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“El presente texto es una traducción de un original en castellano que no tiene carácter oficial en el sentido previsto por el apartado 1º) artículo 6 del Real Decreto 2555/1977, de 27 de agosto, por el que se aprueba el Reglamento de la Oficina de Interpretación de Lenguas del Ministerio de Asuntos Exteriores y de Cooperación.”

LAW 1/2000, OF 7 JANUARY, ON CIVIL PROCEDURE

(«OFFICIAL STATE GAZETTE» No. 7, of 8 January 2000; correction of errors in OFFICIAL STATE GAZETTES numbers 90, of 14 April 2000, and 180, of 28 July 28 2001)

PRELIMINARY TITLE

ON PROCEDURAL RULES AND THEIR IMPLEMENTATION

Article 1. *The principle of procedural legality.*

In civil procedure, the courts and those who appear and act in court shall act in keeping with the provisions herein.

Article 2. *Application of civil procedural rules in time.*

Unless otherwise stipulated in the legal provisions of transitory law, the cases which correspond to the civil courts shall always be substantiated by these in keeping with the procedural rules in force, which shall never be retroactive.

Article 3. *Territorial scope of civil procedural rules.*

With the sole exceptions which may be stipulated in international treaties and conventions, civil procedure taking place in Spain shall only be regulated by Spanish procedural rules.

Article 4. *Supplementary nature of the Civil Procedural Act.*

In the absence of provisions in the laws which regulate criminal, contentious-administrative, employment and military proceedings, the provisions herein shall apply to all of these.

BOOK ONE
ON THE GENERAL PROVISIONS CONCERNING CIVIL TRIALS

TITLE ONE

ON COURT APPEARANCE AND PROCEDURE FOR TRIALS

Article 5. *Classes of jurisdictional protection.*

1. The following may be sought from the courts, a ruling to perform a certain service, the declaration of the existence of rights and judicial situations, the constitution, modification or expiry of these, enforcement, the issuance of injunctions and any other form of protection which is expressly stipulated in law.

2. The pleas referred to in the preceding paragraph shall be made before the competent court and against the parties which are to be affected by the ruling being sought.

CHAPTER ONE

ON THE CAPACITY TO BE A PARTY, THE LEGAL CAPACITY TO SUE OR PLEAD, AND STANDING

Article 6. *Capacity to be a party.*[1]

1. The following may be parties in the proceedings before civil courts:

(i). Natural persons.

(ii). Those conceived but not born, to all those effects favourable to such person.

(iii). Legal persons.

(iv). Estate or separated estate which temporarily lacks an owner or whose owner has been deprived of his powers to dispose of and administer this.

[1] Item added by Act 39/2002, of 28 October.

(iv). The entities lacking legal personality which the law recognises as having the capacity to be a party.

(vi). The Public Prosecution Service with regard to proceedings in which, in accordance with law, it must act as a party.

(vii). The groups of consumers or users affected by a damaging event when the parties which compose this are determined or easily determined. In order to lodge a claim in court, the group must necessarily be constituted by the majority of those affected.

(viii). The entities authorised pursuant to European Community Regulations to exercise cessation in defence of collective interest and the diffuse interest of consumers and users.

2. Notwithstanding the liability which, according to law, may correspond to the managers or the participants, in any case, claims may be placed against the entities which have not complied with the legally established requirements to be constituted as legal persons and are made up of a multiplicity of personal and asset components placed at the service of a specific objective.

Article 7. *Appearance in court and representation.*[2]

1. Only those who fully exercise their civil rights may appear in court.

2. Natural persons not included in the case of the preceding paragraph must appear by representation or with the assistance, authorisation, and empowerment, or by the defender required by law.

3. With regard to those conceived and not born, the persons who would legitimately represent them if they had been born shall appear.

4. Those who legally represent legal persons shall appear.

5. Estates or separated estates referred to in number 4 of paragraph 1 of the preceding article shall appear in court represented by those who manage these, pursuant to law.

6. The entities lacking personality referred to in number 5 of paragraph 1 of the preceding article shall appear in court represented by those to whom the law attributes this representation.

[2] Paragraph added by Act 22/2003, of 9 July.

7. With regard to the entities with no personality referred to number 7 of paragraph 1 and in paragraph 2 of the preceding article, the persons who, in fact or due to agreements made by the entity act on its behalf with regard to third parties, shall appear in court.

8. The limitations to the capacity of those in temporary receivership and the manners to make up for them shall be regulated by what is established in Bankruptcy Act.

Article 8. *Integration of the legal capacity to sue or plead.*[3]

1. When an individual is involved in the case mentioned in paragraph 2 of the preceding article and there is no person to legally represent or assist them to appear in court, the clerk of the court shall issue an order appointing a counsel for the defence who shall assume the representation and defence, until such a representative is appointed.

2. In the event referred to in the preceding paragraph and in any others which involve the appointment of a counsel for the defence of the defendant, the Public Prosecution Service shall assume the representation and defence until such counsel is appointed.

In any case, the proceedings shall be suspended until the Public Prosecution Service intervenes.

Article 9. *Ex officio appreciation of the lack of capacity.*

The lack of capacity to be a party and the lack of the legal capacity to sue or plead may be ex officio appreciated by the court at any time during the proceedings.

Article 10. *The condition of legitimate party to the proceedings.*

Legitimate parties shall be those who appear and act in court as parties to the judicial relationship or the matter in dispute.

The cases in which, by law, standing is attributed to a person other than the party are excepted.

[3] Section 1 is amended by final provision 3.1 of Law 15/2015, of 2 July.

Article 11. *Standing for the defence of the rights and interests of consumers and users.*[4]

1. Notwithstanding the individual standing of those aggrieved, legally constituted associations of consumers and users shall be authorised to defend the rights and interests of their members and of the association in court, as well as the general interests of consumers and users.

2. Where the aggrieved in a harmful event are a group of consumers or users whose members are perfectly determined, or are easily determined, authorisation to seek to protect such collective interests falls to the associations of consumers or users, legally incorporated entities that have the defence or protection of the latter as their object, and the affected groups themselves.

3. When those aggrieved by an event are an undetermined number of consumers or users, or a number difficult to determine, the standing to bring proceedings in defence of these diffuse interests shall correspond exclusively to the associations of consumers and users which, in accordance with the law, are representative.

4. The authorised entities referred to in Article 6.1.8. shall be authorised to exercise an action for an injunction for the defence of the collective interests and the diffuse interests of the consumers and users.

Judges and Courts shall accept this list as proof of the capacity of the authorised entity to be a party, without prejudice to examination of whether bringing an action is legitimised by the aims of the entity and the interests of the affected parties.

5. The Public Prosecution Service is authorised to take any action to defend the interests of consumers and users.

Article 11bis. *Standing for the defence of the right to equal treatment for men and women.*[5]

1. For the defence of the right to equal treatment for men and women, besides those affected and only with their authorisation, Trade Unions and legally constituted associations whose primary objective is the defence of

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[4] Section 4 is amended and section 5 is added by additional provision 2 of Law 3/2014, of 27 March. Paragraph 4 added by Article 1.2 of Law 39/2002 of 28 October.

[5] Article added by Organic Act 3/2007, of 22 March.

equal treatment for men and women shall be legitimised with regard to their affiliates and members, respectively.

2. When those affected are an indeterminate number of persons or a number difficult to determine, the standing to lodge a claim in court in defence of these diffuse interests shall correspond exclusively to the public bodies with competence in the matter, to the more representative Trade Unions and to the associations at State level whose primary objective is equality between men and women, notwithstanding their procedural standing if those affected are determined.

3. The person harassed shall be the only person with standing in cases of sexual harassment or gender harassment.

CHAPTER II

ON THE MULTIPLICITY OF PARTIES

Article 12. *Joint litigation.*

1. Several persons may appear in court as claimants or defendants when the actions are due to a single claim.

2. When the jurisdictional protection sought may only become effective with regard to several parties considered as a whole, all of these shall have to be claimed against as co-litigants unless otherwise expressly stipulated by law.

Article 13. *Intervention of parties who are neither claimants nor defendants.*[6]

1. While proceedings are pending, whoever accredits a direct and legitimate interest in the outcome of the case may be considered to be admitted as a claimant or defendant in the case.

In particular, any consumer or user may intervene in proceedings lodged by legally recognised entities in defence of the interests of these.

2. The application for supervision shall not suspend the course of the procedure. The court shall resolve in proceedings, once the parties have been heard, within a period of ten days.

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[6] Paragraph worded in accordance with Act 13/2009, of 3 November.

3. When the supervision has been allowed, there shall be no reactive action, but the party involved shall be considered to be a party to the proceedings and shall be able to defend the pleas formulated by the co-litigant or those formulated by the person intervening if this might procedurally be allowed even though the co-litigant waives, accepts, desists or abandons the proceedings due to any other reason.

The party acting shall be also be given permission to make the pleas required for his defence which he might not have made as they corresponded to procedural times prior to their admission to the proceedings. In any case, the Court Clerk shall notify the other parties of these pleas within a period of five days.

The party acting may also use the appeals possible against the decisions he considers to be damaging to his interests even though his co-litigant consents to these decisions.

Article 14. *Intervention of parties who are neither claimants nor defendants.*[7]

1. In the event that the law permits the claimant to call a third party to intervene in the proceedings, without being considered to be a defendant, the application for intervention must be included in the claim unless the law expressly states otherwise. Once the third party is given permission to enter the proceedings by the court, they shall have the same powers to act as the law grants to the parties.

2. When the law permits the defendant to call a third party to intervene in the proceedings, procedure shall be in accordance with the following rules:

(i). The defendant shall request the court to notify the third party of the case in dispute. The request must be submitted within the time limit granted to respond to the claim.

(ii). The Clerk of the Court shall order the interruption of the time limit to respond to the claim with effect from the day on which the request was submitted and shall agree to hear the claimant within a period of ten days, and the court shall resolve by order as appropriate.

(iii). The time limit granted to the defendant to respond to the claim shall be resumed by notifying the defendant of the dismissal of their request or, if it is accepted, with the notification of the response

[7] Section 2 is amended by single article 1 of Law 42/2015, of 5 October.

submitted by the third party and, in any case, on the expiry of the time limit granted to respond to the claim.

(iv). If the third party appears and the respondent considers that their place in the proceedings must be occupied by the third party, procedure shall be in accordance with the provisions of Article 18.

5. In the event that the third party is absolved by the judgment, the costs may be imposed on whoever sought their intervention in accordance with the general criteria of Article 394.

Article 15. *Announcement and intervention in proceedings for the protection of collective and diffuse rights and interests of consumers and users.*[8]

1. in the proceedings lodged by associations or entities constituted for the protection of the rights and interests of consumers and users or by groups affected, those who have been damaged due to being consumers of the product or users of the service which gave rise to the proceedings shall be called to appear in order to assert their individual rights or interest. This call shall be made by the Court Clerk, who shall announce the admission of the claim in the media with territorial coverage where the damage to these rights or interests has occurred.

The Public Prosecution Service shall be a party to these proceedings when social interest justifies this. The court which knows of these proceedings shall notify the Public Prosecution Service of their commencement in order to evaluate its appearance

2. When the proceedings involve determined or easily determined damaged parties, the claimant or claimants must have previously notified those concerned of their intention to lodge a claim. In this case, after the call, the consumer or user may act in the proceedings at any time, but may only conduct the procedural acts which have not been precluded.

3. When the proceedings involve damage to an indeterminate number of persons or a number which is difficult to determine, the call shall suspend the course of the proceedings for a time limit which shall not exceed two months and which shall be determined by the Court Clerk in each case

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8 Added to paragraph 1 for the final disposition 1 Act 29/2009, of 30 december.

Paragraphs 1, 2 and 3 of this article were worded in accordance with Act 13/2009, of 4 November, except the second paragraph of section 1 which was included by Act 29/2009, of 30 December.

Paragraph 4 added by Act 39/2002, of 28 October.

depending on the circumstances or complexity of the event and the difficulties concerning the determination and localisation of those damaged. The proceedings shall resume with the intervention of all the consumers who have obeyed the call, and the individual appearance of consumers or users shall not be allowed subsequently, notwithstanding the fact that these may assert their rights or interests in accordance with the provisions of Articles 221 and 519 herein.

4. The proceedings initiated through the exercise of a cessation action for the defence of collective interests and the diffuse interests of consumers and users are excepted.

Article 15 bis. *Intervention in proceedings involving defence of competition.*[9]

1. The European Commission, the National Free Competition Commission and the competent bodies of the autonomous regions, within their jurisdiction, may intervene without the condition of parties, on their own initiative or at the request of a judicial body, through the contribution of information or the presentation of written comments on questions concerning the application of Articles 81 and 82 of The Treaty of the European Community or Articles 1 and 2 of the Free Competition Act. With the approval of the corresponding judicial body, verbal comments may be submitted. For these effects, they may request the competent jurisdictional body to send or have sent to them any documents that are needed to evaluate the case in question.

The contribution of the information shall not include the data or documents obtained within the scope of the circumstances of application of the exemption or reduction of the amount of the fines stipulated in Articles 65 and 66 on the Free Competition Act.

2. The European Commission, the National Commission on Free Competition and the competent bodies of the autonomous regions shall contribute the information or shall present the comments stipulated in the preceding number ten days before the hearing referred to in Article 433 herein or within the period for opposition or challenging the appeal lodged .

[9] Article added by Act 15/2007, of 3 July.

CHAPTER III

ON PROCEDURAL SUCCESSION

Article 16. *Procedural succession due to death.*[10]

1. When the transfer of the subject of the hearing is mortis causa, the person or persons who succeed the claimant may continue to occupy his position in the hearing for all purposes.

On notification of the death of any litigant by the party which succeeds him, the Court Clerk shall agree to the suspension of the proceedings and shall inform the other parties Once the death and the right to succession are accredited and the pertinent formalities have been complied with, the Court Clerk shall consider, in any case, the successor as appearing on behalf of the deceased litigant and the court shall take this into account in the judgement.

2. When the death of a litigant is known by the court responsible for the case and the successor does not appear within a time limit of five days, the Court Clerk, through an order to move the proceedings forward, shall allow the other parties to request notification of the proceedings, with identification of the successors and their addresses, requiring that they appear within a time limit of ten days.

In this decision concerning the notification, the Court Clerk shall agree to the suspension of the proceedings until the successors appear or the time limit for appearing terminates.

3. When the deceased litigant is the defendant and the other parties do not know the successors or these either cannot be located or do not want to appear, the proceedings shall continue, and the defendant shall be declared to be in contempt of court by the Court Clerk.

If the deceased litigant is the claimant and his successors fail to appear due to any of the first two circumstances stated in the preceding paragraph, an order shall be pronounced by the Court Clerk in which the claimant shall be considered to have ceased his claim, the proceedings shall be filed unless the respondent challenges this, in which case the provisions set forth in the third paragraph of Article 20 shall apply. If the appearance

[10] Article worded in accordance with Act 13/2009, of 3 November.

of the successors is due to the fact that they do not wish to appear, it shall be understood that the claimant waives the action.

Article 17. *Succession by transfer of the matter in dispute.*[11]

1. When the transfer has been carried out, pending a trial on its subject, the acquirer may seek to be included as a party in the position held by the transmitter by accrediting the transfer. The Court Clerk shall dictate an order to suspend the procedure and shall grant a period of ten days to the other party so that he might allege what he has the right to.

If this is not challenged within this time limit, the Court Clerk shall order the case to be suspended and declare that the acquirer occupy the position of the transferor in the case.

2. Within the time limit granted in the preceding paragraph, if the other party states his opposition to the acquirer entering the case, the court shall resolve what it considers to be appropriate by a court order.

The claim shall not be accepted when the party accredits that he has rights or defence which, with regard to the subject of the trial, can only be asserted against the party transferring, or a right to counterclaim, or a counterclaim is pending, or if the change of party might seriously damage the defence.

When the plea made by the acquirer is not accepted, the transferor shall continue in the case, and the private judicial relationships between the parties shall continue to exist.

3. The procedural succession arising from the transfer of property and rights in litigation in bankruptcy proceedings shall be governed by the provisions of Bankruptcy Act. In such cases, the other party may efficaciously challenge the acquirer with regard to any rights and exceptions which might correspond to him instead of the party in bankruptcy.

Article 18. *Succession in the cases of provoked intervention.*[12]

In the case referred to in rule 4 of paragraph 2 of Article 14, on the application submitted by the defendant, the Court Clerk shall notify the

[11] Paragraph 1 worded pursuant to Act 13/2009, of 3 November.

Paragraph 3 added by Act 22/2003, of 9 July.

[12] Article worded pursuant to Act 13/2009, of 3 November .

other parties so they might put forward the allegations corresponding to them in law, within a time limit of five days, and the court shall decide what is fitting concerning succession through an order.

CHAPTER IV

THE PARTIES' POWER OF DISPOSITION OVER THE PROCEEDINGS AND THEIR PLEAS

Article 19. *The litigants' right of disposition. Settlement and stay.*[13]

1. Litigants are empowered to dispose of the matter at issue in the proceedings and may waive, acquiesce, submit themselves to mediation or arbitration and reach agreements on the matter at issue, except where the Law should prohibit it or set forth limitations for reasons of general interest or to the benefit of a third party.

2. Should the parties aim to reach a court settlement and the agreement or accord they reach is in keeping with the preceding paragraph, it shall be sanctioned by the court dealing with the matter in dispute with the aim of bringing it to a close.

3. The actions referred to in the preceding paragraphs may be performed, on the basis of their nature, at any time during the first instance, the appeals or the enforcement of judgement.

4. The parties may likewise seek a stay of proceedings, which shall be agreed upon by the Court Clerk through an order whenever it does not harm the general interest or a third party and the stay does not exceed sixty days.

Article 20. *Waiver and abandonment.*[14]

1. Where the claimant may state he is waiving the action or the right upon which the pleas are grounded, the courts shall issue a judgement absolving the defendant, except where such waiver is legally inadmissible. In such an event, a court order shall be issued ordering the proceedings to continue.

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[13] Paragraph 1 amended by final provision 3.1 of Act 5/2012 of 6 July.

Paragraph 4 worded in accordance with Act 13/2009 of 3 November.

[14] Paragraph 3 of this article has been worded in accordance with Act 13/2009 of 3 November.

2. The claimant may unilaterally abandon the claim before the defendant is ordered to attend to tender a plea or summoned to trial. The claimant may likewise unilaterally abandon the claim at any time where the defendant is in default.

3. Once the defendant is ordered to attend, the document of abandonment shall be transferred to the defendant with a time limit of ten days.

Should the defendant grant his consent to the abandonment or not contest it within the time limit set forth in the preceding paragraph, an order shall be issued by the Court Clerk agreeing upon dismissal of action and the claimant may file a new claim on the same matter at issue.

Should the defendant contest the abandonment, the Judge shall issue a judgement in accordance with what he may deem appropriate.

Article 21. *Acceptance of claim.*[15]

1. Should the defendant accept all of the claimant's pleas, the court shall issue a judgement against the defendant in keeping with the claimant's pleas. Nevertheless, should such acceptance of claim have been made in abuse of law or against the general interest or to the detriment of a third party, a court order dismissing it shall be issued and the proceedings shall continue their course.

2. Should the acceptance of claim be partial, the court may, at claimant's request, immediately issue a court order upholding the pleas on the matters at issue of such acceptance of claim. In order to do so, it shall be necessarily be possible to issue a separate judgement on such pleas without pre-judging the remaining matters at issue which have not been accepted, regarding which the proceedings shall continue. This court order shall be enforceable in accordance with the provisions set forth in the Articles 517 and the following herein.

3. Should the acceptance of claim result from an undertaking for the purposes of the settlement set forth in paragraph 3, Article 437 for eviction proceedings due to the failure to pay rent or any amounts due, or to legal or contractual expiry of term, the ruling sanctioning the settlement shall state that, should the premises not be vacated within the time limit set forth in the settlement, such settlement shall be rendered ineffective and the party convicted shall be evicted without any further ado or notice on the

[15] Paragraph 3 added by Act 19/2009 of 23 November.

date and time set in the summons if it is subsequent to or on the date set in such ruling.

Article 22. *End of proceedings due to out-of-court settlement or ex-post facto lack of cause. Special case rendering eviction ineffective.*[16]

1. Where, due to a change in circumstances to the claim and the reconvention, there ceases to be legitimate interest in obtaining the legal protection sought, because the claims of the claimant and, as appropriate, the counter-claimant are settled out of court, or for any other reason, this circumstance will be declared and, if there is agreement between the parties, the Clerk of the Court will decree the proceedings to have terminated without giving an order as to costs.

2. Should either of the parties allege the persistence of a legitimate interest and deny, stating their grounds, that they have received any out-of-court settlement of their claims, or with other arguments, the Clerk of the Court shall summon the parties, within the time limit of ten days to a hearing before the Court, which shall deal with this sole issue.

Once the hearing has been brought to a close, the court shall decide within the next ten days by means of a court order whether or not it is appropriate to continue with the hearing, imposing the costs of these proceedings on whoever may have had their claim dismissed.

3. No appeal may be lodged against the court order ordering the hearing to proceed. An appeal may be lodged against the court order resolving an end to the proceedings.

4. Eviction proceedings concerning urban or rural properties due to the tenant's failure to pay rent or any amounts owed shall come to an end by means of an order issued to such an effect by the Clerk of the Court if, once the tenant is summonsed under the terms provided for in Paragraph 3 of Article 440, the tenant pays the claimant or deposits the amounts claimed with the court or a notary public, within the time limit granted in the summons, as well any amounts owed at the time such payment is made to render the eviction ineffective. Should the claimant contest the rendering ineffective of the eviction due to the preceding requirements not being met, the parties shall be summonsed to the hearing provided for in Article 443 herein, after which the Judge shall issue a judgment either rendering

[16] Paragraph 4 amended by Article 2.1 of Law 4/2013 of 4 June.

the action ineffective or otherwise upholding the claim and the eviction appropriate.

The provisions set out in the preceding paragraph shall not apply whenever the tenant has rendered the eviction ineffective on a previous occasion, except where the payment has not taken place due to causes attributable to the landlord, or where the landlord has served a demand for payment to the tenant by a reliable means at least thirty days before lodging the claim and payment has not been made before such claim was lodged.

5. Any judgment declaring the eviction action ineffective shall impose any costs due to the tenant, except where the rent and any amounts owed have not been collected due to causes attributable to the landlord.

CHAPTER V

ON PROCEDURAL REPRESENTATION AND TECHNICAL DEFENCE

Article 23. *Intervention of the procurator.*[17]

1. Appearance at the hearing will be via procurator, who must have a Law Degree, be a Law Graduate or hold another equivalent university Degree, be authorised to carry out their profession in court and who knows the case.

2. Notwithstanding the provisions of the preceding paragraph, litigants may appear on their own behalf:

(i). In oral hearings decided in relation to the amount where this does not exceed €2.000, and to bring small claims proceedings in accordance with the provisions of this Act.

(ii). In actions on behalf of all creditors, where the appearance is limited to the submission of entitlements to credit or rights, or to attend Meetings.

(iii). In incidents relating to contesting decisions regarding legal aid and where urgent pre-hearing measures are requested.

3. Legally authorised procurators may appear in any kind of proceedings without the need for a lawyer, where they do so for the sole purpose of hearing and receiving notices and making non-personal appearances on

[17] Paragraphs 1 and 2 amended and paragraphs 4 to 6 added by single article 2 of Law 42/2015, of 5 October.

behalf of the represented parties when requested by the Judge, Court or Clerk of the Court. No applications may be filed when performing such actions. Simultaneously performing the professions of lawyer and procurator to the courts is deemed incompatible.

4. Under the terms provided for in this Act, the procurator is responsible for practising procedural acts of notification and carrying out tasks aiding and cooperating with the courts.

5. To carry out acts of notification, they will have the power to certify and will be given the necessary credentials.

To exercise the duties included in this section, and without prejudice to the possibility of substitution by another procurator in accordance with the provisions of the Judiciary Act, they will act personally and indelegably and their acts may be challenged before the Clerk of the Court in accordance with the procedure provided for in articles 452 and 453. An appeal for judicial review may be made against the decree resolving this challenge.

6. The Procurators' Associations will organise the necessary services for the practice of procedural acts and other duties to be carried out by procurators.

Article 24. *Granting Power of Attorney to the Procurator.*[18]

1. The power of attorney the party grants to the procurator must be witnessed by a notary or be granted "apud acta" by personal appearance before the Clerk of the Court in any court office or electronically on the relevant judicial headquarters web site.

2. The electronic copy of the notarial power of attorney for representation, either computerised or digitised, will be attached to the first writ submitted by the procurator.

3. Execution "apud acta" by personal or electronic appearance must be done at the same time as the first writ is submitted or, as appropriate, prior to the first act, without the need for the procurator to be present at such execution. The power of attorney may also be accredited by certification of

[18] Amended by single article 3 of Law 42/2015, of 5 October.
Please note that the provisions relating to the electronic "apud acta" powers of attorney archive will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law.

its registration in the electronic "apud acta" powers of attorney archive at the court offices.

Article 25. *General and special powers of attorney.*

1. A general power of attorney for lawsuits shall empower the court representative to validly perform any procedural actions normally performed in claims on behalf of the grantor of power of attorney.

The grantor of power of attorney may nonetheless exclude from the general power of attorney any matters for which the law does not require a special power of attorney. Such exclusion shall be expressly and unequivocally set forth.

2. A special power of attorney shall be necessary:

(i). For waivers, settlements, abandonment, acceptances of claim, submission to arbitration and statements that may lead to a dismissal of the proceedings due to out-of-court satisfaction or supervening loss of the matter in dispute.

(ii). To exercise any powers the grantor of power of attorney may have excluded from the general power of attorney in accordance with the provisions set forth in the preceding paragraph.

(iii). In all other cases required under the law.

3. Any actions that must be performed personally by the litigants under the law may not be performed through the court representative.

Article 26. *Acceptance of power of attorney. Procurator's duties.*[19]

1. Acceptance of the power of attorney shall be assumed by the fact of the procurator making use of it.

2. Once the power of attorney is accepted, the procurator is under the obligation to:

(i) Carry on with the matter at hand whilst their power of representation does not cease due to any of the causes set out in Article 30. The procurator shall be under the obligation to collaborate with the courts to rectify procedural defects, as well as to perform any actions that

[19] Point 7 of paragraph 2 amended by single article 4 of Law 42/2015, of 5 October.

may turn out to be necessary to move the proceedings forward properly.

(ii) Send to the lawyer chosen by their client or by themselves, where the power of attorney covers such matters, any documents, background facts or instructions that may be sent to them or that they may acquire, doing whatever may further the defence of the interests of their principal under the liability the laws impose on the representative.

Where the procurator lacks instructions or should the ones sent by the grantor be insufficient, the procurator shall do whatever may be required by the nature or kind of the matter in question.

(iii) Keep the principal and the lawyer duly informed of the course of the matter entrusted to them at all times, immediately passing on copies of all decisions notified and of the writs and documents transmitted by the court or by the procurators of the other parties.

(iv) Transfer their principal's and lawyer's writs to the procurators of the other parties in the manner provided for in Article 276.

(v) Collect from a lawyer who ceases to be in charge of the matter all copies of writs and documents and other information on the matter to hand them over to the lawyer in charge of carrying on with the case or to the principal.

(vi) Inform the court immediately of the impossibility of performing any act entrusted to him.

(vii) Pay all the expenses incurred at their request, except for the lawyer's fees and those for experts, the fees for exercising jurisdictional power and the deposits needed to lodge appeals, unless the principal has handed over the funds needed to pay them.

(viii) Serve notices and any other actions of cooperation with the Justice Administration which the party he represents may request or are in such party's interest, where agreed upon during the course of the legal proceedings by the Clerk of the Court, in accordance with the provisions of procedural laws.

(ix) Attend the courts where the procurator exercises their profession, and chambers where notices are served and common services provided during the correct time for acts.

Article 27. *Additional legislation on the granting of power of attorney.*

Lacking any express provisions on the relationship between the grantor of power of attorney and the court representative, the rules set forth for agency agreements in civil legislation shall apply.

Article 28. *Court representative's passive power of attorney.*

1. Whilst the power of attorney remains in force, the court representative shall hear and sign all kinds of summonses, requirements and notices, including judgements referring to his party, during the course of the proceedings and until the judgement is enforced. These actions shall have the same force as if the grantor of power of attorney had been directly involved in them without it being legitimate for him to seek involvement in them.

2. For the purposes of notice, time limits or deadlines, the court representative shall also receive copies of the documents issued by the court representatives of the other parties in the manner set forth in Article 276.

3. There shall be a notice reception service organised by the Association of Court Representatives in all judicial premises housing courts. The reception by such service of notices and copies of documents served by court representatives for transfer to the other parties shall take full effect. The copy made to record reception shall state the number of copies served and the name of the court representatives to whom they are addressed.

4. Any transfers, notices, summonses and requirements that the law sets forth which must be served in person to the litigants are excluded from the preceding paragraphs.

Article 29. *Provision of funds.*[20]

1. The grantor of power of attorney shall be obliged to provide funds to the court representative pursuant to the civil legislation that applies to the agency agreement.

2. Should the grantor of power of attorney fail to provide his court representative with the necessary funds to continue with the proceedings after they are initiated, the latter may apply for the former to be compelled to do so.

[20] Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

Such plea shall be decided before the Court dealing with the matter. Once the plea has been decided upon, the Court Clerk shall transfer the decision to the grantor of power of attorney within a time limit of ten days and the Court Clerk shall immediately decide through an order the appropriate course of action, setting, as appropriate, the amount deemed necessary and the time limit within which it shall be handed over, along with the threat of serving a distraint order.

Article 30. *Dismissal of the court representative.*[21]

1. The court representative shall cease to hold his powers of representation:

(i). Due to the express or implicit revocation of the power of attorney after it is entered in the records. The power of attorney shall be deemed to have been implicitly revoked by the subsequent appointment of another court representative to deal with the issue.

In the latter case, should the court representative who has been acting in the proceedings raise questions about the effective existence or validity of the power of attorney granted to the court representative meant to replace him, the matter shall be resolved through an order after hearing the person or persons appearing as grantors of the respective powers of attorney.

(ii). Due to voluntary relinquishment or due to leaving the profession or being sanctioned with a suspension from exercising the profession. In the former two cases, the court representative shall be obliged to give prior irrefutable notice of the fact to the grantor of power of attorney and to the Court. In the event of suspension, the corresponding Association of Court Representatives shall give the Court notice thereof.

Whilst the relinquishment or dismissal is not duly recorded and the court representative is deemed as having relinquished or been dismissed, the court representative may not cease to represent his grantor of power of attorney and shall continue to do so for a time limit of ten days until another court representative is appointed.

Once this time limit has elapsed without a new court representative being appointed, the Court Clerk shall issue an order stating that the former no longer holds the powers of representation held up to then.

(iii). Due to the grantor of power of attorney or of the court representative's death.

[21] The first paragraph of this article has been worded in accordance with Act 13/2009 of 3 November.

In the former case, the court representative shall be obliged to give notice to the Court, duly providing proof of death and, should he not file a new power of attorney granted by the heirs or successors, the provisions set forth in Article 16 shall apply.

Should the court representative die, the Court Clerk shall give the grantor of power of attorney notice of the death, so that he may proceed with the appointment of a new court representative within a time limit of ten days.

(iv). Due to the grantor of power of attorney setting aside the plea or the defence put forward and, in any event, due to the matter at issue coming to an end or due to the action for which the power of attorney was granted being duly performed.

2. Where the power of attorney has been granted by the legal representative of a legal person, the administrator of joint or separate assets, or a person appearing in the proceedings on behalf of an entity lacking legal personality in accordance with the law, any changes in the powers of representation or administration of such legal persons or joint or separate assets or entities lacking legal personality shall not extinguish the power of attorney of the court representative nor shall they give rise to a new party to the proceedings.

Article 31. *Lawyer's intervention.*[22]

1. The litigants shall be counselled by lawyers duly authorised to exercise their profession in the court and who know about the matter. No applications may be filed without the lawyer's signature,

2. With the sole exception of:

(i). In oral hearings decided in relation to the amount where this does not exceed €2.000, and to bring small claims proceedings in accordance with the provisions of this Act.

(ii). Writs in application to become a party to the lawsuit, to seek urgent pre-hearing measures or to seek an urgent stay of hearings or acts. Where the stay of hearings or acts being sought is grounded in causes particularly referring to the lawyer, the latter must also sign the writ, if possible.

[22] Section 2.1 is amended by single article 5 of Law 42/2015, of 5 October.

Article 32. *Non-compulsory involvement of attorney and court representative.*[23]

1. Where the involvement of an attorney or court representative is not compulsory and the claimant should wish to appear on his own behalf and be defended by an attorney, or be represented by a court representative, or be assisted by both professionals, the claimant shall state such a fact in the statement of claim.

2. Should the defendant also wish to be assisted by an attorney and court representative once the notice of claim has been served, the defendant shall give the court notice thereof within a time limit of three days and may also seek the right to free legal assistance, as appropriate. In the latter case, the court may agree to a stay of proceedings until such right is upheld or dismissed or until an attorney and court representative are provisionally appointed.

3. The defendant shall also be entitled to be a party to the lawsuit with the assistance of the professionals referred to in paragraph 1 where the claimant is not assisted by an attorney or court representative. The defendant shall give the court notice of his decisions within a time limit of three days from the date the notice of claim is served, and the claimant shall in turn be given notice of such circumstance. Should the claimant then also wish to use an attorney and court representative, the claimant shall give the court notice thereof within the three days of receiving notice and, should the claimant apply for the right to free legal assistance, a stay may be agreed upon under the terms set forth in the preceding paragraph.

4. The notice served to a party of the counter-party's intention of using an attorney and court representative shall also include information on the party's entitlement pursuant to Article 6.3 of the Free Legal Assistance Act, so that such party may file the relevant application.

5. Where the involvement of an attorney and court representative is not compulsory, any fees for such professionals shall be excluded from any costs awarded in favour of the other party, unless the Court deems the behaviour of the party ordered to pay costs as reckless or the address of the party counselled and represented should be located in a place other than where the proceedings were conducted. In the latter case, the limitations set forth in paragraph 3, Article 394 herein shall apply. In any event, any duties due to the court representative arising from any merely

[23] Paragraph 5 worded in accordance with Act 13/2009 of 3 November.

optional actions that may have been conducted by Court Offices shall also be excluded.

Article 33. *Appointment of court representative and attorney.*[24]

1. Apart from the cases of ex officio appointment set forth in the Free Legal Assistance Act, the parties are responsible for contracting the services of the court representative and the attorney who shall represent and defend them during the proceedings.

2. Nonetheless, any litigant not entitled to free legal assistance may seek that an attorney, a court representative or both professionals be appointed for him where their involvement is compulsory or, where it is not, whenever the counter-party has given the court notice that he or she shall be defended by an attorney and represented by a court representative.

Should the application be made by the defendant, it shall be filed within a time limit of three days from the date the summons is served.

Such applications shall be filed and decided upon in accordance with the provisions set forth in the Free Legal Assistance Act without the need of certify entitlement to such assistance, as long as the applicant undertakes to pay the fees of the professionals that may be appointed on the applicant's behalf.

3. Where any of the parties should seek recognition of the entitlement to free legal assistance in any of the proceedings referred to in item 1, paragraph 1, Article 250, the Court shall, upon having been served notice of such a fact, issue a grounded decision requiring the professional associations to provisionally appoint an attorney and court representative whenever such appointments have not been performed beforehand and notwithstanding the applicant subsequently paying for the fees should he be later denied entitlement to free legal assistance.

Notice of such decision shall be given to the Bar Association and to the Association of Court Representatives as quickly as possible and the application shall then be processed in keeping with the provisions set forth in the Free Legal Assistance Act.

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[24] Paragraph 3 added by Act 23/2003 of 10 July.

Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

Paragraph 4 added in accordance with Act 19/2009 of 23 November.

4. In the proceedings referred to in the preceding paragraph, the defendant shall apply for the recognition of entitlement to free legal assistance or the appointment of an ex officio attorney or court representative within a time limit of three days of being served notice of claim. Should the application be filed subsequently, the failure of the professional associations to appoint an attorney and court representative shall not lead to a stay in the proceedings, except in the cases set forth in paragraph 2, Article 16 of Act 1/1996 of 10 January on Free Legal Assistance.

Article 34. *Procurator's account.*[25]

1. Where a procurator has to demand payments from their principal in arrears of any fees and expenses outlaid by the former for the matter, the procurator may file detailed accounts with the Clerk of the Court of his place of establishment setting out the amounts owed and not paid arising from such accounts that are being claimed. Successors of the procurators shall enjoy the same entitlement with regard to credits of this nature as the latter may leave them. Intervention by a lawyer or procurator will not be compulsory.

2. Once the accounts have been filed and admitted by the Clerk of the Court, the latter shall demand payment from the principal for such amount or require them to contest the accounts within a time limit of ten days, with a warning of a surcharge if they do not pay or lodge a challenge to them.

If, within this time limit, the principal lodges an objection, the Clerk of the Court will give the procurator three days to respond to the challenge. After this time, the Clerk of the Court will examine the account and procedural steps, along with the documentation provided, and will issue a decision within a period of ten days determining the amount to be paid to the procurator, subject to surcharge if payment is not made within the five days following the notification.

The decision referred to in the preceding paragraph shall not be subject to appeal, but it may not –not even partially– pre-empt the judgment that may be passed in any subsequent ordinary proceedings.

3. If the principal does not contest the accounts within the time limit set, an enforcement order will be made for the amount of the account.

[25] Amended by single article 6 of Law 42/2015, of 5 October.

Article 35. *Lawyers' fees.*[26]

1. Lawyers may claim payment for the fees due to them for the matter at issue from the party they have counselled by submitting a detailed fee note formally stating that such fees are due to them and have not yet been paid. Successors of the lawyers shall enjoy the same entitlement with regard to credits of this nature as the latter may leave them. Intervention by a lawyer or procurator will not be compulsory.

2. Once the claim has been submitted, the Clerk of the Court will demand that the debtor pay such amount or contest the account, within a time limit of ten days, with a warning of surcharge if they do not pay or lodge a challenge to them.

Should the fees be contested within that time limit as not being due, the provisions in the second and third paragraphs of section 2 in the preceding article shall apply.

If the fees are contested as being excessive, the Clerk of the Court will give the lawyer three days to respond to the challenge. If the reduction in fees claimed is not accepted, the Clerk of the Court will proceed beforehand to regulate them in accordance with the provisions of articles 241 et seq, unless the lawyer can prove the existence of a prior written quote accepted by the appellant, and will pass a decision fixing the amount due, subject to surcharge if it is not paid within five days after the notification.

This decision shall not be subject to appeal and it may not – not even partially – pre-empt the judgment that may be passed in any subsequent ordinary proceedings.

3. If the debtor of the fees does not contest the accounts within the time limit set, an enforcement order will be made for the amount of the fee note.

[26] Amended by single article 7 of Law 42/2015, of 5 October.

TITLE II

ON JURISDICTION AND COMPETENCE

CHAPTER ONE

ON THE JURISDICTION OF THE CIVIL COURTS AND PRE-TRIAL MATTERS

Section 1. On the scope and limits of the jurisdiction of the civil courts

Article 36. *Scope and limits of civil jurisdiction. Lack of international competence.*[27]

1. The scope and limits of the jurisdiction of Spanish civil courts is determined by the provisions contained in the Organic Act on the Judiciary Branch and in the international treaties and conventions to which Spain is a party.

2. Spanish civil courts shall refrain from dealing with any matters brought before them where any of the following circumstances may exist:

a) Where a claim is brought or an application for enforcement is filed concerning individuals or assets enjoying immunity from jurisdiction or enforcement in accordance with spanish law and the rules of the Public International Law.

b) Where a matter is exclusively attributed to another state's jurisdiction by virtue of an international treaty or convention to which Spain is a party.

c) Where a defendant duly summoned to attend should fail to appear in cases where the international competence of Spanish courts may only be grounded on the implicit submission of all parties.

Article 37. *Lack of jurisdiction. Abstention of the civil courts.*

1. Where a court of the civil jurisdiction should deem that the matter brought before it corresponds to either the military jurisdiction or to a public administration or to the Court of Auditors acting in its accounting role, such court shall refrain from dealing with the matter.

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[27] Amended by final provision 4 of Organic Act 16/2015 of 27 october.

2. Civil courts shall likewise refrain from dealing with any matters brought before them that should be dealt with by the courts of another jurisdiction within the ordinary jurisdiction. Where the Court of Auditors exercises jurisdictional functions, it shall be deemed to form part of the contentious-administrative jurisdiction.

Article 38. *Ex officio appreciation of the lack of jurisdiction and international competence.*

The abstention referred to in the preceding two articles shall be agreed upon ex officio after hearing the parties and the Public Prosecution Service, as soon as the lack of international competence or the lack of jurisdiction due to the matter belonging to another jurisdiction is known.

Article 39. *Appreciation of the lack of international competence or jurisdiction at the request of a party.*[28]

By means of a declinatory plea, the defendant may allege a lack of international competence or jurisdiction due to the matter at issue belonging to another jurisdiction or having been submitted to arbitration or mediation.

Section 2. On the preliminary points of law

Article 40. *Criminal preliminary points of law.*[29]

1. When a civil action evidences a fact that has the appearance of an offence or misdemeanour that is indictable ex officio, the civil court shall inform the Department of Public Prosecution by direction of the court, in case there are grounds for the initiation of criminal proceedings.

2. In the case referred to in the preceding paragraph, suspension of the actions of the civil proceedings shall only be ordered under the following circumstances:

a) The existence is evidenced of a criminal case wherein one or more of the grounds on which the plea of the parties in the civil procedure is based are being investigated as an allegedly criminal matter.

[28] Amended by final provision 3.2 of Act 5/2012 of 6 July.

[29] Paragraphs 5 and 6 of this article have been worded in accordance with Act 13/2009 of 3 November.

b) The decision of the criminal court concerning the fact constituting the ground for the criminal proceedings may have a decisive influence on the decision concerning the civil case.

3. The stay referred to in the preceding paragraph shall be agreed by means of a court order once the proceedings are only pending judgement.

4. However, the stay motivated by the possible existence of an offence of misrepresentation in any of the documents submitted to the court shall be decided without waiting for the conclusion of the proceedings, as soon as it is evidenced that a criminal case is in progress regarding the said offence and if, in the opinion of the court, the document may be of decisive importance to resolve on the merits of the case.

5. In the case referred to in the preceding paragraph the Court shall not decide the suspension or the Court Clerk shall not execute the suspension agreed by the former, as the case may be, if the party whom the document may benefit waives the latter. Once the waiver has taken place, the Court Clerk shall order the document to be separated from the proceedings.

6. The stays referred to in this article shall be carried out by the Court Clerk if it is evidenced that the criminal proceedings have concluded or have been suspended for reasons preventing their normal continuance.

7. If the criminal case concerning the misrepresentation of a document is the result of a complaint or a petition filed by one of the parties and has been concluded with a decision in which the document is declared authentic or its misrepresentation has not been proved, the party that would have incurred damages as a result of the stay of proceedings may, in the said civil proceedings, claim compensation of damages in accordance with the provisions of Article 712 and subsequent articles.

Article 41. *Appeals against the decision to suspend legal actions on the grounds of criminal first ruling procedure.*[30]

1. An appeal for reversal against the decision denying the suspension of the civil cause may be filed. The application for suspension may, nevertheless, be reproduced during second instance and, where relevant, during the hearing of the extraordinary appeals for breach of procedure or motions to vacate.

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[30] Paragraph added by Act 13/2009 of 3 November.

2. A remedy of appeal may be filed against the suspension and, where relevant, an extraordinary appeal for breach of procedure may be filed against the decisions passed in appeal deciding or confirming the suspension.

3. A direct appeal for judicial review may be filed against the decision of the Court Clerk resolving the execution of the suspension.

Article 42. *Non-criminal pre-trial matters.*[31]

1. For merely pre-trial purposes, the civil courts may examine matters attributed to the contentious-administrative and social courts.

2. The decisions of civil courts on the matters referred to in the preceding paragraph shall have no effect outside the proceedings in which they are issued.

3. The provisions of the preceding paragraphs notwithstanding, if required by law or requested by the parties in mutual agreement or by one of the parties with the consent of the other, the Court Clerk shall stay the execution of the procedures prior to passing judgement until the pre-trial matter has been resolved by the competent public administration, the Court of Auditors or the Courts of the corresponding jurisdictional level, as appropriate. In this case, the Civil Court shall be bound by the decision of the said bodies in relation to the pre-trial matter.

Article 43. *Civil first ruling procedure.*

When, to decide on an issue in litigation, a decision must be reached on an issue that, in turn, is the main issue of a different proceedings in the same or a different civil court and a joinder of actions is not possible, the court, at the request of the parties or of one party, having heard the other party, may issue a court order to stay the proceedings at the level it has reached, until the proceedings on the pre-trial issue has ended.

An appeal for reversal may be brought against the order denying the petition and a remedy of appeal may be lodged against the order deciding the suspension.

[31] Paragraph 3 worded in accordance with Act 13/2009 of 3 November.

CHAPTER II

ON THE RULES FOR DETERMINING THE JURISDICTION

Article 44. *Legal predetermination of the jurisdiction.*

For the civil courts to be competent in each case, the hearing of the lawsuit must have been assigned to them in accordance with legally binding rules and prior to bringing action.

Section 1. On the objective jurisdiction

Article 45. *Jurisdiction of the Courts of First Instance.*[32]

1. The Courts of First Instance are responsible, in first instance, for hearing all civil cases not expressly assigned to other courts by legal provisions.

2. These Courts will also hear:

a) Matters, acts, issues and appeals as assigned to them under the Judiciary Act.

b) Insolvency of individuals who are not entrepreneurs.

Article 46. *Specialisation of certain Courts of First Instance.*

The Courts of First Instance which, by virtue of the provisions of Article 98 of the Organic Act on the Judiciary Branch, have been assigned the hearing of certain specific matters shall extend their jurisdiction exclusively to the proceedings in which the said matters are being resolved and shall remit the case to another competent court where the proceedings are dealing with other matters. Any matters raised in this respect shall be conducted in the same manner as conflicts of competence.

Article 47. *Competence of the Magistrates' Courts.*

The Magistrates' Courts shall be competent to hear, in first instance, the civil matters of an amount not exceeding € 90 and not included in any of the cases which, by reason of the subject matter, are referred to in paragraph 1 of Article 250.

[32] Amended by final provision 4.1 of Law 7/2015 of 21 July.

Article 48. *Ex officio finding of the lack of objective jurisdiction.*[33]

1. The lack of proper jurisdiction shall be found ex officio as soon as it is verified by the court hearing the case.

2. If the court examining the case in second instance or an extraordinary appeal for a breach of procedure or cassation considers that the court which heard the case in first instance lacked the objective jurisdiction, it shall decree the nullity of the entire proceedings, maintaining the right of the parties to lodge their actions before the corresponding rank of court.

3. In the cases referred to in the preceding paragraphs, the Court Clerk shall assign a hearing to the parties and to the Public Prosecution Service within a common time limit of ten days and the Court shall decide by means of a court order.

4. The court order declaring the lack of objective jurisdiction shall indicate the type of court that should hear the case.

Article 49. *Finding the lack of objective jurisdiction at the request of a party.*

The defendant may denounce the lack of objective jurisdiction by filing a declinatory plea.

Article 49 bis. *Loss of competence in the event of acts of violence against women.*[34]

1. When a judge hearing a civil procedure in first instance becomes aware of the perpetration of an act of violence as defined in Article 1 of the Organic Act on Measures of Integral Protection against Gender Violence which gave rise to a criminal trial or a protection order shall, after verifying compliance with the preliminary requirements set forth in paragraph 3 of Article 87 of the Organic Act on the Judiciary Branch, remit the case at its current status to the competent judge of violence against women, unless the case has reached the stage of hearing of evidence.

2. When a Judge hearing a civil procedure becomes aware of the possible perpetration of an act of gender violence that did not give rise to criminal proceedings or the issuing of a protection order shall, after verifying

[33] Paragraph 3 worded pursuant to Act 13/2009, of 3 November.

[34] Article added by Organic Act 1/2004 of 28 December.

compliance with the requirements of paragraph 3 of Article 87 of the Organic Act on the Judiciary Branch, immediately summon the parties to appear with the Public Prosecution Service at a hearing to be held in the next 24 hours, in order for the said Judge to examine all relevant details in connection with the facts. Upon termination of the hearing, the Public Prosecutor shall without delay, within the next 24 hours, decide whether or not it is appropriate to report the acts of gender violence or to apply to the competent Court of Violence against Women for a protection order. In the event that a complaint is lodged or a protection order sought, the Public Prosecutor shall deliver a copy of the complaint or the application to the court, which shall continue to hear the case until the competent Judge of Violence against Women requests that the case be sent to another court.

3. If a Judge of Violence against Women hearing criminal case concerning gender violence becomes aware of the existence of a civil procedure and verifies partial overlapping of the requirements of paragraph 3 of Article 87 of the Organic Act on the Judiciary Branch, he shall request the Civil Court to refrain from involvement. The Civil Court shall then send the case on to the requesting body.

For the purposes of the preceding paragraph, the request to pass the case on shall be accompanied by an attestation of the initiation of committal proceedings or a summary trial in minor offences, the order of admission of the complaint or the protection order adopted.

4. In the cases set forth in paragraphs 1 and 2 of this article, the Civil Court shall send the records to the Court of Violence against Women. The provisions of Article 48.3 of the Code of Civil Procedure shall not apply and, as of that moment, the parties shall be bound to appear before the said latter court.

In such cases, the remaining rules of this paragraph shall not apply, nor shall a declinatory plea be given permission to proceed, and the parties wishing to invoke the competence of the Court of Violence against Women shall submit testimony of one of the decisions issued by the said Court referred to in the final paragraph of the preceding number.

5. The Courts of Violence against Women shall exercise their competence in civil matters in an exclusive and excluding manner and in all respects in accordance with the procedures and remedies set forth in the Code of Civil Procedure.

Section 2. On territorial jurisdiction

Article 50. *General jurisdiction of natural persons.*

1. Unless the law establishes otherwise, the territorial jurisdiction shall correspond to the court of the place of residence of the defendant and, if the latter has no place of residence within the national territory, the competent Judge shall be the Judge of his place of residence in the territory concerned.

2. Those who do not have an address or place of residence in Spain may be sued in the place where they are within the national territory or that of their latest place of residence in the said territory and, if the jurisdiction cannot be determined in this manner either, in the place of residence of the plaintiff.

3. Businessmen and professionals involved in litigation deriving from their business of professional activity can also be sued in the place where the said activity is being carried out and, if they have establishments under their responsibility in various places, in any of such places at the discretion of the plaintiff.

Article 51. *General jurisdiction of corporate entities and entities without legal personality.*

1. Unless the law establishes otherwise, corporate entities shall be sued in the place of their address. They can also be sued in the place where the situation or the legal relation to which the litigation refers has originated or must take effect, provided that they have an establishment open to the public or a representative authorised to act in the name of the entity in the said place.

2. Entities without legal personality can be sued at the address of their administrators or in any place where they are carrying out their activity.

Article 52. *Territorial jurisdiction in special cases.*[35]

1. The jurisdictions established in the preceding articles shall not apply and the jurisdiction shall be determined in accordance with the provisions of this article in the following cases:

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[35] Paragraph 2 amended and paragraph 3 added by single article 8 of Law 42/2015 of 5 October

(i) In hearings where rights in rem are exercised over immovable property the competent court will be that in the place where the subject of the litigation is located. When the action in rem is being exercised over several immovable properties or over just one located in different districts, the competent court shall be that of any one of those districts, at the discretion of the plaintiff.

(ii) In claims relating to the presentation and approval of accounts to be rendered by the administrators of property of others, the competent court shall be that of the place where such accounts must be submitted and, if the address of the principal, grantor or owner of the goods, or that of the place where the administration is being carried out has not been established, at the discretion of the plaintiff.

(iii) In complaints concerning guarantee obligations or accessory to other prior obligations, the competent court shall be the court that is competent to hear, or is hearing, the principal obligation to which they relate.

(iv) In hearings concerning matters of inheritance, the competent court shall be that of the place where the deceased had his last place of residence and, if he had his last place of residence in a foreign country, that of the place of his last residence in Spain or where he had the majority of his assets, at the discretion of the plaintiff.

(v) In legal proceedings in which actions are being exercised concerning the assistance or representation of individuals of unsound mind, disabled or declared prodigal, the competent court shall be that of the place where they reside.

(vi) In matters relating to the rights to honour, personal and family privacy and personal image and, in general, in matters of civil protection of fundamental rights, the competent court shall be that of the place of residence of the plaintiff and, if the latter has no place of residence in Spain, the court of the place where the event infringing the fundamental right concerned occurred.

(vii) In hearings concerning the lease of immovable properties and those of eviction the competent court shall be that of the place where the property is located.

(viii) In hearings concerning property in condominium the competent court shall be that of the place where the property is located.

(ix) In hearings where compensation for damages deriving from the circulation of motor vehicles is demanded, the competent court shall be that of the place where the damages were caused.

(x) In matters contesting corporate resolutions, the competent court shall be that of the place of the registered office.

(xi) In proceedings where claims are lodged concerning the infringement of intellectual property rights, the competent court shall be that of the place where the infringement was committed or where there is evidence that it has been committed or where there are unlawful copies, at the discretion of the plaintiff.

(xii) In hearings relating to unfair competition, the competent court shall be that of the place where the defendant has their establishment and, failing such establishment, their address or place of residence and, should they not have such address or place of residence on Spanish territory, the court of the place where the act of unfair competition was committed, or where its effects are occurring, at the discretion of the plaintiff.

(xiii) In matters relating to patents and trademarks, the competent court shall be that indicated by the specific legislation governing those matters.

(xiv) In proceedings in which actions are taken requesting an order not to incorporate the general contracting conditions in the contract or the nullity of the said conditions, the competent court shall be that of the address of the plaintiff. On this same matter, where declaratory, injunction or retraction actions are taken, the competent court shall be that of the place where the defendant has their establishment and, failing such establishment, that of their residence; and if the defendant does not have an address in Spanish territory, the court of the place where accession took place.

(xv) In third-party claims to ownership or third-party interventions with a paramount right lodged in relation to an administrative collection procedure, the competent court shall be that of the address of the body ordering the attachment, notwithstanding the special cases provided for public authorities in matters of territorial jurisdiction.

(xvi) In proceedings where injunction action is taken in defence of the collective and diffuse interests of consumers and users, the competent court will be that of the place where the defendant has an establishment and, failing such establishment, that of their residence; if they do not have an address in Spanish territory, the court of the place where the plaintiff resides.

(xvii) In proceedings against resolutions and acts by the Department of Registries and Notaries regarding the Civil Register, with the exception of applications for nationality due to residence, the competent court

will be the Court of First Instance in the capital of the province where the appellant resides.

2. Where the rules of the preceding paragraph do no not apply to litigation regarding insurance, hire purchase of movable tangible property and contracts for their finance, as well is in matters of contracts for the provision of services or relating to movable property which were entered into after a public tender, the competent court shall be that of the address of the insured, purchaser or borrower or that of the address of the person who accepted the offer, respectively, or the court provided for in the rules of article 50 and 51, at the discretion of the plaintiff.

3. Where the rules in the preceding paragraphs do not apply to litigation arising from individual actions taken by consumers and users, the competent court will, at the discretion of the consumer or user, be that of their residence or the relevant court in accordance with articles 50 and 51.

Article 53. *Territorial jurisdiction in the event of joinder of causes of action and in the event of multiple defendants.*

1. When different legal actions are exercised jointly against one of more individuals, the competent court shall be that of the actions forming the basis of the remaining actions, failing the latter, that where the highest number of accumulated actions must be examined and, in the last instance, that of the place corresponding to the most important action from a quantitative point of view.

2. If there are several defendants and, in accordance with the rules set forth in this and preceding articles, the territorial jurisdiction may correspond to the judges of more than one place, the complaint may be lodged with any of them, at the discretion of the plaintiff.

Article 54. *Dispositive nature of the rules on territorial jurisdiction.*

1. The legal rules attributing the territorial jurisdiction shall be applied only in the absence of an explicit or tacit submission by the parties to the courts of a specific judicial district. An exception applies to the rules established under points (i) and (iv) to (xv) of paragraph 1 and in paragraph 2 of Article 52 and other provisions in which this or another law expressly establishes their imperative nature. Nor shall the explicit or tacit submission apply to matters that must be resolved in oral trials.

2. The explicit acceptance contained in contracts of adherence or contracts containing general conditions imposed by one of the parties or that have been entered into with consumers or users shall not be valid.

3. The submission of the parties shall be valid and effective only when made to courts with objective jurisdiction to hear the relevant case.

Article 55. *Explicit submission.*

Explicit submission shall be understood as that agreed upon by the parties involved with specification of the judicial district to whose courts they submit themselves.

Article 56. *Tacit submission.*[36]

The following shall be considered submitted tacitly:

(i). The plaintiff, by the mere fact that he presented himself at the courts of a specific judicial district lodging the complaint or filing a petition or application required to be presented to the court competent to hear the complaint.

(ii). The defendant who, having appeared at the hearing after the filing of the complaint, undertakes any action other than that of filing a declinatory action in due form. Likewise, the defendant to, having been summoned or served notice in due form, fails to appear at the hearing or does appear after the faculty to propose the declinatory action has precluded shall be deemed to have submitted himself tacitly.

Article 57. *Explicit submission and assignment.*

The explicit submission of the parties shall determine the judicial district whose courts must hear the case. When, in the said judicial district, there are several courts of the same class, the assignment of the cases shall determine to which of them it shall correspond to hear the case, and the parties shall not be entitled to submit themselves to a specific court to the exclusion of the others.

Article 58. *Ex officio appreciation of the territorial jurisdiction.*[37]

When the territorial jurisdiction is established pursuant to imperative rules, the Court Clerk shall examine the territorial jurisdiction immediately after

[36] Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

[37] Article worded in accordance with Act 13/2009 of 3 November.

the complaint has been filed and if, after having heard the Public Prosecutor and the parties appearing, he considers that the Courts lacks the territorial jurisdiction to hear the case, shall inform the Judge in order for the latter to resolve as appropriate by means of a court order and, if appropriate, to refer the procedure to the Court which, in his opinion, has the territorial jurisdiction. In case elective jurisdictions apply, the defendant's preference shall be adhered to, pursuant to a notice served upon the latter to this effect.

Article 59. *Allegation of the lack of territorial jurisdiction.*

Apart from those cases in which the territorial jurisdiction is determined by the law by virtue of imperative rules, the lack of territorial jurisdiction may only be appreciated if the defendant or those who may be legitimate parties to the case propose the declinatory action in due time and form.

Article 60. *Negative conflict of territorial jurisdiction.*

1. If the decision of disqualification of a court due to the lack of territorial jurisdiction has been adopted pursuant to a declinatory action or at a hearing of all the parties involved, the court to which the procedure is referred shall adhere to the decision and cannot declare its lack of territorial jurisdiction ex officio.

2. If the decision of disqualification due to the lack of territorial competition has not been adopted pursuant to a hearing of all the parties involved, the court to whom the procedure is referred may declare its lack of territorial jurisdiction ex officio if the latter must be determined by virtue of imperative rules.

3. The decision declaring the lack of jurisdiction shall order the referral of all the records to the immediately superior ordinary court, which shall decide by means of an order without the possibility of subsequent appeal which court shall hear the case, ordering, if appropriate, the referral of the procedure and the citation of the parties within the next ten days to appear before the said court.

Section 3. On the functional jurisdiction

Article 61. *Functional jurisdiction by connectivity.*

Barring a legal provision to the contrary, the court that is competent to hear a case shall equally be competent to resolve on its incidents, to put into

effect the decisions and orders it may pass and to execute the judgement or covenants and transactions it may approve.

Article 62. *Ex officio appreciation of the jurisdiction to hear the appeals.*

1. The appeals filed with a court that lacks the functional jurisdiction to hear the said appeals shall not be given leave to go ahead. Notwithstanding the above, if, after having leave for an appeal to go ahead, the court with which the said appeal has been filed determines that it lacks the functional jurisdiction to hear the case shall issue an order abstaining from hearing the case, after having heard all the parties appearing within an ordinary term of ten days.

2. The order referred to in the preceding paragraph having been served, the parties to the suit shall dispose of a term of five days for the appropriate filing or announcement of the appeal, which term shall be added to the legally established term for the said procedures. If the parties exceed the resulting period without appealing in due form, the decision concerned shall become final.

CHAPTER III

ON DECLINATORY ACTIONS

Article 63. *Contents of the declinatory plea, legal capacity to propose it and competent court to examine it.*[38]

1. By means of a declinatory plea, the defendant and those who may be legally entitled to be party to the case filed can claim the lack of jurisdiction of the court before which the complaint has been lodged on the grounds that the hearing of the case corresponds to foreign courts, to bodies of a different jurisdictional order or to arbitrators or mediators.

A declinatory plea may also be lodged to claim the lack of jurisdiction of any nature whatsoever. Should the declinatory plea be grounded on the lack of territorial jurisdiction, the court holding territorial jurisdiction to which the records are to be forwarded shall be indicated.

2. The declinatory action shall be filed with the same court that is hearing the case and is considered to lack jurisdiction of competence. However, the declinatory action may also be filed with the court of the address of the

[38] Paragraph 1(1) amended by final provision 3.3 of Law 5/2012 of 6 July.

defendant, and the said court shall forward the said action using the most rapid means of communication to the court with which the complaint was filed, notwithstanding its obligation to refer it officially on the day following that of its presentation.

Article 64. *Procedural time for submission of a jurisdictional plea and immediate effects.*[39]

1. A jurisdictional plea must be submitted within the first ten days of the time limit for responding to the claim and will, until resolved, have the effect of staying the time limit to respond and the course of the main proceedings and the suspension will be declared by the Clerk of the Court.

2. The suspension of the main proceedings caused by the prior jurisdictional claim shall not prevent the court with which the cause is pending from conducting, at the request of a legitimate party, any actions taking evidence and any precautionary measures whose delay could result in irreparable damage to the plaintiff, unless the defendant deposits a sufficient bond to cover the damages that may arise from processing a jurisdictional plea lacking grounds.

The bond may be provided in cash, by joint and several guarantee for a definite duration and payable on first request, issued by a credit entity or a mutual guarantee company or any other means that, in the opinion of the court, guarantees the immediate availability, if appropriate, of the amount involved.

Article 65. *Processing and decision on the declinatory plea.*[40]

1. The writ of declinatory action shall be accompanied by the documents or principles of evidence on which it is grounded, with a number of copies equal to that of the remaining litigants, who shall avail of a term of five days as of the notification of the declinatory action to allege and to present whatever they deem convenient to sustain the jurisdiction or the competency of the court, which shall resolve the matter within the next five days.

If the declinatory action concerns the lack of territorial jurisdiction, the plaintiff who challenges the said the said declinatory action may also allege the lack of territorial jurisdiction of the court in whose favour the hearing of the cause is being contested.

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[39] Section 1 is amended by single article 9 of Law 42/2015, of 5 October.

[40] Paragraph 2 (2) amended by final provision 3.4 of Law 5/2012 of 6 July.

2. If the court considers that it has no jurisdiction because the hearing of the case corresponds to courts of another State, it shall so declare by means of an order, abstaining from hearing the case and declaring the stay of the proceedings.

The court shall proceed in like manner should it deem that the declinatory plea is grounded on the matter at issue having been submitted to arbitration or mediation.

3. If the court considers that it has no jurisdiction because the matter concerned corresponds to the courts of a different jurisdictional level, in its order abstaining from hearing the case it shall inform the parties of the bodies before which they shall exercise their rights. The same decision shall be passed if the court considers that it lacks objective jurisdiction.

4. If a declinatory action has been lodged relating to the territorial jurisdiction and the latter is not determined by imperative rules, in order to allow the said action to proceed the court shall be bound to consider the body indicated by the party who filed the declinatory action to be the competent body.

5. The tribunal, when allowing the declinatory action relating to the territorial jurisdiction to proceed, shall disqualify itself in favour of the body to which the jurisdiction corresponds and shall resolve to refer the procedure to the said court, summoning the parties to appear before the latter within a term of ten days.

CHAPTER IV

ON THE APPEALS CONCERNING JURISDICTION AND COMPETENCY

Article 66. *Appeals concerning international competence, jurisdiction, submission to arbitration or mediation and subject-matter jurisdiction.*[41]

1. A remedy of appeal may be filed against the order abstaining from hearing the case on the basis of a lack of international competence, on the grounds that the matter corresponds to another jurisdictional level, because the matter has been submitted to arbitration or mediation, or on the basis of a lack of subject-matter jurisdiction.

2. The only remedy available against the order rejecting the lack of international competence, jurisdiction or subject-matter jurisdiction shall

[41] Amended by final provision 3.5 of Law 5/2012 of 6 July.

be an appeal for reversal, notwithstanding the right to allege the lack of the said procedural prerequisites in the appeal against the final judgment.

The provisions set forth in the preceding paragraph shall equally apply when the order rejects the submission of the matter to arbitration or mediation.

Article 67. *Appeals concerning territorial jurisdiction.*

1. No remedy of any nature shall be possible against the orders resolving on the territorial jurisdiction.

2. Allegations of lack of territorial jurisdiction in remedies of appeal and extraordinary appeals for breach of procedure shall be only be given permission to proceed when imperative rules apply to the case concerned.

CHAPTER V

ON THE DISTRIBUTION OF THE CAUSES

Article 68. *Compulsory nature of the distribution. Procedural treatment.*[42]

1. All civil causes shall be distributed among the Courts of First Instance if there are several in the judicial district. The same rule shall apply to the causes to be heard by the Provincial Courts when the latter are divided in Divisions.

2. The Court Clerks shall not allow any cause subject to distribution to be filed if the corresponding proceeding is not set forth in the said cause. If the said proceeding is not mentioned, at the request of any of the parties, any action not consisting in ordering the cause to be assigned shall be annulled.

3. No declinatory action shall be allowed against the decisions concerning the distribution, although any of the litigant parties shall have the right to challenge the infringement of the distribution rules in force at the time of presentation of the brief or of the application to initiate the procedure.

4. The decisions passed by courts other than the court or courts competent to hear the case according to the rules of distribution shall be declared null at the request of the party to whose disadvantage the said decisions have

[42] Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

been passed, provided that the nullity has been requested during the court procedure immediately following the moment when the party has become aware of the infringement of the rules of distribution and the said infringement has not been remedied in accordance with The provisions set forth in the preceding paragraph.

Article 69. *Term within which the distribution has to take place.*[43]

The causes shall be distributed and remitted to the relevant Court Office within a time limit of two days following the presentation of the brief or application to initiate the procedure.

Article 70. *Urgent measures in unassigned cases.*

The Deans and the presiding judges of Courts and High Courts may, at the request of a party, adopt urgent measures in unassigned cases if failure to do so may violate a specific right or cause a certain serious and irreparable damage.

TITLE III

ON THE JOINDER OF ACTIONS AND PROCEEDINGS

CHAPTER ONE

ON THE JOINDER OF ACTIONS

Article 71. *Main effect main joinder. Objective joinder of actions. Contingent joinder.*

1. The joinder of actions given permission to proceed shall lead to all the actions being dealt with in the same proceedings and their decision in a single judgement.

2. The claimant may join as many actions against the defendant he is entitled to in the claim, though they may arise from different titles, as long as they are not mutually incompatible.

3. It shall be incompatible to simultaneously bring two or more actions in the same proceedings where they are mutually exclusive or mutually

[43] Article worded in accordance with Act 13/2009 of 3 November.

contradictory, so that choosing one such action shall impede or render ineffective the bringing of the other action or actions.

4. Notwithstanding the provisions set forth in the preceding paragraph, the claimant may join contingent actions that are mutually incompatible by stating the main action and the other action or actions brought for the sole purpose of the main action being deemed groundless.

Article 72. *Subjective joinder of actions.*

Actions may be joined and simultaneously brought against several or single subjects, as long as such actions have some sort of link or grounds on the basis of a title or the causes of plea.

It shall be construed that the title or grounds are identical or connected where the actions are grounded in the same facts.

Article 73. *Admissibility of a joinder of actions due to procedural reasons.*[44]

1. The following shall be necessary for a joinder of actions to be admissible:

(i). That the Court should deem that it enjoys jurisdiction and competence over the main action due to the matter at issue or due to its amount in order to deal with the joined action or actions. Nonetheless, any action that has to be heard for reasons of its amount in an oral trial may be joined to an action that has to be conducted through declaratory actions.

(ii). That the joined actions may not for reasons of their subject matter be heard in trials of a different kind.

(iii). That the law does not prohibit joinder in cases where specific actions are brought due to reasons of the matter at issue or due to the kind of proceedings that have to be followed.

2. In certain cases, different actions may also be joined in the same claim where the law should so provide.

3. Should several actions have been unduly joined, the Court Clerk shall require the claimant to rectify the defect within a time limit of five days, keeping the actions whose joinder is possible, before granting the claim leave to proceed. Once this period has elapsed without the rectification

[44] This article is worded in accordance with Act 13/2009 of 3 November.

being carried out, or should the circumstance of the inadmissibility persist concerning the joinder of the actions the claimant wishes to bring, the Court Clerk shall give the Court notice thereof, which shall then issue a ruling on the claim's admission.

CHAPTER II

ON THE JOINDER OF PROCEEDINGS

Section 1. On the joinder of proceedings: General provisions

Article 74. *Purpose of the joinder of proceedings.*

By virtue of a joinder of proceedings, the proceedings shall be conducted in a single procedure and brought to a close through a single judgement.

Article 75. *Capacity to seek a joinder of proceedings.*[45]

Ex officio joinder. Joinder may be requested by whoever may be a party to the proceedings whose joinder is sought or agreed upon on an ex officio basis by the Court, as long as any the circumstances set forth in the following article are met.

Article 76. *Circumstances in which the joinder of proceedings may proceed.*[46]

1. The joinder of proceedings may be agreed upon whenever:

(i) The judgment to be issued in one of the proceedings may bring about injurious effects on the other.

(ii) Such connection exists between the matters at issue in the proceedings whose joinder is sought, so that, if they are conducted on a separate basis, judgments containing contradictory, incompatible or mutually exclusive decisions or grounds may be issued.

2. Joinder may also be given leave to proceed under the following circumstances:

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[45] Article worded in accordance with Act 13/2009 of 3 November.

[46] Number (iii) added and the last paragraph of paragraph 2 amended by Article 4.1 of Law 26/2015, of 28 July.

(i) Where proceedings have been brought to protect collective or diffuse rights and interests granted by the law to consumers and users, which may be joined in accordance with the provisions of paragraph 1.1 of this article or in Article 77 whenever the diversity of proceedings has been impossible to avoid through the joinder of actions or the intervention provided for in Article 15 of this Act.

(ii) Where the matter at issue in the proceedings is to contest corporate resolutions adopted at the same Meeting or Assembly or at the same meeting of a collegiate body of governance. In this event, all the proceedings initiated through claims seeking a declaration that such decisions are null and void or voidable shall be joined, as long as such claims are brought within a time limit not exceeding forty days from the date the first claim was brought.

(iii) Where proceedings have been brought in which objection to administrative resolutions regarding protection of a minor is substantiated, processed in accordance with article 780, as long as none of them have started to be heard.

At any event, in places where there is more than one Court having jurisdiction in company matters, in the cases of numbers (i) and (ii) or, in civil matters, in the case of number (iii), claims lodged after another claim will be distributed to the Court where the first should have been heard.

Article 77. *Proceedings that may be joined.*[47]

1. Apart from the provisions of Article 555 of this Act on the joinder of enforcement proceedings, the joinder of declaratory proceedings shall only proceed where they are conducted by the same procedures or such procedures may be joined without a loss of procedural rights, as long as any of the grounds set out in this chapter exist.

It will be understood that there is no loss of procedural rights where a joinder of an ordinary hearing and an oral hearing is agreed, which will continue under ordinary court proceedings, with the court passing an order agreeing to the joinder, and, if necessary, stay the oral court action that is being joined until such time as the claim is responded to, so that the proceedings provided for an ordinary hearing may be followed.

2. Should the proceedings be awaiting judgment before different courts, the joinder shall not be appropriate if the court dealing with the oldest

[47] Section 1 is amended by single article 10 of Law 42/2015, of 5 October.

proceedings should lack objective competence due to the matter at issue or to the amount of the proceedings that are to be joined.

3. The joinder shall likewise not be appropriate where the territorial jurisdiction of the court dealing with the newest proceedings is irrevocable for the parties under the Law.

4. For the joinder of proceedings to be admissible, the proceedings must be in the first instance and none of them shall have brought to a close the hearing referred to in Article 433 of this Act.

Article 78. *Inappropriateness of a joinder of proceedings.Exceptions.*[48]

1. A joinder of proceedings shall not be appropriate where the risk of judgements containing contradictory, incompatible or mutually exclusive rulings or grounds may be avoided through the exception of lis pendens.

2. Neither shall a joinder of proceedings at the request of a party be appropriate where it is not duly proven that proceedings could not have been brought through the initial claim or, as appropriate, through the expansion of such claim or through the counterclaim which includes pleas and matters at issue that are substantially the same as those arising from the various proceedings whose joinder is sought.

3. Should the proceedings whose joinder is being sought have been brought by the same claimant or by a defendant filing a counterclaim, either alone or in joint litigation, it shall be deemed, except where duly proven otherwise, that they could have been brought in single proceedings under the terms of the preceding paragraph and the joinder shall not be appropriate.

4. The provisions set forth in the preceding paragraphs shall not apply to the proceedings referred to in item 2.1, Article 76.

Article 79. *Proceedings in which joinder shall be applied for or agreed upon ex officio.*[49]

1. An application for a joinder of proceedings shall always be filed in the Court dealing with the oldest proceedings, to which the more recent

[48] Paragraphs 2 and 4 of this article have been worded in accordance with Act 13/2009 of 3 November.

[49] Article worded in accordance with Act 13/2009 of 3 November.

proceedings shall be joined. Should this requirement not be met, the Court Clerk shall issue a decision dismissing the application.

Pursuant to the provisions set forth in Article 75, the Court dealing with the oldest proceedings shall hold responsibility for ordering the joinder on an ex officio basis.

2. Age shall be determined by the date the claim was brought and a document certifying such date shall be filed along with the application for joinder.

Should the claims have been brought on the same date, the proceedings assigned first shall be construed as the oldest.

Should it be impossible to determine which of the claims was assigned first due to the proceedings being pending before different Courts or for any other reason, the application may be filed in any of the proceedings whose joinder is being sought.

Article 80. *Joinder in oral hearings.*[50]

In oral hearings, the joinder of proceedings that are pending before the same Court shall be governed by the rules set out in the following section.

Section 2. On the joinder of proceedings pending before the same court

Article 81. *Application for joinder of proceedings.*[51]

Where the proceedings are being conducted before the same Court, the joinder shall be applied for in writing, clearly stating the proceedings whose joinder is being requested and the procedural stage at which they are to be found and setting forth the grounds to justify the joinder.

The application for joinder of proceedings shall not lead to a stay in the course of the proceedings whose joinder is being sought, except as set forth in Article 88.2. The Court may, nonetheless, abstain from issuing a judgement in any of the proceedings until a decision is taken on the appropriateness of the joinder.

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[50] Amended by single article 11 of Law 42/2015, of 5 October.

[51] Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

Article 82. *Initial dismissal of the application for joinder of proceedings.*

The court may dismiss the application for joinder by means of a court order when it may lack the details required by the preceding article or whenever the joinder may not be appropriate according to such application's contents due to the kind or type of proceedings, their procedural stage and any other procedural requirements set forth in the preceding articles.

Article 83. *Performance and decision on the joinder of proceedings. Appeals.*[52]

1. Once an application for a joinder of proceedings has been filed, the Court Clerk shall transfer it to all the other parties to any of the proceedings whose joinder is being sought, even though they may not be a party to the proceedings in which the application has been filed, so that they may file their pleas about such joinder within the common time limit of ten days.

2. Once such time limit has elapsed or the pleas have been received and should all the parties be in agreement with the application for joinder, the Court shall resolve in favour of the joinder within the next five days should it deem that the necessary requirements have been met.

3. Should there be no agreement among the parties or should none of them file any pleas, the Court shall resolve whatever it may deem appropriate, either upholding or dismissing the joinder being sought.

4. Should the joinder be put forward on an ex officio basis, the Court shall give a hearing to all the parties of the proceedings whose joinder is being proposed within a common time limit of ten days, so that they may file their pleas.

5. No appeal other than an appeal for reversal may be lodged against the court order deciding upon the joinder.

Article 84. *Effects of the court order granting the joinder.*[53]

1. Once the joinder has been upheld, the Court shall order that the more recent proceedings be joined to the older proceedings, so that they may be conducted with the same procedure or by the same formalities and be decided upon through the same judgement.

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[52] Article worded in accordance with Act 13/2009 of 3 November.

[53] Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

2. Should the joined proceedings not be at the same stage within the first instance, the Court Clerk shall resolve upon a stay for the most advanced proceedings until the others reach the same stage. In any event, the provisions set forth in the paragraph two, Article 77.1 shall be met.

Article 85. *Effects of the court order dismissing the joinder.*

1. Once the joinder has been dismissed, the proceedings shall be conducted separately.

2. The court order dismissing the joinder shall impose costs on the party that had filed the joinder application.

Section 3. On the joinder of proceedings pending before different courts

Article 86. *Governing rules.*

The joinder of proceedings pending before different courts shall be governed by the preceding rules of this chapter, with the peculiarities set forth in the following articles.

Article 87. *Application for joinder of proceedings.*

In addition to the provisions set forth in Article 81, the written application for joinder of proceedings shall specify the court before which the other proceedings whose joinder is being sought are pending.

Article 88. *Non-suspensive effect of the application or of the initiation of ex officio procedures for the joinder of proceedings.*[54]

1. The application or the initiation of ex officio procedures for the joinder of proceedings shall not lead to a stay in the course of the proceedings affected, except from the moment at which any of them is only pending judgement. In such a case, the time limit for issuing judgement shall be suspended.

2. Notwithstanding the preceding, the Court may agree to suspend the trial or the hearing in order to prevent the holding of such events from affecting the outcome and the evidence to be taken in the other proceedings.

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[54] Article worded in accordance with Act 13/2009 of 3 of November.

3. As soon as the application for joinder is filed, the Court Clerk shall give notice thereof as quickly as possible to the other Court, so that it may abstain from issuing a judgement or decide upon the stay set forth in the preceding paragraph until a definitive decision is taken on the joinder being sought.

4. The Court Clerk shall transfer the application for joinder to all the other parties involved, so that they may file their pleas within the common time limit of ten days on the appropriateness of the joinder. The Court shall then issue a ruling within a time limit of five days in accordance with the provisions set forth in Article 83 herein. Should the joinder be dismissed, notice thereof shall be given by the Court Clerk to the Court, which may then issue a judgement or, as appropriate, proceed to hold the trial or hearing.

Article 89. *Contents of the court order upholding the joinder of proceedings.*

Should the Court uphold the joinder, it shall instruct through the same court order that a formal written request be sent to the court dealing with the other proceedings, requiring the joinder and the transfer of the relevant proceedings.

A certification of the background facts the same court may have determined as sufficient to know the grounds upon which the joinder is being sought, along with any pleas the parties other than the joinder's applicant may have filed shall be attached to such formal request.

Article 90. *Reception of the requirement for joinder by the Court required and hearing of the litigants.*[55]

1. Once the formal request and certification have been received by the Court required, the Court Clerk shall transfer them to all the litigants that have appeared before the Court.

2. Should any of the parties appearing before the Court not have entered an appearance in the proceedings conducted in the Court making the requirement, they shall be given five days to know about the formal request and certification at the Court Office and to file a document stating whatever they may deem most convenient for their rights.

Article 91. *Decision of the requirement for joinder.*

1. Once the five-day time limit referred to in the preceding article has elapsed, the Court shall issue a court order, as appropriate, either accepting or dismissing the requirement for joinder.

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[55] Article worded in accordance with Act 13/2009 of 3 November.

2. Should none of the parties appearing before the court required contest the joinder or should they not file pleas or arguments that differ from those filed before the court making the requirement, the court required shall abstain from contesting the grounds of the court order requiring the joinder on the basis of the existence of the requirements set forth in Articles 76 and 77, and it may only ground its rejection of the requirement on the fact that the joinder should be performed in the proceedings pending before the court thus required.

Article 92. *Effects of the acceptance of joinder by the Court required.*[56]

1. Once the requirement for joinder has been accepted, the Court Clerk shall immediately give notice thereof to all the parties involved in the proceedings conducted before the Court required, so that they may within a time limit of ten days enter an appearance before the Court making the requirement, to which the records shall be sent, so that the proceedings may move forward before such court, as appropriate.

2. Once the joinder of proceedings has been agreed upon, the Court Clerk shall resolve to stay the course of the most advanced proceedings until the other proceedings reach that procedural stage, which shall be the moment at which the joinder is made.

Article 93. *Effects of the rejection of joinder of proceedings by the Court required.*

1. Should the court required not accept the requirement for joinder because it deems such joinder inappropriate or considers that the joinder should be effectuated in the proceedings pending before it, it shall give notice thereof to the court making the requirement and both shall submit themselves to the court holding competence to resolve the discrepancy.

2. The immediately higher court to both the court required and the court making the requirement shall hold competence to resolve such discrepancies.

Article 94. *Conducting the discrepancy before the competent court.*

1. For the purposes set forth in the preceding article, both the court making the requirement and the court required shall send the competent court a certification of the records of the proceedings in their respective courts as

[56] Article worded according to Act 13/2009 of 3 November.

quickly as possible, so that the discrepancy regarding the joinder may be resolved.

2. Both the court making the requirement and the court required shall summon the parties so that they may appear within the non-extendable time period of five days before the competent court and file pleas in writing as to whatever they may deem most convenient to their rights.

Article 95. *Decision on the discrepancy.*[57]

1. The competent court shall issue a decision within a time limit of twenty days in view of the background facts appearing in the records and of the written pleas filed by the parties, should they have been filed, by means of court order. No kind of appeal may be lodged against the court order.

2. Should the joinder of proceedings be upheld, the provisions set forth in Article 92 herein shall be ordered. Should it be dismissed, the proceedings shall follow their course separately and any stays agreed upon shall be lifted by the Court Clerk.

Article 96. *Joinder of more than two proceedings. Multiple requirements for joinder.*[58]

1. The provisions set forth in this chapter shall apply should there be more than two proceedings whose joinder is being sought.

2. Where the same Court may be required for joinder as regards two or more proceedings being followed in different Courts, the Court Clerk shall send the records to the higher court of all of them and shall give notice thereof to the requiring courts, so that they may defer to the decision issued by such higher court. In such a case, the provisions set forth in the two articles above shall apply.

Article 97. *Prohibition of a second instance of joinder.*[59]

1. Should an instance of joinder in proceedings in a case have been raised, a subsequent application for joinder to other proceedings shall not be allowed if the party filing the application had initiated the proceedings to be joined.

[57] Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

[58] Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

[59] Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

2. The Court Clerk shall reject the application filed through a decision to such a purpose. Should a new instance arise despite the preceding prohibition, the Court shall declare null and void any procedures conducted as a result of such application as soon as it is known, imposing costs on whoever may have filed it.

Section 4. On the joinder of specific proceedings to general proceedings

Article 98. *Cases in which the joinder of specific proceedings to general proceedings applies.*[60]

1. The joinder of proceedings shall also be ordered:

(i). Where bankruptcy proceedings are pending involving assets against which any kind of claim has been brought or is brought. In such cases, the courts shall proceed pursuant to the provisions set forth in bankruptcy legislation.

(ii). Where probate proceedings are being followed involving an estate against which any kind of claim has been brought or is brought.

The joinder referred to in this item shall exclude any enforcement proceedings solely involving mortgaged or pledged assets, which on no accounts may be included in probate proceedings, whatever the initiation date of the enforcement proceedings may have been.

2. In the cases set forth in the preceding paragraph, the application for joinder shall be filed before the court dealing with the general proceedings independently of which of the proceedings is the oldest.

3. The joinder of proceedings, where appropriate, shall be governed in this case by the rules of this chapter with the specificities set forth in special legislation on bankruptcy and probate proceedings.

[60] Paragraph 2 (1.2) worded according to the Bankruptcy Act 22/2003 of 9 July.

TITLE IV

ON ABSTENTION AND OBJECTION

CHAPTER ONE

ON ABSTENTION AND CHALLENGES: GENERAL PROVISIONS

Article 99. *Scope of the law's application and the principle of legality.*

1. The abstention and challenging of Judges, Senior Judges, as well as members of the Public Prosecution Service, Court Clerks, experts and personnel at the service of the Administration of Justice in civil proceedings shall be governed by the provisions set forth in this Title.

2. Any abstentions and, if appropriate, challenges set forth in the preceding paragraph may only proceed where any of the causes set forth in the Organic Act on the Judiciary Branch for the abstention and the challenging of Judges and Senior Judges should exist.

Article 100. *Duty of abstention.*[61]

1. Any Judge or Senior Judge who may meet any of the causes legally set forth for abstention shall abstain from dealing with the matter at issue without waiting for a challenge to be filed.

2. Court Clerks and civil servants belonging to the Administrative and Case Management Service, to the Procedural and Administrative Handling Service or to the Legal Assistance Service, as well as members of the Public Prosecution Service or experts appointed by the Courts incurring in any of the causes set forth by the law shall be subject to the same duty.

Article 101. *Legal capacity to challenge.*

In civil matters only the parties may file a challenge. The Public Prosecution Service may also file challenges, as long as it is can or should be involved in the proceedings due to the nature of the rights at issue.

[61] Paragraph worded in accordance with Act 13/2009 of 3 November.

CHAPTER II

ON THE ABSTENTION OF JUDGES, MAGISTRATES, COURT SECRETARIES, PUBLIC PROSECUTORS AND PERSONNEL AT THE SERVICE OF CIVIL COURTS

Article 102. *Abstention of Judges and Senior Judges.*[62]

1. Notice of the abstention of a Senior Judge or Judge shall respectively be given to the Division or Chamber of which he forms part or to the court holding the functional competence to deal with appeals against judgements, which shall then issue a decision within a time limit of ten days. Notice of abstention shall be reasoned and be given in writing as soon as the cause for the abstention is known.

2. The abstention of a Judge or Senior Judge shall lead to a stay of the proceedings until the abstention is resolved and such stay shall be decided upon by the Court Clerk.

3. Should the Court referred to in paragraph 1 of this article deem that the abstention is unjustified, it shall order the Judge or Senior Judge to continue dealing with the matter at issue, notwithstanding the parties' right to file a challenge. Once the order is received, the Court Clerk shall issue an order to move the proceedings forward, putting an end to the stay of proceedings.

4. Should the abstention be upheld by the competent court in accordance with paragraph 1, the abstaining Judge or Senior Judge shall issue a court order definitively removing himself from the matter and ordering the records to be sent to whomever may replace him. Should the abstaining Judge or Senior Judge form part of a Chamber court, the court order, which shall not be subject to any kind of appeal, shall be issued by the Chamber or Division of which the abstaining Judge or Senior Judge forms part.

In both cases, the stay of proceedings shall respectively be brought to an end when the replacement receives the records or joins the Chamber or Division to which the abstaining Judge or Senior Judge belonged.

5. Notice of the abstention and of the replacement for the abstaining Judge or Senior Judge shall be given to the parties, including the name of such replacement.

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[62] Paragraphs 2 and 3 of this article are worded in accordance with Act 13/2009 of 3 November.

Article 103. *Abstention of Court Clerks.*[63]

The abstention of Court Clerks shall be governed by the rules set forth in the Organic Act on the Judiciary Branch.

Article 104. *Abstention of civil servants belonging to the Administrative and Procedural Case Management Service, the Procedural and Administrative Handling Service and the Legal Assistance Service.*[64]

1. Notice of abstention of civil servants belonging to the Administrative and Procedural Case Management Service, the Procedural and Administrative Handling Service and the Legal Assistance Service shall be reasoned and given in writing to whomever may hold competence for taking the decision to bring the matter at issue or case to an end in the appropriate instance, who shall then decide upon its appropriateness.

2. Should the abstention be upheld, the civil servant incurring in the legal causes for abstention shall be replaced in the proceedings by whoever may legally replace him. Should it be dismissed, the civil servant shall continue dealing with the matter.

Article 105. *Abstention of experts.*[65]

1. Any expert appointed by the Judge, Division or Chamber dealing with the matter at issue or, as appropriate, by the Court Clerk shall abstain should any of the circumstances legally set forth come about. The abstention may be done orally or in writing and shall be duly justified.

2. Should the cause for abstention exist at the time of appointment, the expert shall not accept the appointment and shall be immediately replaced. Should the replacement expert also refuse to accept the appointment due to incurring in the same or other causes for abstention, the provisions set forth in paragraph 2, Article 342 herein shall apply. Should the causes be known or come about after the expert's acceptance of the appointment, the abstention shall be resolved after a hearing of the parties by whoever may have made the appointment. No kind of appeal may be lodged against the decision.

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[63] Article worded in accordance with Act 13/2009 of 3 November.

[64] Article worded in accordance with Act 13/2009, of 3 of November on the reform of procedural legislation for the implementation of the new Court Office.

[65] Article worded in accordance with Act 13/2009 of 3 November.

Article 106. *Abstention of members of the Public Prosecution Service.*

The abstention of members of the Public Prosecution Service shall be governed by the rules set forth in such Service's Statutes.

CHAPTER III

ON CHALLENGING JUDGES AND MAGISTRATES

Article 107. *Time and manner of filing the challenge.*[66]

1. The challenge shall be filed as soon as knowledge of its causes is known, as it shall not be given leave to proceed otherwise. More specifically, challenges shall not be given leave to proceed:

(i). Where they are not filed within a time limit of ten days from the date notice is served of the first decision revealing the identity of the Judge or Senior Judge to be challenged, should the existence of the cause for the challenge have been known beforehand.

(ii). Where they are filed with the proceedings already underway, should the cause for the challenge have been known before the procedural stage at which the challenge is filed.

2. The challenge shall be filed in writing and shall specifically and clearly state the legal causes and the reasons on which it is grounded, attaching preliminary evidence thereof. Such document shall be signed by the attorney and the court representative should they be involved in the proceedings, as well as by the person filing the challenge or by someone on his behalf should he be illiterate. In any event, the court representative shall attach a special power of attorney for the challenge in question. Should no attorney and court representative be involved, the person filing the challenge shall have to ratify it before the Court Clerk in question.

3. Once the challenge is filed, it shall be transferred to the other parties involved in the proceedings, so that they may state within a common time limit of three days whether or not they back or contest the challenge thus filed and whether they know of any other causes for a challenge at that moment. Any party that may fail to put forward a challenge within said time limit may not do so subsequently, except where such party may fully prove that they did not know about the new cause for a challenge at the time.

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[66] Paragraph (1.2) worded in accordance with Act 13/2009, of 3 of November on the reform of procedural legislation for the implementation of the new Court Office.

4. On the next business day following the end of the time period set forth in the preceding paragraph, the judge thus challenged shall issue a ruling on whether or not the cause or causes for the challenge filed are given leave to proceed.

Article 108. *Competence for examining challenges.*[67]

1. The following shall examine challenges:

(i). Where the presiding judge or a Senior Judge of the Supreme Court or of a High Court of Justice is challenged, a Senior Judge of the Chamber to which the challenged Senior Judge belongs, appointed according to the rota established by order of seniority.

(ii). Where the presiding judge or a Senior Judge of a Provincial Court is challenged, a Senior Judge of the Civil and Criminal Chamber of the corresponding High Court of Justice, appointed according to the rota established by order of seniority.

(iii). Where the Judge challenged is a High Court Judge, a Judge of the same High Court, appointed according to the rota established by order of seniority, as long as such Judge does not belong to the same Division as the Judge challenged.

(iv). Where all the Judges of a Court of Justice are challenged, a Judge forming part of the Court in question, appointed according to the rota established by order of seniority, as long as such Judge is not affected by the challenge.

(v). Where the Judge or Senior Judge challenged is in charge of a single-judge court, a Senior Judge of the Provincial Court, appointed according to the rota established by order of seniority.

(vi). Where a Justice of the Peace or Magistrate is challenged, the Judge of First Instance of the court district in question or, should there be several Courts of First Instance, the Judge appointed according to the rota established by order of seniority.

Seniority shall be ordered by ranking in the judiciary.

2. In cases where it is impossible to comply with the provisions set forth in the preceding paragraph, the Governing Body of the Court in question shall appoint the examining judge, ensuring he is as highly ranked as possible or at least a judge having greater seniority the judge or judges challenged.

[67] Paragraph 1 of this article is worded in accordance with Act 13/2009 of 3 November.

Article 109. *Performing the challenging and the effects thereof on the main case.*[68]

1. On the same day on which the time limit referred to in paragraph 3 of Article 107, or on the next working day, the Court Clerk shall make the case or action known to the substitute, and it must be forwarded to the Court which must examine the incident, the written statements and the documents of the challenge.

A report must also be attached on the party challenged regarding whether the challenge is given permission to proceed or not.

2. The challenges which do not state the reasons on which they are grounded and those which do not have the documents referred to in paragraph 2 of Article 107 shall not be allowed.

3. If the party challenged accepts the challenge as certain, the incident shall be resolved with no further ado. Otherwise, if the instruction judge allows the challenge proposed to proceed, he shall order the taking of the pertinent evidence requested and which he considers necessary within a period of ten days, and shall then forward the examination to the competent court so that it might decide on the incident.

Once the work is received by the competent court in order to decide on the challenge, the Court Clerk shall transfer this to the Public Prosecutor for a report within a period of three days. Once this time limit has elapsed, the incident shall be decided on within the following five days with or without a report from the Public Prosecutor. There shall be no appeal against this decision.

4. The challenge shall suspend the course of the case until the challenging incident.

Article 110. *Competence for deciding on the challenging incident.*[69]

Challenging incidents shall be decided on by the following:

(i). The Chamber set forth in Article 61 of the Organic Act on the Judiciary Branch, when the party challenged is the presiding judge of the Supreme Court, the president of the Civil Chamber or two or more Senior Judges of this Chamber.

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[68] Paragraph 1, 3, 4 are worded in accordance with Act 13/2009 of 3 November.

[69] Article worded in accordance with Act 13/2009, of 3 November.

(ii). The Civil Chamber of the Supreme Court when one of the Senior Judges who compose this is challenged.

(iii). The Chamber referred to in Article 77 of the Organic Act on the Judiciary Branch when the presiding judge of the high Court of Justice, the presiding judge of the Civil and Criminal Chamber of this High Court, the presiding judge of the Provincial Court located in the corresponding autonomous region or two or more Senior Judges of a Division or Provincial Court have been challenged.

(iv). The Civil and Criminal Chamber of the High Courts of Justice when one or several of the Senior Judges of these courts are challenged.

For the purposes stated in the preceding paragraphs, the party challenged shall not form part of the Chamber.

(v). When the party challenged is a Senior Judge of a Provincial Court, the Provincial Court without the Judge challenged, or, if this is composed of two or more Divisions, the Division the judge challenged is not a part of or the Division which follows the Division which the challenged Judge forms a part of in numerical order.

(vi). When the party challenged is a judge of First Instance or a judge of a Commercial Court, the Division of the Provincial Court which knows of the appeals against his decisions, and, if there are several, a rota shall be established commencing with the First Division.

(vii). When the party challenged is a Justice of the Peace, the Examining Magistrate of the challenging incident shall decide.

Article 111. *Specialities of the challenging incident in oral trials. Other special cases.*[70]

1. In the proceedings which are substantiated through oral trials, if the judge challenged does not accept the challenge as certain, the proceedings shall pass to the party which must deal with the incident, and the main case shall remain suspended. The Court Clerk shall convene the parties before the Examining Magistrate, within the following five days, and once the parties have been heard and the evidence declared to be relevant examined, the Examining Magistrate shall decide through a procedural court order on whether the challenge applies or not at the same act.

[70] Paragraph worded in accordance with Act 13/2009 of 3 November.

2. As regards challenges to Judges or Senior Judges subsequent to the setting of a date for the hearing, the provisions set forth in Articles 190 to 192 herein shall apply.

Article 112. *Decision on the incident, costs and fine.*

1. The court order which dismisses the challenge shall agree to return the information on the case or action in the state it is in to the party challenged and shall sentence the challenger to pay the costs unless there are exceptional circumstances which might justify another pronouncement. When the decision the incident expressly declares that the challenger had bad fait, a fine of € 180 to one € 6000 may be imposed on him.

2. The court order which upholds the challenge shall definitively separate the party challenged from knowledge of the proceedings or action. The party who substitutes him shall continue with the case until its termination.

Article 113. *Notification of the court order and appeals.*

There shall be no appeal against the decision on the challenging incident, notwithstanding an appeal against the decision taken in the proceedings or action and asserting the possible nullity of the decision as the Judge or Senior Judge who issued the decision appealed against or formed part of the corresponding Chamber or Division is involved in the alleged challenge proceedings.

CHAPTER IV

ON THE CHALLENGE TO THE COURT CLERKS OF THE CIVIL COURTS[71]

Article 114.[72]

Without content.

Article 115. *Challenge. Jurisdiction for examining and resolving challenging incidents.*[73]

1. The provisions set out in the Judiciary Act for Judges and Magistrates will apply to challenges of the Clerk of the Courts, with the following particulars:

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71 Signature worded in accordance with Act 13/2009, of 3 November.

72 This article remains without content due to Act 13/2009, of 3 November.

73 Amended by final provision 4.2 of Law 7/2015 of 21 July.

a) Clerk of the Courts cannot be challenged during any proceedings or actions for which they are responsible.

b) The challenge will be resolved by the relevant Governance Secretary, having being instructed on the incident by the appropriate Coordinating Secretary or, as appropriate, the Clerk of the Court appointed by the former.

Article 116. *Report of the party challenged.*[74]

Once the writ of challenge is submitted, the Clerk of the Court challenged will provided a detailed written report on whether they acknowledge the alleged grounds to be true and legitimate, or not, and this writ will be sent to the Coordinating Secretary so that they may give account of it to the Governance Secretary, or, as appropriate, it will be sent directly to the Governance Secretary who needs to be aware of the challenge.

Article 117. *Acceptance of the challenge by the party challenged.*[75]

1. When the party challenged acknowledges the reason for the challenge as being true, the Governance Secretary shall pass an order, without further proceedings and with no further appeal, upholding the challenge if the grounds are considered to be legal.

2. If the court upholds that the case is not one of those classified by the Act, it shall declare that there is no place for the challenge. There can be no appeals against this order.

Article 118. *Opposition by the challenged party and substantiation of the challenge.*[76]

When the party challenged denies the certainty of the alleged reason which grounds the challenge, if the Examining Magistrate allows the challenge proposed to proceed, the Coordinating Secretary shall order the taking of evidence requested which he considers to be appropriate and useful within a period of ten days, and shall forward this to the Public Prosecution Service for a period of three days. Once this time limit has elapsed, whether or not there is a report from the Public Prosecution Service, it will be referred to the

[74] Amended by final provision 4.3 of Law 7/2015 of 21 July.

[75] Amended by final provision 4.4 of Law 7/2015 of 21 July.

[76] Amended by final provision 4.5 of Law 7/2015 of 21 July.

Governance Secretary who will pass a decision on the incident within the following five days. There can be no appeal against this decision.

Article 119. *Substitution of the Court Clerk challenged.*

The Court Clerk challenged shall be replaced by his legal substitute from the time the statement of the challenge is submitted.

CHAPTER V

ON THE CHALLENGE OF CIVIL SERVANTS BELONGING TO THE BODIES OF PROCEDURAL AND ADMINISTRATIVE MANAGEMENT, OF PROCEDURAL AND ADMINISTRATIVE PROCESSING, AND OF JUDICIAL ASSISTANCE[77]

Article 120.[78]

Without content.

Article 121. *Challenge. Competence for examining and resolving the challenging incident.[79]*

1. The challenge of civil servants belonging to the Bodies of Procedural and Administrative Management of Procedural and Administrative Processing and Judicial Assistance, shall only be possible for the reasons provided in law.

2. The Court Clerk they depend on in the hierarchy shall be competent to examine the challenging incident and this shall be decided by the party competent to dictate the decision which finalises the proceedings or action at the respective instance. There shall be no appeal against the decision which decides on the incident.

Article 122. *Inadmissibility of the challenge.*[80]

In the light of the written notice of a challenge, if the Court Clerk considers that the reason is not one of those characterised in law, the request stating the reasons for the inadmissibility shall not be allowed. There shall be no appeal against this decision.

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[77] Signature worded in accordance with Act 13/2009, of 3 November.

[78] Article with no content in accordance with Act 13/2009, of 3 November.

[79] Article worded in accordance with Act 13/2009, of 3 November, on the reform of procedural legislation for the implementation of the new Court Office.

[80] Article worded in accordance with Act 13/2009 of 3 November.

Article 123. *Performance of the incident; acceptance or rejection of the challenge by the party challenged.*

1. Once the written notice of the challenge is given leave to proceed, on the day following its reception, the party challenged shall state to the Court Clerk whether or not the alleged reason exists. When the reason for the challenge is recognised to be certain, the Court Clerk shall agree to replace the party challenged by the party which the law provides must substitute him. There is no appeal against this decision.

2. If the party challenged denies the certainty of the reason alleged as grounds for the challenge, the Court Clerk shall have five days in which to verify whether the challenged party's proposals are relevant and decide whether they are appropriate, after which he shall forward the case to the party which has to decide on the matter.

CHAPTER VI

ON THE CHALLENGE TO EXPERTS

Article 124. *Scope of the challenge to experts.*

1. Only the experts appointed by the court by drawing lots may be challenged, in the terms stipulated in this chapter. This provision is applicable to full-time experts and their substitutes.

2. The experts who are the authors of opinions submitted by the parties can only be the subject of objections for the reasons and in the manner set forth in Articles 343 and 344 herein, but they cannot be challenged by the parties.

3. In addition to the reasons for challenges stipulated in the Organic Act on the Judiciary Branch, the following are reasons for challenging experts:

a) Having previously given an opinion on the same case contrary to the challenging party either within the proceedings or not.

b) Having provided services as an expert to the counter litigant or being dependent on or an associate of the counter litigant.

c) Having a stake in a company, establishment or firm which is a party to the proceedings.

Article 125. *The manner of proposing the challenge to experts.*

1. The challenge shall be made in writing and signed by the attorney and the court representative of the party if these are involved in the case, and

shall be sent to the head of the court or the Senior Reporting Judge if there is a Chamber. This document shall specifically state the reason for the challenge and the means to prove this, and copies shall be enclosed for the party challenged and for the other parties in the proceedings.

2. If the reason for the challenge was prior to the appointment of the expert, the document must be submitted within the two days following the day notice was given of the appointment.

If the reason is subsequent to the appointment, but prior to the issue of the opinion, the written notice of a challenge may be submitted before the date stipulated for the case or hearing or at the beginning of these.

3. An expert cannot be challenged after a case or a hearing, notwithstanding the possibility that any reasons for challenges that may have existed at the time the opinion was issued but were only known after the opinion may be stated to the court before a decision is pronounced and, if this is not possible, to the court competent in the second instance.

Article 126. *Admission of the written notice of a challenge.*[81]

Once the challenge is proposed in time and form, a copy of the written notice shall be forwarded to the expert challenged and to the parties. The party challenged must state whether or not the reason for the challenge is certain before the Court Clerk. If it is recognised as certain and the Court Clerk considers the recognition to be grounded, he shall be deemed as challenged without further ado and he shall be replaced, where relevant, by a substitute. If the party challenged is the substitute, and recognises that the reason is certain, the provisions set forth in Article 342 herein shall apply.

Article 127. *Performance and decision on the challenging incident.*[82]

1. When the expert denies the certainty of the reason for the challenge or does not accept the recognition made by the expert of the occurrence of this reason, the Court Clerk shall order the parties to appear in court on the day and time stated by him, with the evidence they intend to use and assisted by their attorneys and court representatives if the involvement of the latter is compulsory in the proceedings.

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[81] Article worded in accordance with Act 13/2009, of 3 November .

[82] Paragraphs 1 and 2 of this article are worded in accordance with Act 13/2009, of 3 November.

2. If the party challenging fails to appear the Court Clerk shall consider him to have abandoned the challenge.

3. If the party challenging appears and insists on the challenge, the court shall allow the relevant and useful evidence and shall immediately decide what it deems proper through a court order.

In the event that the challenge is upheld, the expert challenged shall be replaced by the substitute. If the substitute is the party challenged and there are no more experts, procedure shall be in accordance with the provisions set forth in Article 342 herein.

4. There shall be no appeal against the decision which resolves the challenge to the expert, notwithstanding the right of the parties to submit the question to a higher court.

Article 128. *Costs.*

The regime for awarding court costs when challenging experts shall be the same as the regime for challenging judges and Senior Judges.

TITLE V

ON COURT PROCEDURES

CHAPTER ONE

ON THE PLACE OF THE COURT PROCEDURES

Article 129. *The place of the court procedures.*[83]

1. Court procedures shall take place at the Court Office except for those which, due to their nature, must take place elsewhere.

2. The procedures which must take place outside the judicial district of the court which deals with the case, shall be carried out, where relevant, with legal assistance.

3. Notwithstanding the provisions of the preceding paragraph, courts may be set up anywhere in the territory of their jurisdiction in order to conduct their procedures when this is necessary or advisable for the proper administration of justice.

[83] The title and paragraph 1 of this article are worded in accordance with Act 13/2009, of 3 November.

They may also move out of their jurisdictions in order to conduct procedures involving evidence as provided herein and in Article 275 of the Organic Act on the Judiciary Branch.

CHAPTER II

ON THE TIME OF COURT PROCEDURES

Section 1. On working days and hours

Article 130. *Working days and hours.*[84]

1. Court proceedings shall be conducted on working days and during work hours.

2. Saturdays and Sundays, 24 and 31 December, Spanish national holidays and the public holidays which are specific to the respective Autonomous Regions or cities and towns are non-working days. All the days of the month of August shall also be non-working days.

3. Work hours are understood to be from 8 a.m. to 8 p.m. unless the law provides otherwise for a specific act.

Working hours for acts of notification and enforcement shall be from 8 a.m. to 10 p.m.

4. The provisions of the above paragraphs will be taken without prejudice to what may be provided for electronic proceedings.

Article. 131. *Authorisation of working days and hours.*[85]

1. Ex officio or at the request of a party, the courts may authorise non-working days and hours when there is an urgent reason for this. The authorisation shall be given by the Court Clerks when it is intended to conduct court procedures which must be done concerning matters of their sole competence, when the procedures are ordered by them or when they tend to comply with the decisions issued by the courts.

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[84] Paragraph 4 is added by single article 12 of Law 42/2015, of 5 October.

Paragraph 2 worded pursuant to Act 13/2009, of 3 November.

[85] Paragraphs 1 and 4 of this article are worded in accordance with Act 13/2009, of 3 November .

2. Procedures of the court whose delay may lead to serious damage for the persons concerned or to the proper administration of justice or lead to the inefficacy of a judicial decision shall be deemed to be urgent.

3. For the urgent procedures referred to in the preceding paragraph, the days in the month of August shall be working days with no need for express authorisation. Likewise, no authorisation shall be needed to continue working during non-work hours on urgent procedures commenced during work hours, for as long as required.

4. No appeals may be made against decisions to authorise non-working days and hours.

Section 2. On time limits and terms

Article 132. *Time limits and terms.*[86]

1. The procedures of cases shall be carried out in the terms or within the time limits stated for each procedure.

2. When neither time limits nor terms are established, it shall be construed that they must be conducted without delay.

3. Infringement of the provisions set forth in this article by the courts and personnel at the service of the Administration of Justice, unless there is a just reason, shall be corrected in keeping with the provisions set forth in the Organic Act on the Judiciary Branch, notwithstanding the right of the party damaged to request any other relevant liabilities.

Article 133. *Calculation of the time limits.*[87]

1. The time periods shall begin on the day following the day on which the notice which the law makes the commencement of the time limit depend on is given and this shall include the expiry date, up to 12 p.m..

However, when the law states a time limit which begins to run from the expiry of another time limit, the former shall be calculated, with no need for further notice, from the day following the date of expiry of the latter.

2. Non-working days shall be excluded from the calculation of the time limits indicated by days.

[86] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

[87] Paragraphs 2 and 4 of this article are worded in accordance with Act 13/2009, of 3 November .

For the time limits which are stated in the urgent procedures referred to in paragraph 2 of Article 131, the days of the month of August shall not be considered to be non-working days and only Saturdays, Sundays and feast days shall be excluded from the calculation.

3. The time limits indicated by months or years shall be calculated from date to date.

In the expiry month, when there is no date equivalent to the initial date of the calculation, it shall be construed that the time limit expires on the last day of the month.

4. The time limits which terminate on Saturdays, Sundays or another non-working day shall be construed to be extended until the following working day.

Article 134. *Impossibility to extend the time limits.*[88]

1. The time limits established herein cannot be extended.

2. However, the time limits may be interrupted and the terms delayed in the event of force majeure which prevents them from being complied with, and the calculation shall be renewed at the time when the cause of the interruption or delay ceases. The occurrence of force majeure must be appreciated by the Court Clerk through a decree, ex officio, or at the request of the party suffering force majeure, with a hearing of the other parties. An appeal for judicial review may be lodged against this order and shall have suspensory effects.

Article 135. *Submission of writs for the purposes of the time requirements of procedural acts.*[89]

1. Where court offices and the individuals appearing in a process are under the obligation to use existing computer or electronic systems at the

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88 Paragraph 2 worded pursuant to Act 13/2009, of 3 November .

89 Amended by single article 13 of Law 42/2015, of 5 October.

Please note that the provisions relating to the obligation on all court professionals and court and tax offices and bodies who are not yet doing so to use the Justice Administration’s existing computer systems for submission of writs and documents and carrying out acts of procedural communication under the terms of procedural law and Law 18/2011 of 5 July, will come into force on 1 January 2016 with respect to proceedings commenced from that date. The provisions relating to the electronic “apud acta” powers of attorney file and the use by interested parties who are not legal professionals of the Justice Administration’s existing computer systems for submission of writs and documents and acts of procedural communication under the afore-mentioned terms will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law 42/2015.

Justice Administration in accordance with article 273, they will send and receive all writs, whether initial submissions, or not, via these systems, apart from the exceptions provided for in the law, in such a way that the authenticity of the communication is guaranteed and that there is written proof of sending and receipt as a whole, along with the date on which they were carried out. This will also be applicable to those parties intervening who, although not under the obligation to do so, choose to use the computer or electronic systems.

Writs and documents may be submitted in electronic format twenty-four hours a day, every day of the year.

Once writs and documents are submitted by electronic means, an automatic receipt will be issued by the same means, showing the entry number on the register and the date and time of submission on which, for all purposes, they will be taken to have been submitted, In the event that the submission takes place on a non-working day or at a non working time for procedural purposes in accordance with law, it shall be construed to have been made on the first following working day and at the first working hour.

For the purposes of evidence and compliance with the legal requirements which require the original documents or authoritative copies to be available, the provisions of Article 162 shall apply.

2. Where submission of imperative writs using the computer or electronic means referred to in the previous paragraph is not possible within the time limit due to an unplanned interruption in computer or electronic communications services, in as far as possible means will be made available so that the user is informed of this circumstance, along with the effects of the suspension, with express indication, as appropriate, of the extension of the time limits which are about to expire. The sender may proceed, in this event, to make the submission at the court office on the first following working day together with the proof of the interruption.

In the event of planned interruption to the service, this must be publicised sufficiently in advance, with a notification of the alternative means of submission that are appropriate in such an event.

3. If the computer or electronic communications service is insufficient to submit the writs or documents, they must be submitted in electronic format to the court office on that day or the next working day together with the proof issued by the server of the unsuccessful attempt to submit. In these cases an acknowledgement of receipt will be given.

4. Without prejudice to the foregoing, writs and documents will be submitted in hard copy where the interested parties are not under the obligation to use electronic means and have not chosen to use them, where they are not liable to conversion into electronic format and in other cases provided for by law. These documents, and instruments or effects attached to them, will be deposited and stored on the case file, whether in progress or definitive, at the court office, at the disposition of the parties, and they will be given a file number and a record will be made on the electronic judicial case file of its existence.

In the event that writs and documents are submitted in hard copy, the civil servant appointed shall stamp the written notices for commencement of proceedings and any others whose submission is subject to a peremptory time limit with a stamp which will record the Court Office at which it was submitted and the day and time of submission.

5. Submission of writs and documents, in whatever format, it they are subject to a time limit, may be made up until 15:00 on the working day following expiry of the time limit.

In the court proceedings before civil courts, the submission of written statements in the court providing duty service is not allowed.

Article 136. *Final deadline.*

Once the time limit has elapsed or the terms stated for carrying out a procedural act has passed, the fixed and final deadline shall have elapsed and the opportunity to conduct the act in question shall be lost. The Court Clerk shall leave a record of the elapse of the time limit in an official document and shall agree to what is applicable or shall serve notice to the court so the corresponding decision can be ordered.

CHAPTER III

ON IMMEDIACY, ANNOUNCEMENTS AND OFFICIAL LANGUAGE

Article 137. *Judicial presence at declarations, evidence and hearings.*[90]

1. The Judges and Senior Judges members of the court which is dealing with a case shall be present at the declarations of the parties and the

[90] A new paragraph 3 has been added and the preceding paragraph 3 becomes paragraph 4, pursuant to Act 13/2009, of 3 November.

witnesses, confrontations, presentations, explanations and responses provided by the experts, as well as at the oral criticism of their decisions and any other act concerning evidence which, in accordance with the provisions set forth herein, must be carried out with examination and cross-examination and in public.

2. The hearings and appearances which are intended to hear the parties before issuing a decision shall always be held before the Judge or the Senior Judges who make up the court dealing with the case.

3. The provisions set forth in the preceding paragraphs shall be applicable to the Court Clerks with regard to the procedures which must be carried out only before them.

4. The infringement of the provisions set forth in the preceding paragraphs shall determine the nullity of the corresponding procedures fully in law.

Article 138. *Public oral proceedings.*[91]

1. The evidence procedures, hearings and appearances intended to hear the parties before passing a decision shall be conducted at a public hearing.

2. However, the proceedings referred to in the preceding paragraph may be heard in closed session when this is necessary for the protection of public order, or national security in a democratic society, or when the interests of minors, or the protection the private lives of the parties and other rights and liberties require this or, insofar as the court deems this to be strictly necessary when, due to the occurrence of special circumstances, being heard publicly might damage the interests of justice.

3. Before agreeing to holding proceedings in closed session, the court shall hear the parties who are present at the act. The decision shall take the form of a court order and no appeal shall be allowed against it, without prejudice to any protests and raising the question, if admissible, in the applicable appeal against the final judgment.

The Clerk of the Courts may adopt the same measure in such proceedings which must be carried out in matters of their sole jurisdiction by means of an order. Only an appeal for reversal can be lodged against this order.

[91] Paragraph 4 is added by final provision 4.6 of Organic Law 7/2015, of 21 July.
Paragraph 2 (3) added in accordance with Act 13/2009, of 3 November.

4. The details of the directions of the judicial body must be made public. The Clerk of the Courts will ensure that the relevant civil servants at the Judicial body publish, in publicly visible place, on the first working day of each week, the list of directions relating to their respective judicial body, with an indication of the date and time they were held, type of action and proceedings number.

Article 139. *The secret of deliberations on Chamber.*

The deliberations of Chamber of Judges are secret. The result of the voting is also secret, notwithstanding the provisions of the law on the announcement of dissenting votes.

Article 140. *Information on procedures.*[92]

1. Justice Administration lawyers and the relevant civil servants at the Court Office will provide any person proving a legitimate and direct interest with any information they request about the status of court proceedings, which they may examine and have knowledge of, unless they are or have been declared restricted in accordance with the law. Such persons may also request uncertified copies of writs and documents relating to the proceedings, which have not been declared as restricted, at their own expense.

2. At the request of the persons referred to in the preceding paragraph, and at their own expense, the Justice Administration Lawyer shall issue the testimonies and certificates they request, stating the receiver.

3. Notwithstanding the provisions of the preceding paragraphs the courts, through court orders, may classify the whole or part of the proceedings as restricted when this measure is justified due to the circumstances stated in paragraph 2 of Article 138.

Proceedings classified as restricted may only come to the knowledge of the parties involved and their representatives and defenders, without prejudice to the provisions regarding events and data of a criminal or tax or other nature.

Article 141. *Access to books, files and judicial registers.*

The persons who accredit a legitimate interest may access the books, files and judicial registers which are not of a reserved nature and, at their own expense, obtain testimony or certification of the data stated therein.

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[92] Paragraphs 1 and 2 amended by final provision 4.7 of Law 7/2015 of 21 July.

Article 141 bis.[93]

In the cases stipulated in the two preceding articles, personal data, images, names and surnames, addresses and any other data or circumstance which directly or indirectly might permit the identification of minors must be omitted in the simple copies, testimonies and certifications issued by the Court Clerks, regardless of the storage system used for this, when it is necessary to protect the higher interest of the minors and preserve their privacy.

Article 142. *Official Language.*

1. In all judicial procedures, the Judges, Senior Judges. public Prosecutors, Court Clerks and other civil servants in courts and tribunals shall use Castilian Spanish, the official language of the State.

2. The Judges, Senior Judges, Court Clerks. Public Prosecutors and other civil servants in Courts and courts may also use the official language of the Autonomous Authority, providing none of the parties opposes this, alleging that they do not know this language, which would lead to lack of proper defence.

3. The parties, court representatives and attorneys, as well as witnesses and experts, may use the language which is also official in the Autonomous Authority in whose territory the court procedure takes place, both as regards oral and written declarations.

4. The court procedure carried out and the documents submitted in the official language of an autonomous region shall have full validity and efficacy with no need for translation into Castilian Spanish; however, these shall be translated ex officio when they shall take effect beyond the jurisdiction of the judicial bodies located in the autonomous region, unless these are Autonomous Authorities with an official own language which coincides. These shall also be translated when this is provided for in the laws or at the request of a party who alleges lack of proper defence.

5. In oral procedures, by a procedural court order the court may authorise any person who knows the language used as an interpreter once he has sworn or promised that the translation is true to the original.

[93] Article added by Act 54/2007, of 28 December.

Article 143. *Intervention of interpreters.*[94]

1. When a person who does not know Castilian Spanish nor, in the event, the own official language of the Autonomous Authority has to be questioned or make a declaration, or when it is necessary to personally let him know a decision, the Court Clerk may issue an order authorising any person who knows the language concerned to act as interpreter, in which case the said interpreter shall be required to swear or promise that the translation is true to the original.

Notwithstanding the above, the provision of interpretation services shall be guaranteed in trans-border litigation for the persons who do not know Castilian Spanish nor, as appropriate, the own official language of the Autonomous Authority, in the terms established in Act 1/1 996, of January 10, regulating free legal assistance.

As regards the procedures which are carried out in the above cases, a record shall be kept with the texts in the original language and their translation to the official language, which shall be signed by the interpreter.

2. In the same cases as in the preceding paragraph, if the person is deaf, an interpreter of the proper sign language shall always be appointed, pursuant to the provisions in the aforementioned paragraph.

A proper record shall be kept of the procedure carried out with deaf persons.

Article 144. *Documents worded in an unofficial language.*[95]

1. Any document worded in a language other than Spanish or, as appropriate, the official language of the Regional Authority in question shall have a translation of such document attached thereto.

2. Such translations may be done privately, in which case, should any party contest it within a time limit of five days of it being translated, stating that it is not a true and faithful translation and stating the reasons for such discrepancy, the Court Clerk shall order an official translation of the part of the document placed into question at the cost of whoever may have submitted it.

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[94] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

Paragraph worded in accordance with Organic Act 19/2003, of 23 December.

[95] Paragraph 1 (2) worded in accordance with Act 13/2009 of 3 November.

Nonetheless, should the official translation made at the request of a party turn out to be substantially the same as the private translation, the costs shall be incurred by whoever may have requested it.

CHAPTER IV

ON ATTESTING TO AND RECORDING THE PROCEDURES

Article 145. *Judicial authority to attest.*[96]

1. The Court Clerk shall hold sole and full responsibility for attesting to procedural actions.

More specifically, the Court Clerk shall:

(i). Attest by himself or through the corresponding records, of which he shall be in charge, to the reception of written statements and any documents and receipts attached thereto, issuing, as appropriate, any certifications the parties may request.

(ii). Irrefutably attest to the performance of procedural actions at the Court or before it, as well as any significant procedural events that may come about through the relevant certificates and procedural steps in whatever media may be employed.

(iii). Issue certifications or affidavits on court procedures which have not been declared secret or reserved to the parties, expressing the recipient and purpose for which they have been requested.

(iv). Authorise and record the granting of powers of attorney for proceedings in accordance with the provisions set forth in Article 24 herein.

2. The Court Clerk shall not require the additional intervention of any witnesses in the performance of such functions.

Article 146. *Recording proceedings.*[97]

1. Any procedural actions not consisting of written statements or documents shall be recorded by means of certificates and records. Wherever technical

[96] Article worded in accordance with Act 13/2009 of 3 November.

[97] Paragraph 3 is amended by single article 14 of Law 42/2015, of 5 October.

Paragraphs 1 and 2 of this article have been worded in accordance with Act 13/2009 of 3 November (“Official State Gazette” no. 266 of 4 November).

means are used to record or reproduce them, the Clerk of the Court shall ensure the authenticity of whatever may have been recorded or reproduced.

2. Where the law requires a record to be issued, such record shall include everything that may have been performed with the necessary length and detail.

Should proceedings have to be recorded on a medium that is suitable for recording or reproduction under this Act, and should the Clerk of the Court be equipped with a recognised electronic signature or any other security system which according to the law ensures the authenticity and integrity of whatever may be recorded, the electronic document generated in this way shall be the record for all intents and purposes.

Should it be impossible to use the guarantee mechanisms provided for in the preceding paragraph, the Clerk of the Court shall include the following details in the record: number and type of proceedings, place and date held, duration, persons attending the hearing, the parties' petitions and requests, in the event of proposals for the taking of evidence, a statement of relevance and order in the performance of the same, decisions issued by the Judge or Court, along with any other circumstances or incidents that cannot be recorded in such medium.

In such cases, or where the recording means provided for in this article cannot be used for any reason, the records shall be digital and may not be hand-written, except where the court in which the hearing is held should lack computer equipment.

3. Courts may use technical documentation and archiving methods for their proceedings and for any writs or documents they may receive, with the guarantees referred to in paragraph 1 of Article 135 of this Act. They may also employ technical means to monitor the status of proceedings and their statistics.

Article 147. *Recording proceedings using image and sound recording and reproduction systems.*[98]

Oral proceedings in hearings, cases and appearances held before judges or magistrates or, as appropriate the Clerk of the Courts, will be recorded on media suitable for recording and reproducing sound and image and may not be transcribed.

[98] The first paragraph is amended by single article 15 of Law 42/2015, of 5 October.

As long as the necessary technical means are available, the Clerk of the Court shall ensure the authenticity and integrity of whatever may have been recorded or reproduced through the use of recognised electronic signatures or any other security system offering such guarantees under the law. In such a case, the holding of a hearing shall not require the Clerk of the Court's presence in the chamber, unless the parties have requested it at least two days before the hearing is to be held or, exceptionally, should the Clerk of the Court deem it necessary due to the complexity of the matter, the amount and nature of the evidence to be taken, the number of people involved, the possibility of any incidents that cannot be recorded coming about or the existence of any other equally exceptional circumstances that may justify it. In such cases, the Clerk of the Court shall issue a succinct record under the terms contained in the preceding article.

Oral proceedings and hearings recorded and documented on digital media may not be transcribed, except in cases where a law determines they shall.

The safekeeping of the electronic document serving as a medium for the recording shall be the Clerk of the Court's responsibility. The parties may request copies of the original recordings at their own expense.

Article 148. *Drawing up, safekeeping and conservation of the records.*[99]

Court Clerks shall be held liable for the records being appropriately worded, recording any decisions the Courts or they themselves may issue, when duly authorised by the law. They shall likewise be held liable for the safekeeping of such records, except for the time they may be in possession of a Judge, Senior Reporting Judge or any other Senior Judge belonging to the Court.

CHAPTER V

ON COURT NOTICES

Article 149. *Kinds of notices.*[100]

Procedural notices shall be include:

(i). Notices, where the purpose is to inform about a decision or procedure.

(ii). Summons, so that a person may enter an appearance and act within a certain time limit.

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[99] Worded in accordance with Act 13/2009 of 3 November.

[100] This article has been worded in accordance with Act 13/2009 of 3 November.

(iii). Orders to attend, where the place, date and time to appear and act are set.

(iv). Injunctions, to order a specific kind of activity or lack thereof pursuant to the law.

(v). Orders, to mandate the issuance of records or affidavits, or the performance of any kind of action corresponding to Real Estate, Company or Vessel Registrars on the hire purchase of moveable property, Notary Publics, or civil servants at the service of the Administration of Justice.

(vi). Formal written requests, for notices to non-judicial authorities and civil servants other than the ones set forth in the item above.

Article 150. *Notice of rulings and orders to move the proceedings forward.*[101]

1. Notice of procedural rulings shall be given to all parties to the proceedings.

2. By arrangement of the Court, notice of the proceedings being pending shall also be given to the any person which, according to the records, may be affected by the judgement bringing the proceedings to a close. Such notice shall be served with the same requirements should the Court become aware of evidence that the parties are using the proceedings for fraudulent purposes.

3. Notice shall also be given to third parties in any circumstances laid down by the law.

Article 151. *Time limited for notices.*[102]

1. Notice of any decisions issued by the Courts or Clerk of the Courts shall be given within at most three days from the date they are issued or published.

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[101] Paragraphs 1 and 2 of this article have been worded in accordance with Act 13/2009 of 3 November.

[102] Paragraph 2 is amended by single article 16 of Law 42/2015, of 5 October.

Please note that the provisions relating to the obligation on all court professionals and court and tax offices and bodies who are not yet doing so to use the Justice Administration's existing computer systems for submission of writs and documents and carrying out acts of procedural communication under the terms of procedural law and Law 18/2011 of 5 July, will come into force on 1 January 2016 with respect to proceedings commenced from that date. The provisions relating to the electronic "apud acta" powers of attorney file and the use by interested parties who are not legal professionals of the Justice Administration's existing computer systems for submission of writs and documents and acts of procedural communication under the afore-mentioned terms will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law 42/2015.

See transitional provision 4 of the afore-mentioned act regarding the time limit in paragraph 2.

2. Acts of notification to the Public Prosecution Service, the Public Prosecutor, the Lawyers of the General Courts and Legislative Assemblies, or the Legal Service of the Social Security Administration Legal Service, other Public authorities in the Autonomous Communities or Local Bodies, and those which are made using the notification services organised by the Procurators' Associations, will be taken to have been made on the working day following the date of receipt shown on the act or on the slip proving receipt where the act of notification was made using the means and following the requirements provided for in article 162. Where the act of notification was sent after 15:00, it will be taken to have been received on the following working day.

3. Where the delivery of any document or despatch that should be attached to the notice takes place subsequent to service of the notice, the notice shall be construed to have been served upon certification of the document's delivery, as long as the effects arising from the notice are linked to such document.

Article 152. *Form of notices. Response.*[103]

1. Notices shall be given under the supervision of the Clerk of the Court, who shall be responsible for appropriate organisation of the service. Such notices shall be served by:

(i) Civil servants belonging to the Legal Assistance Service.

(ii) The procurator for the party requesting it.

For this purpose, in all writs giving rise to initiation of legal or enforcement proceedings or other instances, the applicant must state if they wish all notices to be carried out by their procurator. If no statement if made to this effect, the Clerk of the Court will process orders and such acts will be served by civil servants from the Judicial Assistance Office. Furthermore, they will be served by the latter if the defendants, under enforcement or

[103] Amended by single article 17 of Law 42/2015, of 5 October.
Please note that the provisions relating to the obligation on all court professionals and court and tax offices and bodies who are not yet doing so to use the Justice Administration's existing computer systems for submission of writs and documents and carrying out acts of procedural communication under the terms of procedural law and Law 18/2011 of 5 July, will come into force on 1 January 2016 with respect to proceedings commenced from that date. The provisions relating to the electronic "apud acta" powers of attorney file and the use by interested parties who are not legal professionals of the Justice Administration's existing computer systems for submission of writs and documents and acts of procedural communication under the afore-mentioned terms will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law 42/2015.

Article worded in accordance with Act 13/2009 of 3 November.

appeal, do not expressly request in their writ of appearance that this be done by their procurator or if the parties are beneficiaries of the right to free legal aid.

The applicants may, with grounds and if there exists just cause, apply for amendment to the initial regime and the Clerk of the Court, if this is considered to be justified, will carry out subsequent notices in accordance with the new application.

These notices will be considered to validly served where the certification contains sufficient records of them having been served in person, at the address, at the E-mail address given for that purpose, over the internet or by the computer or electronic media chosen by the consignee.

For these purposes, the procurator will prove, at their own liability, the identity and status of the recipient of the notification, taking care that the copy contains a written record of receipt, of the date and time and the content of the notification.

2. Notices will be served using electronic media where the individuals involved in a process are under the obligation to use the computer or electronic systems existing at the Justice Administration in accordance with article 273, or where, without being under that obligation, they choose to use these media subject, in all cases, to the provisions contained in the regulations governing the use of information and communications technology at the Justice Administration.

Nevertheless, notifications will not be served by electronic means where the act is accompanied by elements that cannot be converted into electronic format or if provided for by law.

The consignee may identify an electronic device, simple messaging service or an E-mail address to be used to notify them a notification is available, but may not be used to serve notifications. In this event, regardless of the format the notification is made in, the court office will send the afore-mentioned alert. The absence of this alert will not prevent the notification from being considered to be fully valid.

3. Notices shall be served in any of the following ways, as provided for in this Act:

a) Through the procurator, where notices are served to whoever may have entered an appearance in the proceedings and represented by the former.

b) By sending the notice by post, telegram, E-mail or any other electronic means which allows irrefutable proof of receipt, the date and time and the contents of notice to appear on the records.

c) Delivery to the consignee of a verbatim copy of the decision to be notified, of the injunction sent by the Court or the Clerk of the Court, or of the order to attend or summons.

d) In all cases where a procurator has not been appointed, by the personnel at the service of the Justice Administration, by electronic means, where the Public Prosecution Service, the Public Prosecutor, the Lawyers of the General Courts and Legislative Assemblies or the Legal Service of the Social Security Administration and other Public authorities in the Autonomous Communities or Local Bodies are concerned.

4. The order will clearly record the legal nature of the writ and will state the court or Clerk of the Court passing the decision and the matter to which it relates, the name and surnames of the person to whom the summons or order to attend is made, and the procurator in charge of complying with it, as appropriate, the purpose of them and the place, date and time that the person summonsed must appear, or the time limit within which the act referred to in the summons must be performed, along with the relevant warnings provided for by the law in each case.

5. No responses to notices, summonses or orders to attend from the interested party shall be given permission to proceed or be recorded, unless provided otherwise. Responses from the party being summonsed shall be allowed in the case of injunctions by recording such circumstance briefly in the procedural step.

Article 153. *Notice by means of court representatives.*

Any notices to the parties of the proceedings shall be served through their court representative, where they are thus represented. Court representative shall sign any kind of notices, summonses, orders to attend and injunctions that have to be served to his grantor of power of attorney during the course of the case, including judgements as well as notices concerning any procedures the grantor must perform personally.

Article 154. *Place of notices to procurators.*[104]

1. Notices to procurators shall be served at the court's premises or through the common receipt service organised by the Procurators' Association. The Procurators' Association shall be responsible for the internal regulation of such service in accordance with the law.

2. Sending and receiving notices to procurators in this service will be carried out, apart from the exceptions provided for by the law, by computer or electronic media and with the proof of receipt referred to in article 162.

If the notice was served in hard copy, duplicate copies of the ruling or summons shall be sent to the service, one copy of which will be kept by the procurator and the other signed by them, which shall then be returned by the service to the Court Office.

Article 155. *Notices to parties that have not yet entered an appearance or that are not represented by a procurator. Address.*[105]

1. Where the parties involved are not represented by a procurator or where the notice is an initial summons or order to attend, notices shall be sent to the litigants' address. The right to request free legal aid shall be stated in the summons or order to attend, as well as the time limit for request it.

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[104] Paragraph 2 is amended by single article 18 of Law 42/2015, of 5 October.
Please note that the provisions relating to the obligation on all court professionals and court and tax offices and bodies who are not yet doing so to use the Justice Administration's existing computer systems for submission of writs and documents and carrying out acts of procedural communication under the terms of procedural law and Law 18/2011 of 5 July, will come into force on 1 January 2016 with respect to proceedings commenced from that date. The provisions relating to the electronic "apud acta" powers of attorney file and the use by interested parties who are not legal professionals of the Justice Administration's existing computer systems for submission of writs and documents and acts of procedural communication under the afore-mentioned terms will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law 42/2015.

Paragraph 2 worded in accordance with Act 41/2007 of 7 November.

[105] Paragraph 2 is amended by single article 19 of Law 42/2015, of 5 October.
Please note that the provisions relating to the obligation on all court professionals and court and tax offices and bodies who are not yet doing so to use the Justice Administration's existing computer systems for submission of writs and documents and carrying out acts of procedural communication under the terms of procedural law and Law 18/2011 of 5 July, will come into force on 1 January 2016 with respect to proceedings commenced from that date. The provisions relating to the electronic "apud acta" powers of attorney file and the use by interested parties who are not legal professionals of the Justice Administration's existing computer systems for submission of writs and documents and acts of procedural communication under the afore-mentioned terms will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law 42/2015.

2. The claimant's address shall be the address appearing in the claim or in the petition or application bringing the proceedings. For the purposes of the initial summons or order to attend sent to the defendant, the claimant shall likewise designate as the defendant's address one or several of the places referred to in the following paragraph of this article. Should the claimant designate several places as addresses, the claimant shall indicate the order in which, as they understand it, notice may be successfully served.

Furthermore, the claimant should indicate as much information about the defendant as they are aware of and which may be of use to locate them, such as telephone and fax numbers, E-mail address or similar, which will be used subject to Law 18/2011, of 5 July, regulating the use of information and communications technologies by the Justice Administration.

The defendant may designate a different address for the purpose of subsequent notices once an appearance has been entered.

3. For the purposes of giving notice, the address appearing on the municipal registry of inhabitants or in any other official records for other effects may be designated, as may an address appearing in an official Registry or in the publications of professional associations in the respective cases of companies and other entities and persons exercising a profession requiring membership of a professional association. The place where professional or work activities are carried out on a non-temporary basis may also be designated as the address.

Where an action of those referred to in item (i), paragraph 1, Article 250 is being exercised in the claim, it shall be construed that, if the parties have not agreed to designate an address in the lease contract to which notice is to be served, such address shall be the rented home or premises.

If the claim is addressed to a corporate entity, the address of any person appearing as director, manager or attorney of the trading company, or the president, member or manager of the Board of any association appearing on an official register may be given.

4. Should the parties not be represented by a procurator, any notices served to any of the places provided for in the preceding paragraph, which have been designated as addresses, shall take full effect as soon as it can be certified that notice of whatever may have to be communicated has been sent, even though proof of its receipt by the addressee has not be recorded.

Nonetheless, should notice be for the purpose of entering an appearance in the proceedings or the personal performance of certain procedural steps by the parties and no proof of receipt by the interested party is available, the provisions set out in Article 158 shall apply.

5. Should the parties change their address during the time proceedings are being conducted, they shall immediately notify the Court Office.

They shall also give notice of any changes to their telephone number, fax number, E-mail address or similar, as long as they are being used as means to communicate with the Court Office.

Article 156. *Investigations by the court about the address.*[106]

1. In cases where the claimant states that he is unable to designate the defendant's address or place of residence for the purposes of entering an appearance, the Court Clerk shall use any suitable means to find it and may, as appropriate, get in contact with the Registries, organisations, professional associations, entities and companies referred to in paragraph 3, Article 155.

Upon receiving such communications, the Registries and public bodies shall proceed pursuant to the provisions governing their activities.

2. Under no circumstances shall the designation of an address be deemed impossible for the purposes of serving notice if such address is recorded in public archives or registries to which access may be gained.

3. Should the investigations referred to in paragraph 1 lead to the address or place of residence being found, notice shall be served in the second manner set forth in paragraph 2, Article 152 and, as appropriate, the provisions set forth in Article 158 shall apply.

4. Should these investigations turn out to be fruitless, the Court Clerk shall issue an order stating that notice shall be served through public notices.

Article 157. *Central Civil Defaulters Registry.*[107]

1. Where the investigations referred to in the preceding article may have turned out to be fruitless, the Court Clerk shall order the defaulter's name and other identification details to be reported to the Central Civil Defaulters

[106] Paragraphs 1, 3 and 4 of this article have been worded in accordance with Act 13/2009 of 3 November.

[107] Article worded in accordance with Act 13/2009 of 3 November.

Registry, which shall be located at the Ministry of Justice, indicating the date of the ruling on giving the defaulter notice through a public notice in order to proceed with the defaulter's registration.

2. Any Court Clerk who has to investigate the address of a defendant may get in contact with the Central Civil Defaulters Registry to verify whether the defendant appears in such Registry and if the details contained therein coincide with those in the possession of the Court Clerk. Should this be the case, the Court Clerk may decide to issue a public notice directly to the defendant by means of an order to move the proceedings forward.

3. At the request of the interested party or at its own initiative, any judicial body knowing the address of a person registered in Central Civil Defaulters Registry shall seek the cancellation of such registration by providing information on the address to which court notices may be sent. The Registry shall send information on the aforementioned address for the purposes of giving notice to any Court Offices where proceedings against such defendant have been brought, and any notices served at such address shall be valid as from that moment.

4. Notwithstanding the above, any Court needing to know the current address of a proceedings' defendant whose whereabouts is unknown subsequent to the entry of appearance stage may contact the Central Civil Defaulters Registry so that the relevant entry may be recorded to provide it with the address to where court notices may be sent, should such information come to be known at such Registry.

Article 158. *Notice through personal delivery.*

Where, in the cases set forth in paragraph 1, Article 155, it is impossible to obtain proof that the addressee has been duly served with a notice aimed at the defendant entering an appearance in the proceedings or the party personally performing or taking part in some procedural actions, such notice shall be served in the manner set forth in Article 161.

Article 159. *Notices to witnesses, experts and other persons who are not a party to the hearing.*[108]

1. Any notices that have to be served on witnesses, experts and any other persons who, without being a party to the proceedings, are nonetheless

[108] Paragraph 1 is amended by single article 20 of Law 42/2015, of 5 October.

Paragraphs 2 and 3 of this article have been worded in accordance with Act 13/2009 of 3 November .

involved in them shall be sent to their addresses in accordance with the provisions of paragraph 1, Article 160. Such notices shall be sent to the address designated by the party concerned and, as appropriate, the investigations referred to in Article 156 may be conducted. These notices will be recorded by the procurator for the party proposing them, if requested to do so.

2. Where the failure to serve such notices appears on the records or it may be advisable, owing to the circumstances of the case, taking into account the purpose of the notice and the nature of the proceedings that depend on it, the Clerk of the Court shall order the proceedings to move forward in accordance with the provisions of Article 161.

3. The persons referred to in this article shall notify the Court Office of any change of address that may come about during the time the proceedings are being conducted. They shall be duly informed of this obligation at the first appearance they may make.

Article 160. *Sending of notices by post, telegram or other similar methods.*[109]

1. Where it may be appropriate to send a copy of the ruling or summons by registered post or telegram with acknowledgement of receipt, or by any other similar means that would allow irrefutable proof of service, the date thereof and the notice's contents to appear on the records, the Court Clerk shall certify in the records that such notice has been sent and shall attach thereto, as appropriate, the acknowledgement of receipt or the documents provided by the court representative, should the latter have proceeded to give notice.

2. Notices may be sent simultaneously to several of the places set forth in paragraph 3, Article 155 at the request of a party and at their cost.

3. Where the addressee's address may be within the Court's district and the notices do not require entering an appearance or a personal intervention in the proceedings, a summons may be sent by any of the means referred to in paragraph 1 so that the addressee may appear before the court for the purposes of being served notice, or handed a citation or document.

The summons shall clearly state the purpose for which the party's appearance is required by indicating the procedure or matter to which it refers, along with a warning stating that, should the party fail to appear without justified cause within the time limit set forth, the notice in question shall be construed to have been served or the document delivered.

[109] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

Article 161. *Notices by way of copy of the decision or summons.*[110]

1. Service to the consignee of notice of the copy of the decision or summons will be made in the court or to the address of the person who must be notified, summonsed, cited or required to appear, without prejudice to provisions in the field of enforcement.

Service shall be recorded on a certificate signed by the civil servant or by the procurator delivering it and by the person to whom it is served, whose name shall be recorded.

2. Where the consignee of the notice is found to be at the address and refuses to receive the copy of the decision or summons or to sign the certificate of service, the civil servant or procurator in charge of serving notice shall inform them that a copy of the ruling or summons remains at their disposal at the Court Office and that the effects of having served notice shall have come about, all of which shall be stated in the certificate.

3. Should the address at which an attempt is made to serve notice be the consignee's domicile according to the municipal registry of inhabitants, or for tax purposes, or according to an official registry or to a professional association publication and should the defendant not be found there, notice may be served, in a sealed envelope, on any employee, family member or person with whom the defendant cohabits who is older than fourteen years of age, or to the building's concierge, should there be one, duly informing the recipient that they are obliged to hand over the copy of the decision or summons to the consignee or advise them of it, if the consignee's whereabouts is known, advising the recipient, at any event, of their liability in relation to protection of the consignee's data.

Should notice be sent to the consignee's non-temporary place of work, it shall be served, should the consignee be absent, to a person who claims to know them or, should there be an office in charge of receiving documents or objects, to whoever may be in charge of it, with the same advice as in the preceding paragraph.

The name of the person to whom the notice is addressed, the date and the time at which they were sought and not found shall be recorded on the certificate, as shall the name of the person who receives the copy of the decision or summons and their relationship to the consignee. Any notices served in this way shall take full effect.

[110] Amended by single article 21 of Law 42/2015, of 5 October.

4. Should nobody be found at the address at which notice is meant to be served, the Clerk of the Court, civil servant or procurator shall make an effort to find out if the consignee resides there.

If they no longer live or work in the address attended and any of the persons consulted know their current one, this will be recorded on the certificate of non-notification and notice will then be served at the address provided.

Should it turn out to be impossible to find out the defendant's address through these means and should the claimant fail to designate any other possible addresses, the Court shall proceed in accordance with provisions of Article 156.

Article 162. *Notices using electronic, computer and other similar means.*[111]

1. Where Court Offices and the parties or addressees of notices are under the obligation to send and receive them via electronic, computer or information and communications technology means, or similar, which allow writs and documents to be sent and received, so that the notices' authenticity and contents are ensured and there is a tangible record of integral sending and receipt as well as the time when this occurred, or where the consignees choose these media, notices may be served by such means with the appropriate certificate proving reception.

Professionals and consignees who are under the obligation to use these media, and those who choose to do so, must notify the court offices of the fact that they have the afore-mentioned means available and of the E-mail address provided for that purpose.

Similarly, an electronically accessible Registry of such means and of the addresses of the public bodies and professionals obliged to use them shall be set up at the Ministry of Justice.

2. In any of the cases referred to in this article, where it is recorded that notice has been properly sent by such technical means, except for any

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[111] Amended by single article 22 of Law 42/2015, of 5 October.
Please note that the provisions relating to the obligation on all court professionals and court and tax offices and bodies who are not yet doing so to use the Justice Administration's existing computer systems for submission of writs and documents and carrying out acts of procedural communication under the terms of procedural law and Law 18/2011 of 5 July, will come into force on 1 January 2016 with respect to proceedings commenced from that date. The provisions relating to the electronic "apud acta" powers of attorney file and the use by interested parties who are not legal professionals of the Justice Administration's existing computer systems for submission of writs and documents and acts of procedural communication under the afore-mentioned terms will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law 42/2015.

served through the notice services organised by the Procurators' Associations, it shall be construed that notice has been served after three days have elapsed without the consignee accessing its contents and it shall then take full legal effect.

Any cases in which the consignee can prove the lack of access to the notices system shall be excluded from such period. Should the lack of access be due to technical reasons and should these persist at the moment they are notified, notice shall be served by delivering a copy of the decision. In any event, notice shall be construed to have been validly served the moment at which the possibility of accessing the system is proven. Nonetheless, should access come about once such period has elapsed but before notice through delivery has been served, notice shall be construed to have been validly served on the date appearing on the certificate proving its receipt.

No notices will be served on professionals by electronic means during the days of the month of August, unless they are considered to be working days for the relevant proceedings.

3. Where the authenticity of any rulings, documents, opinions or reports filed or transmitted by the means referred to in the preceding paragraph may only be recognised or verified through their direct examination or other procedures, they may, nonetheless, be filed on electronic media by means of digitised images of them in the manner provided for in Articles 267 and 268 of this Act. Nonetheless, in proceedings dealing with family, incapacity or kinship matters, such documents shall be filed in original hard copy documents within the time limit or procedural stage set for such a purpose should any of the parties, the court or the Public Prosecution Service so request.

Article 163. *Common Procedural Notices Service.*[112]

The Common Procedural Notices Services shall serve any notices that should be effectuated by the Court Office wherever such service may have been set up, apart from any notices that may have been entrusted to the court representative due to a request filed by the party he represents.

Article 164. *Notification of edicts.*[113]

In the event of the investigations referred to in article 156 being carried out and it is not possible to know the address of the consignee of the notice, or

[112] Article worded in accordance with Act 13/2009, of 3 November.

[113] The first paragraph is amended by single article 23 of Law 42/2015, of 5 October.

when the notice with all its effects cannot be served in accordance with the provisions of the preceding articles, or when so agreed in the case referred to in paragraph 2 of Article 157, the Clerk of the Court, having recorded such circumstances, shall order notice to be served by attaching the decision or the summons to the bulletin board at the Court Office in accordance with Law 18/2011 of 5 July, regulating the use of information and communications technologies at the Justice Administration, safeguarding the rights and interests of minors, as well as other rights and liberties which might be affected by publishing the notices. Such publicity may be replaced, under the regulatory terms provided for, by the use of other computer, IT or electronic means.

Only at the request and expense of a party, shall notification be published in the Official Gazette of the province or Autonomous Region, in the Official State Gazette or in a national or provincial daily newspaper.

In any case, in the notice or publication referred to in the preceding paragraphs, in the best interests of minors and in order to preserve their privacy, personal data, names and surnames, addresses or any other data or circumstance which could permit their identification, whether directly or indirectly, shall be omitted.

In eviction proceedings from an urban or rural property due to non-payment of rent or amounts due or due to legal or contractual expiry of the term and in proceedings claiming such rents or amounts due, where the lessee cannot be found or notice served at the addresses designated in the second paragraph of section 3 of article 155, or the lessor has not been notified in writing of a new address after the contract expires, which has not been opposed by the latter, without further ado the summons or order to appear will be fixed on the notice board at the court office.

Article 165. *Notices through judicial assistance.*[114]

Where notices must be served by a court other than the one ordering them, the despatch will be sent over the court computer system except in

[114] Amended by single article 24 of Law 42/2015, of 5 October.
Please note that the provisions relating to the obligation on all court professionals and court and tax offices and bodies who are not yet doing so to use the Justice Administration's existing computer systems for submission of writs and documents and carrying out acts of procedural communication under the terms of procedural law and Law 18/2011 of 5 July, will come into force on 1 January 2016 with respect to proceedings commenced from that date. The provisions relating to the electronic "apud acta" powers of attorney file and the use by interested parties who are not legal professionals of the Justice Administration's existing computer systems for submission of writs and documents and acts of procedural communication under the afore-mentioned terms will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law 42/2015.

such cases where this must be done in hard copy as the notice is accompanied by elements which cannot be converted into electronic format, and the relevant copy or order will be attached along with whatever is relevant in each case.

These notices will be completed within a period of not more than twenty days from their receipt and must be returned in accordance with the provisions of the preceding paragraph. When they are not served within the stated time limit, the Clerk of the Court shall be requested to ensure compliance and the reasons for the delay shall be stated, as appropriate.

These acts may be carried out, at the request of one of the parties, by a procurator who will ensure their completion under the same terms and time limits provided for in the preceding paragraph.

Article 166. *Nullity and rectification of notices.*

1. Notices which are not made in accordance with the provisions in this chapter and may lead to the lack of proper defence shall be null and void.

2. However, when the person notified, summoned or ordered to attend is aware of the case and fails to report the nullity of the notice procedure at his first appearance before the court, from that time, the notice shall take full effect, as if it had been served in keeping with the law.

Article 167. *Sending judicial instructions and orders.*[115]

1. Orders and judicial instructions shall be sent directly by the Clerk of the Court who issues them to the authority or civil servant to whom they are addressed, and the means provided for in Article 162 must be used.

However, if they request to do so, the parties may personally carry through the orders and judicial instructions.

[115] Paragraph 1 is amended by single article 25 of Law 42/2015, of 5 October.
Please note that the provisions relating to the obligation on all court professionals and court and tax offices and bodies who are not yet doing so to use the Justice Administration's existing computer systems for submission of writs and documents and carrying out acts of procedural communication under the terms of procedural law and Law 18/2011 of 5 July, will come into force on 1 January 2016 with respect to proceedings commenced from that date. The provisions relating to the electronic "apud acta" powers of attorney file and the use by interested parties who are not legal professionals of the Justice Administration's existing computer systems for submission of writs and documents and acts of procedural communication under the afore-mentioned terms will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law 42/2015.

2. In any case, the party at whose request the judicial instructions or orders referred to in this article are issued shall have to pay the expenses involved in fulfilling them.

Article 168. *Responsibility of civil servants and professionals intervening in procedural notices.*[116]

1. The Court Clerk or the civil servant of the bodies at the service of the Justice Administration who, while carrying out their work assigned to them by this chapter, give rise to undue hold-ups or delays, through malice or negligence, disciplinary action shall be taken by the authority they depend on in order to correct this and they shall incur liability for damages.

2. The court representative who incurs mens rea, negligence or delay in the notices he has assumed or does not respect any of the legal formalities established, leading to damage to a third party, shall be liable for the damages caused and may be sanctioned in accordance with the provisions in legal or statutory rules.

CHAPTER VI

ON JUDICIAL ASSISTANCE

Article 169. *Cases in which judicial assistance operates.*

1. The civil courts are obliged to provide assistance in procedures which have been ordered by one court but require the cooperation of another to carry this out.

2. Judicial assistance shall be requested for procedures which must be carried out outside the district of the court which deals with the case, including acts involving taking of evidence when the court does not consider it possible or advisable to make use of the power granted to it herein to move outside its court district in order to carry out the said procedures.

3. Judicial assistance may also be requested for procedure to be carried out outside the municipality where the court which orders this is located, but within the corresponding judicial or court district.

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[116] Article worded in agreement with Act 13/2009, of 3 November.

4. Questioning of the parties, declarations of witnesses and ratification by experts shall be carried out at the court dealing with the case concerned, although the addresses of the said parties may be outside the corresponding court district.

Only when, due to distance, travel difficulties, personal circumstances of the party, of the witness or the expert, or due to any similar reason it is impossible or costly for the persons summoned to appear in court, judicial assistance may be requested in order to carry out the examinations stated in the preceding paragraph.

Article 170. *Body which shall provide judicial assistance.*[117]

It shall be the duty of the Office of the Court of First Instance to provide judicial assistance in the towns or cities within its court district. Notwithstanding the preceding, if there is a Court of Justice in the town or city, and judicial assistance consists of notice, the Court of Justice shall serve the notice.

Article 171. *Petition.*[118]

1. Judicial assistance shall be sought by the court which requests it through a petition addressed to the Court Office which must provide the assistance, and which shall contain:

(i). The appointment of the petitioning court and the court petitioned.

(ii). The subject of the case which is the reason for sending the petition.

(iii). The appointment of the persons who are parties to the case, as well as their representatives and their defence.

(iv). A statement of the procedure involved.

(v). When the procedure involved must be carried out within a time limit, the time limit shall be stated.

(vi). Any documents which must necessarily be enclosed with the petition shall be expressly mentioned.

2. It shall be the duty of the Court Clerk to authorise and despatch petitions.

[117] Article worded in accordance with Act 13/2009 of 3 November.

[118] Paragraph 1 worded in accordance with Act 13/2009, of 3 November .

Article 172. *Sending letters rogatory.*[119]

1. Letters rogatory will be sent directly to the body called on using the court computer system or any other computer or electronic means, except in cases where this must be done in hard copy as the order is accompanied by elements which cannot be converted into electronic format.

In all cases the system used must guarantee a record of the letter rogatory being sent and received.

2. Without prejudice to the foregoing, if the party interested in fulfilment of the letter rogatory so requests, it will be delivered to them at their own liability for submission to the body called on within the following five days. In this case, the letter rogatory will state the person in charge of its processing, who may only be the litigant themselves or the procurator appointed by them.

3. The other parties may also appoint a procurator where they wish to be notified of the decisions passed for fulfilment of the letter rogatory. The party interested in fulfilling the letters rogatory may do the same, providing they have not requested that it be given to them for any of the purposes stipulated in the preceding paragraph. Such appointments shall be recorded in the documentation for the letter rogatory.

4. Where letters rogatory have been sent to a body other than the one which must provide the assistance, the body that receives it shall forward it directly to the relevant body, providing they know which body it is, and shall inform the issuer of the letter rogatory of the despatch.

Article 173. *Fulfilment of the petition.*[120]

The person responsible for the Court Office who receives the petition shall arrange for it to be fulfilled and whatever is necessary for the procedures set forth in the petition to be carried out within the stated time limit.

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[119] Paragraphs 1 and 3 are amended by single article 26 of Law 42/2015, of 5 December.
Please note that the provisions relating to the obligation on all court professionals and court and tax offices and bodies who are not yet doing so to use the Justice Administration's existing computer systems for submission of writs and documents and carrying out acts of procedural communication under the terms of procedural law and Law 18/2011 of 5 July, will come into force on 1 January 2016 with respect to proceedings commenced from that date. The provisions relating to the electronic "apud acta" powers of attorney file and the use by interested parties who are not legal professionals of the Justice Administration's existing computer systems for submission of writs and documents and acts of procedural communication under the afore-mentioned terms will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law 42/2015.

[120] This article is worded in accordance with Act 13/2009, of 3 November.

When this does not happen, the Court Clerk of the petitioning body, ex officio or at the request of the party, shall remind the petitioned body of the urgency of its fulfilment. If the situation persists, the body for which assistance has been requested for shall inform the Governing Body for the court petitioned.

Article 174. *Intervention of the parties.*

1. The parties and their attorneys and court representatives may intervene in the procedures being carried out to fulfil the petition.

Nevertheless, notice of the decisions issued to fulfil the petition shall only be sent to the parties which have appointed court representatives to intervene in the formalities.

2. If the parties have not appointed court representatives, the former shall only receive the notices required to fulfil a petition if the latter stipulates that a procedure is to be carried out with a summons, the intervention or appearance of the parties, and whatever is necessary to request the parties to provide data or news which might facilitate the said fulfilment.

Article 175. *Return of the letter rogatory.*[121]

1. Once the letter rogatory is complete, the issuer of the letter rogatory will be notified in accordance with the provisions of paragraph 1 of article 172.

2. The judicial assistance procedure carried out, if it cannot be sent electronically, shall be sent by registered mail or delivered to the litigant or the procurator entrusted with processing the letter rogatory, who will submit it to the body issuing the letter rogatory within ten days.

Article 176. *Lack of diligence of the parties regarding judicial assistance.*

The litigants who, for no just reason, delay submittal to the party petitioned or the return of the despatches entrusted to them to the petitioner shall be

[121] Amended by single article 27 of Law 42/2015, of 5 October.
Please note that the provisions relating to the obligation on all court professionals and court and tax offices and bodies who are not yet doing so to use the Justice Administration's existing computer systems for submission of writs and documents and carrying out acts of procedural communication under the terms of procedural law and Law 18/2011 of 5 July, will come into force on 1 January 2016 with respect to proceedings commenced from that date. The provisions relating to the electronic "apud acta" powers of attorney file and the use by interested parties who are not legal professionals of the Justice Administration's existing computer systems for submission of writs and documents and acts of procedural communication under the afore-mentioned terms will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law 42/2015.

corrected with a fine of € 30 for each day of delay with regard to the time limit established, respectively, in paragraph 2 of Article 172 and in paragraph 2 of the preceding article.

Article 177. *International judicial co-operation.*[122]

1. Despatches regarding judicial procedure abroad shall be dealt with in accordance to the provisions of relevant Community legislation, in the international Treaties to which Spain is a party and, in their absence, in the relevant domestic legislation.

2. The provisions in such legislation shall also apply when foreign judicial authorities request the co-operation of the Spanish courts.

CHAPTER VII

ON SUBSTANTIATION, HEARING AND DECISION ON THE CASES

Section 1. On ordinary dealing

Article 178. *Giving account.*[123]

1. The Court Clerks shall inform the Chamber, the Reporting Judge or the Judge, as appropriate, of the written statements and documents submitted on the same day or on the following working day when the latter have pleas or claims that require a pronouncement from the former.

The same shall be done with regard to the records authorised outside the judicial area.

2. On the following working day they shall also inform on the course of the procedural time limits and the consequent status of the records when the due decision must be pronounced by the Judge or by the Senior Judge on expiry of the period, as well as any decisions issued which are not mere formalities.

3. The civil servant of the Procedural and Case Management Body shall also inform the Court Clerk of the processing of the procedure, in particular when this requires an interpretation of the law or of procedural rules, notwithstanding informing the head of the judicial body when this is required.

[122] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

[123] Article worded in accordance with Act 13/2009 of 3 November on the reform of procedural legislation for the implementation of the new Court Office.

Article 179. *Procedural development and stay of proceedings by agreement of the parties.*[124]

1. Unless otherwise stipulated, the Court Clerk shall give the proceedings the corresponding progression ex officio and shall issue the decisions required for this purpose.

2. The course of the procedure may be stayed in accordance with provisions set forth in section 4 of Article 19 herein, and shall resume if any of the parties requests this. Once the time limit for the stay of proceedings agreed on has elapsed, if no one requests the resumption of the proceedings within the following five days, the Court Clerk shall agree to temporarily file the proceedings and they shall remain filed until continuation of the proceedings is requested or the case expires.

Article 180. *Senior Reporting Judge.*[125]

1. In courts with a Chamber, the Court Clerk shall decide who shall be the Senior Reporting Judge for each case, in accordance with the rota established for the Division or Courtroom at the beginning of each judicial year exclusively on the basis of objective criteria.

2. The appointment shall be made in the first decision issued by the Court Clerk in the proceedings and the parties shall be informed of the name of the Senior Reporting Judge and of his substitute, as appropriate, in accordance with the rota established, with a statement on the reasons for the substitution.

3. All the Senior Judges of the court or division, including the presiding judges, shall be appointed Reporting Judge by turn.

Article 181. *Functions of the Senior Reporting Judge.*[126]

In courts with benches, the functions of the Senior Reporting Judge shall be to:

(i). Attend to ordinary business and to process the cases assigned to him by rota, notwithstanding the development thereof which is the duty of the Court Clerk.

[124] Article worded in accordance with Act 13/2009, of 3 November.

[125] Sections 1 and 2 of this article are worded in accordance with Act 13/2009, of 3 November.

[126] Article worded in accordance with Act 13/2009, of 3 November.

(ii). Examine proposals of evidence submitted by the parties and report on their admissibility, relevance and usefulness.

(iii). Report appeals lodged against the decisions of the court and appeals lodged against the decisions of the Court Clerk which must be decided by the court.

(iv). Issue court orders and propose any other decisions which must be issued by the court.

(v). Draft the decisions issued by the court, notwithstanding the provisions in the second paragraph of Article 203.

Section 2. On hearings and appearances[127]

Article 182. *Setting a date for hearings.*[128]

1. It shall be the duty of the Presiding judges of the Chamber and divisions of the collective bodies to determine the date and time for deliberating and voting on the cases which must be adjudicated with no hearing.

Likewise, it corresponds to the Judge or presiding judge to set a date when the decision to call, resume or establish new proceedings, hearings or a similar step is adopted in the course of any procedural act which has already commenced and which they preside, on condition that this can be done at the same act, and taking into account the needs of the scheduled agenda.

2. The holders of single member jurisdictional bodies and the presiding judges of Chambers or Divisions in the bench courts shall establish the general criteria and give specific instructions for setting the dates for hearings and equivalent formalities.

3. These criteria and instructions shall include the following:

(i). Setting the days predetermined for this purpose, which must be subjected to the availability of the Chamber stipulated for each judicial body and the required co-ordination with the other judicial bodies.

(ii). Times of hearings.

(iii). Number of dates set.

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[127] Instruction worded in accordance with Act 13/2009, of 3 November.

[128] Article worded in accordance with Act 13/2009, of 3 November.

(iv). Approximate duration of a specific hearing, decided after the matter or case concerned has been studied.

(v). The nature and complexity of the cases.

(vi). Any other circumstance considered to be relevant.

4. The Court Clerks shall establish the date and time of the hearings or equivalent procedures subject to the above criteria and instructions, and arrange a scheduled agenda taking the following circumstances into account:

(i). The order in which the procedures reach the status for holding a hearing or trial, except for the legally established exceptions or the cases in which the jurisdictional body exceptionally establishes must take preference. In such cases, they shall be placed before the others for which no date has been set.

(ii). The availability of a courtroom planned for each judicial body.

(iii). The organisation of the human resources of the Court Office.

(iv). The time required for the summons and appearances of the experts and witnesses.

(v). The co-ordination with the Public Prosecution Service in the procedure in which the laws stipulate its intervention.

5. The Judge or President shall be informed as the dates and times are included in the scheduled agenda and, in any case, before the parties are notified. In the event that these are not in consonance with the criteria and instructions established, the Judge or Presiding Judge shall decide on the date and time.

Article 183. *Application for setting a new date and time for a hearing.*[129]

1. If any of those who have to attend a hearing and it is impossible for him to attend on the day appointed, due to force majeure or another similar reason, he shall immediately inform the court, duly accrediting the cause or reason and requesting the scheduling of another hearing or decision on the situation.

[129] This article is worded in accordance with Act 13/2009, of 3 November.

2. When it is the attorney of one of the parties who considers it impossible to attend the hearing, if the situation he alleges is considered attendable and accredited, the Court Clerk shall set a new date for the hearing.

3. When it is the party who alleges the situation of impossibility stipulated in the first section, if the Court Clerk considers the situation alleged to be attendable and accredited, he shall adopt one of the following decisions:

a) If the hearing involves proceedings in which the party is not assisted by an attorney or represented by a court representative, he shall set a new date for the hearing.

b) If the hearing involves procedures in which the party is assisted by a attorney or court representative, and it is necessaryfor the party to be personally present, a new date shall be set for the hearing.

In particular, if the party has been summoned to the hearing in order to respond to questioning regulated in Articles 301 et seq., the Court Clerk shall set a new date, with the relevant summons. The same decision shall apply when a contrary party summoned for questioning alleges and accredits the impossibility to attend.

4. The Court Clerk shall notify the court of the new date set for the hearing, on the same day or on the working day following the day this is agreed on.

5. When a witness or expert who has been summoned to a hearing by the court states and accredits he is in the same situation of impossibility stated in the first paragraph of this precept, the Court Clerk shall provide that the parties are heard for a common period of three days on whether the date set for the hearing becomes ineffective and a new date shall be set or whether the witness or expert is summoned for the pleadings apart from the scheduled hearing. Once the time limit has elapsed, the court shall decide what it considers to be advisable, and if it considers the excuse of the witness or the expert attendable or accredited, the scheduling for the hearing shall be maintained and the Court Clerk shall notify the former of the fact, requesting them to appear, with the admonition stipulated in paragraph two of Article 292.

6. When the Court Clerk decides on the situations referred to in paragraphs 2 and 3 above, and deems that the attorney or the litigant may have acted with unjustified or groundless delay, he shall inform the judge or the court, which may impose a fine on them of up to six hundred euros, notwithstanding what the Court Clerk decides on the re-scheduling.

The same fine may be imposed by the court in the cases stipulated in paragraph 5 of this article, when it is deemed that the circumstances are similar to the ones referred to in the preceding paragraph.

Article 184. *Time for holding hearings.*

1. As regards the holding of hearings, all the working and authorised times of the day may be used in one or more sessions and, when necessary, continue on the following day or days.

2. Except in the cases in which the law provides otherwise, at least two working days must elapse between the scheduling and the holding of the hearing.

Article 185. *Holding of the hearings.*[130]

1. Once the court is constituted as stipulated herein, the Judge or Presiding Judge shall declare that a public hearing shall be held, except when the act is held behind closed doors. Once the hearing commences, the records of the case or the questions to be dealt with shall be summed up.

2. Immediately and in the following order, they shall inform the claimant, and the defendant or appellant and the respondent, through their attorneys, or the parties themselves, when the law permits this.

3. If evidence has been submitted for the hearing, it shall be examined in accordance with the rules which regulate this.

4. Once the evidence has been taken or, if there is no taking of evidence, when the first group of interventions ends, the Judge or Presiding Judge shall again allow the parties to speak in order to correct facts or concepts and, when appropriate, to make concise allegations based on the results of the taking of evidence, as permitted by law.

Article 186. *Direction of the debates.*[131]

During the development of the hearings, the Judge and the Presiding Judge, or the Court Clerk in the case of hearings held exclusively before him, are responsible for giving direction to the debates and, in particular to:

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[130] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

[131] Paragraph 1 worded in accordance with Act 13/2009, of 3 November.

(i). Maintain good order in the hearings, with all the resources at their disposal, ensuring the respect and consideration owed to the courts and to those who act before it, immediately correcting any mistakes which are made as provided in the Organic Act on the Judiciary Branch.

(ii). Speed up the hearings, and, for this purpose, to admonish the attorney or the party who fails to keep on the subject, urging them to avoid unnecessary vagary, and if they do not obey the second warning made in this regard, they may be forbidden to speak.

Article 187. *Documentation of the hearings.*[132]

1. The development of the hearing

This shall be recorded in a storage system which can record and reproduce sound and image or, if this is not possible, sound only, in accordance with the provisions in Article 147 herein.

In any case, at their own expense, the parties may request a copy of the storage systems where the hearing has been recorded.

2. If the storage systems referred to in the preceding section cannot be used for any reason, the hearing shall be documented through minutes taken by the Court Clerk.

Article 188. *Adjournment of hearings.*[133]

1. The holding of the hearings on the day scheduled may only be adjourned in the following cases:

(i). When the hearing prevents the continuation of another hearing pending from the previous day.

(ii). The number of Senior Judges required to issue a decision is not present or the judge or the Court Clerk are indisposed, if there is no substitute for them.

(iii). If the parties agree to request this, alleging a just reason in the opinion of the Court Clerk.

(iv). The absolute impossibility of any of the parties summoned to be questioned in the proceedings or hearing, on condition that this

[132] Paragraph 1 worded in accordance with Act 13/2009, of 3 November.

[133] Article worded in accordance with Act 13/2009 of 3 November.

impossibility is sufficiently justified in the opinion of the Court Clerk, and this occurred when it was not possible to request re-scheduling in accordance with the provisions in Article 183.

(v). Death, illness or absolute impossibility or maternity or paternity leave of the attorney of the party which requests the suspension, and this is sufficiently justified, in the opinion of the Court Clerk, on condition that these events occurred when it was not possible to request re-scheduling in accordance with the provisions in Article 183, providing the right to effective judicial protection is guaranteed and there is no lack of proper defence.

Moreover, other analogous situations stipulated in other social welfare systems shall be considered equivalent to the above cases, and with the same requirements and for the same period of time for which the leave and the permissions set forth in Social Security legislation were granted.

(vi). The defence attorney has two hearings on the same day and in different courts, and it is impossible for him to attend both due to the timing, on condition that he sufficiently accredits that, under Article 183, he unsuccessfully tried to obtain a re-scheduling in order to prevent the coincidence.

In this case, the hearing concerning a criminal case with a prisoner shall have priority and, if there is no criminal case, the earliest hearing scheduled, and if the two hearings are scheduled for the same day, the later hearing shall be adjourned.

The adjournment of the hearing shall not be agreed to if the notice of the application of the suspension occurs with more than three days of delay from the notice of the scheduling received in the second place. For these purposes, a copy of the notice of this scheduling must be attached to the application.

The provisions in the preceding paragraph shall not apply to hearings involving criminal cases with prisoners, notwithstanding any liability which may have been incurred.

(vii). The adjournment of the procedure was agreed to or this adjournment was correct in accordance with the provisions herein.

2. Any suspension decided by the Court Clerk shall be made known on the same day or on the following working day and the Court Clerk shall notify the parties present who were judicially summoned as witnesses, experts or in some another capacity.

Article 189. *Re-scheduling of the hearings suspended.*[134]

1. In the event that a hearing is adjourned, the Court Clerk shall set a new date when adjournment is decided and, if this is not possible, as soon as the reason which led to the adjournment.

2. The re-scheduling shall be made for the earliest date possible, without altering the order of any previously set dates.

Article 189 bis. *On appearances.*[135]

The content of Articles 188 and 189 shall apply, insofar as this is applicable, as regards the appearances which are to take place exclusively before the Court Clerk.

Article 190. *Changes of judges after a date has been set for a hearing and potential challenges.*[136]

1. In the event that a court's Judge or Senior Judge who are members of a Chamber have been substituted after a date was set for a hearing, and in any case before the hearing commences, the parties shall be informed immediately of the said substitutions and the hearing shall be held, unless the Judge or any of the Senior Judges who became a member of the Chamber owing to the substitution is challenged, even when the said challenge is only made verbally.

2. If the challenge referred to in the preceding section is formulated, the hearing shall be adjourned and the incident shall be processed as provided herein, and once the challenge is resolved, a new date for the hearing shall be set. A verbal challenge shall succinctly state the reason or reasons for it and must be formulated in writing before three days have elapsed. If the challenge is not made within this time limit, it shall not be given permission to proceed and a fine shall be imposed on the challenger for the sum of one hundred and fifty euros or up to six hundred euros, and he shall also be ordered to pay the costs caused by the adjournment. On the same day that the above decision is issued, the Court Clerk shall set a new date for the hearing for the earliest time possible.

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[134] Paragraph 1 worded in accordance with Act 13/2009, of 3 November.

[135] Article added by Act 13/2009, of 3 November.

[136] Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

Article 191. *Subsequent challenge to the hearing.*

1. In the event that the Judge, Senior Judge or Senior Judges, referred to in paragraph 1 of the preceding article, are changed, when the hearing is held as there was no challenge, if the court has only one member, the judge shall allow three days to elapse before issuing a decision and if the court is formed by a Chamber, discussion and voting shall be suspended for three days.

2. Within the period of time referred to in the preceding paragraph, the Judge or the Senior Judges who became members of the Chamber after a date was set may be challenged, and, if the parties do not use this right, the period for issuing a decision shall begin to run.

3. In the case referred to in this article, only the challenges based on reasons which could not have been known before the commencement of the hearing shall be given permission to proceed.

Article 192. *Effects of a decision to challenge lodged after a hearing.*

If a court order states that a challenge lodged in accordance with the preceding article is relevant, the hearing shall be null and void and shall be held again on the nearest date that can be set, before a Judge or with competent Senior Judges substituting the challenged judges.

If the challenge is overruled, the decision shall be issued by the Judge or the Senior Judges who attended the hearing and the time limit to issue the decision shall commence on the day following the date on which a decision has been adopted regarding the challenge.

Article 192 bis. *Change of the Court Clerk after a date has been set. Potential challenge.*[137]

The provisions set forth in the three preceding articles shall apply to the Court Clerks with regard to the procedures to be carried out only before them.

Article 193. *Adjournment of hearings.*[138]

1. Once commenced, a hearing may only be adjourned if:

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[137] Article added by Act 13/2009 of 3 November.

[138] Paragraphs 1 and 3 of this article have been worded in accordance with Act 13/2009 of 3 November.

(i). The Court has to resolve an incidental matter which cannot be decided there and then.

(ii). Taking of evidence is required outside the court premises and cannot be carried out in the interval between one session and the next.

(iii). The witnesses or experts summoned by the Court fail to appear and the Court considers their statement or report essential.

(iv). After commencement of the hearing, one of the circumstances that would have led to an adjournment of the hearing occurs and the suspension is decided by the Judge of the Presiding Judge.

2. The hearing shall be resumed once the cause of its adjournment has ceased to exist.

3. If the hearing may be resumed within twenty days following its adjournment, and in all cases where the date for the new hearing may be set at the same time as the decision of adjournment, this shall be done by the Judge or the Presiding Judge, who shall take into account the requirements of the programmed agenda of set dates and any other circumstances set forth in Article 182.4.

If the hearing cannot be resumed within twenty days following its adjournment and a new date cannot be set at the same time, the date shall be set by the Court Clerk, in accordance with the provisions of Article 182, and the said date shall be the earliest date possible.

Section 3. On the votes and rulings of the cases

Article 194. *Judges and Senior Judges responsible for pronouncing judgement in the cases.*

1. In the cases that must be judged after a hearing or a trial has taken place, the drawing up and signing of a decision in single-judge courts or the deliberation and vote in a Chamber court shall be the responsibility of the Judge or the Senior Judges at the hearing or trial, even if after the said hearing or trial they have ceased to perform their functions at the court hearing the case.

2. Excepted from the provisions set forth in the preceding paragraph are the Judges and Senior Judges who, after the hearing or trial, have:

(i). Ceased to be a Judge or Senior Judge.

Nonetheless, paragraph 1 of this article shall apply to the Judges and Senior Judges who have retired by reason of age and to the substitute Judges and acting Senior Judges who have ceased in their post by resignation, expiry of the term for which they were appointed or for having reached the age of seventy-two.

(ii). Been suspended from their functions.

(iii). Accepted a public post or a profession incompatible with the jurisdictional function or have entered a situation of voluntary leave of absence in order to present themselves as candidates for a public post.

Article 194 bis. *Court Clerks responsible for taking decisions.*[139]

The provisions set forth in the preceding article shall apply to the Court Clerks who must issue a decision after the acts and appearances established herein have been held.

Article 195. *Information of the Senior Judges regarding the content of the records in Chamber courts.*

1. The Senior Reporting Judge shall avail of the records to issue a judgement or a decision on incidents or appeals, whereas the remaining members of the court shall be given permission to examine the said records at all times.

2. Upon conclusion of the hearing in the cases where the former precedes the decision or, otherwise, as of the day on which the Presiding Judge set the date for the deliberation, vote and judgement, any of the Senior Judges may request the records of the proceedings to study them.

If the records are requested by several Senior Judges, the Presiding Judge shall set the time each of them may examine them, in order to ensure that the judgements can be issued within the time limit established for that purpose.

Article 196. *Deliberation and voting of decisions in Chamber courts.*

In Chamber courts the decisions shall be discussed and voted upon immediately after the hearing if a hearing is held and, otherwise, the

[139] Article added by Act 13/2009 of 3 November .

Presiding Judge shall establish the day on which the decisions have to be discussed and voted upon, within the time limit established by law.

Article 197. *Method of the discussion and voting of decisions in Chamber courts.*

1. In Chamber courts, the discussion and voting of the decisions shall be directed by the Presiding Judge and shall at all times take place in closed session.

2. The Senior Reporting Judge shall submit the facts, matters and grounds of law to deliberation by the Chamber or Division, as well as the decision which, in his opinion, should be adopted and, following the necessary discussion, voting shall take place

Article 198. *Voting on the decisions.*

1. The Presiding Judge may decide that a separate vote shall be cast on the various pronouncements of facts of law that need to be made or on part of the decision that needs to be issued.

2. The Senior Reporting Judge preparing the opinion of the court shall vote in first place, followed by the remaining Senior Judges in inverse order of seniority. The Presiding Judge shall be the last to cast his vote.

3. The voting shall not be suspended once it has commenced, barring an insurmountable difficulty.

Article 199. *Vote of disabled Senior Judges after the hearing.*

1. If, after the hearing has been held, a Senior Judge suffers a disability that prevents him from being present during the discussion and for the vote, he shall issue his vote in writing, properly founded and signed, which he shall forward directly to the court's Presiding Judge. Where he is unable to write or to sign, he shall request the assistance of the Court Clerk.

The vote issued in this manner shall be counted with the remaining votes and shall be recorded, initialled by the Presiding Judge, with the book of judgements

2. If the disabled Senior Judge is unable to vote even in this manner, the matter shall be resolved by the remaining Senior Judges who attended the hearing, provided their number is sufficient to make up a majority. If their

number is insufficient, a new hearing shall be held, attended by those who were present at the previous hearing and the Judge or Judges who are called to replace those who are disabled, in which case the provisions set forth in Articles 190 to 192 herein shall apply.

3. The provisions set forth in the preceding paragraph shall also apply when one of the Senior Judges who attended a hearing are unable to take part in the deliberation and vote due to their being affected by one of the cases set froth in paragraph 2 of Article 194.

Article 200. *Impediment of the Judge or the Court Clerk who attended the hearing or appearance.*[140]

1. In single-judge courts, if, after the hearing, the Judge who attended the said hearing becomes incapacitated and cannot issue a decision, not even with the assistance of the Court Clerk, a new hearing shall be held presided over by the Judge who substitutes the incapacitated Judge.

The same rule shall apply when a Judge who participated in the hearing is unable to issue a decision owing to one of the cases set forth in paragraph 2 of Article 194.

2. The above shall apply to the Court Clerks who cannot issue a decision, either because they have become incapacitated or because they incur in one of the cases set forth in Article 194 bis, after the appearance has taken place before them.

Article 201. *Majority of votes.*

In the Chamber courts, records and judgements shall be passed by absolute majority of the votes, unless a larger majority is expressly established by the law.

Under no circumstances may a specific number of votes in favour be requested infringing the majority rule.

Article 202. *Dissents.*

1. If, when voting on a decision, no majority of votes is obtained regarding any of the pronouncements of fact or of law required to be made, the issues object of the dissenting vote shall be discussed and voted on again.

[140] Article worded in accordance with Act 13/2009 of 3 November.

2. If no agreement is reached, the dissent shall be resolved holding a new hearing, attended by the Senior Judges who took part in the first hearing, increasing their number by an additional two if the number of dissenting votes was odd, and an additional three if the said number was even. This additional number shall be formed, firstly, by the Presiding Judge of the Court of Division, unless he has already assisted; secondly, by the Senior Judges of the same Court who have not examined the case; thirdly, by the Presiding Judge of the High Court and, finally the Senior Judges of the remaining Courts or Divisions, giving preference to those of the same jurisdictional order, following the order agreed upon by the Governing Body of the Court.

3. The Judge appointed to preside the Court made up as described in the preceding paragraph shall, by procedural court order, set the dates for the hearings of the dissenting issued and make the appropriate appointments.

4. If, in a vote on a decision by the Court as contemplated in the second paragraph of this article, once again no majority is obtained on the issues object of the dissent, a new vote shall take place, this time voting only on the two opinions that obtained the largest number of votes in the previous vote.

Article 203. *Drawing up the decisions in Chamber courts.*

In the Chamber courts, the reporting judge shall be responsible for drawing up the decisions object of discussion by the Chamber or Division, provided the former is in agreement with the decision.

If the Reporting Judge disagrees with the vote of the majority, he shall decline to draw up the decision and shall formulate his dissenting vote in a well-founded manner. In this case, the Presiding Judge shall entrust another Senior Judge with the drafting and shall see to the necessary rectification during the motions session in order to restore the equality in the said session.

Article 204. *Signing of the decisions.*

1. The court decisions shall be signed by the Judge or by all the Senior Judges who are not incapacitated within the time limit established for issuing the said decisions

2. If, after a decision has been adopted concerning the case by a Chamber court, a Senior Judge of those who voted becomes incapacitated and is unable to sign the decision, the judge who presided over the session shall sign in his place, indicating the name of the Senior Judge for whom his is

signing and specifying that the incapacitated Senior Judge did vote but was unable to sign.

If the incapacitated judge is the Presiding Judge himself, the most senior of the Senior Judges shall sign in his name.

3. The court decisions shall be authorised or published with the signature of the Court Clerk, under penalty of nullity.

Article 205. *Dissenting votes.*

1. Anyone taking part in the vote on a judgement or an order shall sign that agreed upon, even if he dissented from the majority; however, he shall be entitled, in this case, announcing his intention at the time of the vote or of the signing of the decision, to cast a dissenting vote, in the form of a judgement, in which he may accept by remission the issues of fact and the fundamental points of law of the judgement passed by the court with which he is in agreement.

2. The dissenting vote, signed by its author, shall be incorporated to the book of judgements and shall be notified to the parties together with the judgement approved by majority. If, in accordance with the law, the publication of the judgement is mandatory, the dissenting vote, if any, shall be published together with the judgement.

3. A dissenting vote may equally be formulated, subject to the provisions set forth in the preceding paragraphs, to the extent applicable, in relation to orders and decisions succinctly motivated.

CHAPTER VIII

ONTHE PROCEDURAL DECISIONS141

Section 1. On the classes, form and content of the decisions and the manner of passing, publishing and recording them

Article 206. *Classes of decisions.*[142]

1. Judicial decisions are court rulings, orders and judgements passed by the judges and courts.

[141] Additional paragraph worded in accordance with Act 13/2009 of 3 November.

[142] Rule (ii) , paragraph 1 amended by final provision 3.6 of Law 5/2012 of 6 July.

Article worded in accordance with Act 13/2009 of 3 November.

In declaratory actions, where the law does not establish the class of judicial decision to be used, the following rules shall be observed:

a) A procedural court order shall be issued when the decision refers to procedural matters requiring a judicial decision by virtue of the law, provided that, in such cases, the form of an order is not expressly requested.

b). Orders shall be issued when decisions are adopted on appeals against procedural court orders or decrees, or when a decision is adopted on the admission or rejection of a claim, counterclaim, joinder of actions, admission or rejection of evidence, judicial approval of settlements, mediation agreements and covenants, injunctions and nullity or validity of the procedures.

Likewise, decisions shall be in the form of an order when they concern rules of procedure, registry annotations and inscriptions and incidental matters, regardless of whether or not this Act establishes a special procedure for them, provided that, in such cases, the law requires a decision of the Court, as well as those which terminate the procedures of a petition or appeal before the ordinary procedure is finalised, unless, in relation to the latter, it has been ordered that they must be terminated by decree.

c). A judgement shall be passed to put an end to the proceedings, in first or second instance, once its ordinary procedure as established in the law has been concluded. The extraordinary appeals and the proceedings for review of final judgements shall also be resolved by means of a judgement.

2. The decisions of the Court Clerks shall be called proceedings and decrees.

If the law does not establish the class of decision to be used, the following rules shall be observed:

a) A proceedings of order shall be issued if it is the purpose of the decision to give the procedure the course established by the law.

b) A decree shall be issued when leave is given to proceed with the claim, when the procedure the exclusive competence of which had been assigned to the Court Clerk is terminated an, in any class of procedure, when it is necessary or convenient to give a reasoned explanation of the decision adopted.

c) Proceedings of record, communication or execution shall be issued for the purposes of recording facts or acts of a procedural significance in the proceedings.

3. In the executions of judgement the rules established in the preceding paragraphs shall be observed to the extent applicable.

Article 207. *Final decisions. Absolute decisions. Formal res judicatal.*

1. Final decisions are those that put an end to the first instance and those resolving the appeals filed against them.

2. Absolute decisions are those against which no remedy of appeal is possible, either because none is foreseen by the law, or because, although foreseen, the legally established term has expired without any of the parties having filed such remedy of appeal.

3. Final decisions become res judicata and the court to which the proceedings was assigned must at all events adhere to them.

4. Upon expiry of the terms established to appeal against a decision without the latter having been challenged, the decision shall be final and becomes res judicata and the court to which the proceedings has been assigned must at all events adhere to it.

Article 208. *Form of the decisions.*[143]

1. The proceedings or order and court orders shall be limited to expressing what is ordered by them and shall also include a summary motivation if required by the law or if deemed convenient by whomever has to issue them.

2. The decrees and orders shall always be motivated and shall contain separate numbered paragraphs setting out the record of the facts and the fundamental points of law on which the subsequent order or verdict of the court is based.

3. Sentences and orders must indicate the Court pronouncing them, specifying the Judge or Senior Judges composing the court with their signature and the name of the reporting judge in the case of a Chamber court. In the case of court decisions issued by Courtrooms, the signature of the reporting judge shall be sufficient.

In the decisions issued by the Court Clerks, the name of the issuer must always be indicated, followed by his signature.

[143] Article worded in accordance with Act 13/2009 of 3 November.

4. Every decision shall include mention of the place and date on which is adopted and whether the latter is final or can be appealed again, specifying in the latter case the type of appeal that can be filed, the court with which it must be lodged and the term granted to file the appeal.

Article 209. *Special rules on the form and content of the judgements.*

The judgements shall be formulated in accordance with the provisions contained in the preceding article and, in addition, subject to the following rules:

a) The heading shall contain the names of the parties and, if necessary, the legal capacity and representation in which they intervene, as well as the names of the attorneys and attorneys-at-law and the subject matter of the proceedings.

b) The record of the facts shall indicate, as clearly and concisely as possible and in separate and numbered paragraphs, the claims of the parties involved or interested, the facts on which they are based which have been alleged at the appropriate time and are relating to the issues to be resolved, the evidence that has been submitted and taken and the facts as found, in any.

c) The fundamental points of law shall express, in separate and numbered paragraphs, the points of fact and of law established by the parties and those contained in the issues in dispute, setting out the legal reasons and grounds of the verdict to be passed, with a specific mention of the legal rules applicable to the case.

d) The verdict, which shall comply with The provisions set forth in Article 216 and following articles, shall contain, numbered one by one, the pronouncements corresponding to the claims of the parties, although the admission or rejection of all or some of the said claims may be deduced from the legal grounds, as well as the pronouncement regarding the legal costs. In addition, it shall determine, where applicable, the amount object of the conviction, the determination whereof cannot be reserved for the execution of the judgement, notwithstanding the provisions set forth in Article 219 herein.

Article 210. *Verbal decisions.*[144]

1. Unless the law allow differing the pronouncement, the decisions required to be issued at a hearing, audience or appearance before the Court of the

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[144] Paragraphs 1 and 2 of this article have been worded in accordance with Act 13/2009 of 3 November.

Court Clerk shall be issued in the same act, documenting the latter setting out the judgement and the summary motivation of the said decisions.

2. Once the decision has been issued and if all individuals party to the suit are present in the act, either in person or duly represented, and indicate their intention not to appeal against the decision, the latter shall be declared final.

In all other cases, the term to appeal shall commence as soon as the notice of the duly drafted decision has been served.

3. Under no circumstances may judgements be passed verbally in civil proceedings.

Article 211. *Time limit of issuing court decisions.*[145]

1. The decisions of Courts and Court Clerks shall be issued within the time limit established by the law.

2. Failure to comply with the time limit shall result in a disciplinary measure, barring a justified cause, which shall be specified in the decision.

Article 212. *Publication and filing of the judgments.*[146]

1. The judgments and other absolute decisions, once issued and signed by those who passed them, shall be published and deposited with the Court Office and the Clerk of the Court shall order their notification and filing, and publish them in the manner allowed or provided for in the Constitution and the laws.

2. Without prejudice to the provisions of the second paragraph of section 1 of article 236 (d) of the Judiciary Act 6/1985, of 1 July, any interested party will be allowed access to the text of the judgments or to certain details of them. This access may only be given once the personal data contained within them are removed and with full respect for the right to privacy, the rights of persons requiring a special duty of care, the guarantee of anonymity of the aggrieved parties, as appropriate, and, in general, to prevent judgments being used for purposes which are against the law.

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[145] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

[146] Paragraph 2 is amended by final provision 4.9 of Organic Law 7/2015, of 21 July
Article worded in accordance with Act 13/2009 of 3 November.

3. The judgments passed in proceedings concerning the application of Articles 81 and 82 of the Treaty of the European Community or Articles 1 and 2 of the Defence of Free Competition Act shall be notified by the Clerk of the Court to the National Competition Commission.

4. The Clerk of the Courts shall include a literal certification of the judgments and other absolute court decisions on the records.

Article 213. *Book of judgements.*

Each court shall keep, under the custody of the Court Clerk, a book of judgements, which shall incorporate all the absolute judgements, the orders of the same nature, and the dissenting votes that have been issued, which shall be included in correlative order according to their date.

Article 213 bis. *Book of decrees.*[147]

Each Court shall keep, under the responsibility and custody of the Court Clerk, a book of decrees, which shall incorporate all the signed absolute decrees, to be included in chronological order.

Article 214. *Invariability of the decisions. Clarification and rectification.*[148]

1. The courts cannot alter the decisions issued by them once they have been signed, although they are given permission to clarify any obscure concept and to rectify any material error contained therein

2. The clarifications referred to in the preceding paragraph may be made ex officio by the Court or the Court Clerk, as applicable, within two day following that of the publication of the decision, or at the request of a party or the Public Prosecutor made within the same time limit, in which case the request shall be resolved by whomever issued the decision within three days following the presentation of the written request for clarification.

3. Evident material errors and arithmetic mistakes committed in the decisions of the Courts and Court Clerks may be rectified at all times.

4. No appeal may be lodged against the decision resolving on the clarification or rectification, notwithstanding the appeals allowed, as the

[147] Article added by Act 13/2009 of 3 November.

[148] The paragraphs 2 and 3 have been worded in accordance with Act 13/2009 of 3 November, which, in turn, introduces a new paragraph 4.

case may be, against the decision referred to in the request of procedure ex officio.

Article 215. *Correction and complementing of defective or incomplete judgements and orders.[149]*

1. The omissions and defects that may be contained in judgements and orders and need to be remedied in order for the said decisions to be fully effective may be corrected, by means of an order, within the same terms and following the same procedure as set forth in the preceding article.

2. In the case of judgements or orders in which pronouncements concerning claims duly deduced and conducted during the trial have been manifestly omitted, the Court, upon written request of a party within a time limit of five days following notice of the decision, after referral by the Court Clerk of the said request to the remaining parties to allow them to submit written allegations within an additional time limit of five days, shall issue an order by which it resolves to complete the decision with the omitted pronouncement or indicating that there is no ground to complete the decision.

3. If, in the judgements or orders issued by it, the Court becomes aware of the omissions referred to in the preceding paragraph, it may, within a time limit of five days following the date of passing of the said judgement or order, proceed to complete its decision ex officio by means of an order, albeit without modifying or rectifying that agreed.

4. In the same manner as established in the preceding paragraphs, the Court Clerk may, when necessary, correct or complete the decrees issued by the latter.

5. No appeal may be lodged against the orders or decrees completing or rejecting to complete the decisions referred to in the preceding paragraphs of this article, notwithstanding the appeals that may be lodged, if any, against the judgement, order or decree referred to in the request of the procedure carried out ex officio by the Court or the Court Clerk. The time limits for these appeals, if proper, shall be suspended from the moment when its clarification, rectification, correction or fulfilment is requested and shall resume as of the day following that of the notice of the decision

[149] The paragraphs 2 and 4 have been worded in accordance with Act 13/2009 of 3 November, which, in turn, introduces a new paragraph 5.

acknowledging of denying the omission of pronouncement and deciding or refusing to remedy the said omission.

Section 2. On the internal requirements of the judgement and its effects

Article 216. *Principle of justice at the request of a party.*

The civil court shall resolver on the matters by virtue of the submission of facts, evidence and claims of the parties, unless the law establishes otherwise in certain special cases.

Article 217. *Burden of proof.*[150]

1. If, at the time of passing a judgement or issuing a similar decision, the court considers that certain facts relevant to the decision are uncertain, it shall dismiss the claims of the plaintiff or the counter-claim defendant, or those of the defendant or the counter-claim plaintiff, depending on the party to whom corresponds the burden of proof of the facts that remain uncertain and constitute the ground for the claims.

2. It corresponds to the plaintiff and the counter-claim defendant to prove the certainty of the facts from which, according to the legal rules applicable to them, the legal effect of the causes of action of the claim and the counterclaim are ordinarily inferred.

3. It is up to the defendant and the counter-claim plaintiff to prove the facts which, in accordance with the rules applicable to them, preclude, extinguish or enervate the legal efficacy of the facts referred to in the preceding paragraph.

4. In the proceedings concerning unfair competition and illicit publicity, it shall be up to the defendant to prove the accuracy and veracity of the indications and statements made and of the material information expressed in the publicity, respectively.

5. In accordance with the procedural laws, in the procedures in which the allegations of the plaintiff are grounded on discriminating acts on the basis of gender, it shall be up to the defendant to prove the absence of discrimination in the measures adopted and their proportional nature.

[150] Paragraph added by the Organic Act 3/2007 of 22nd March, the former paragraphs 5 and 6 becoming the current paragraphs 6 and 7.

For the purposes of the provisions set forth in the preceding paragraph, the judicial body may, on behalf of a party, request, if it deems appropriate, a report or opinion of the competent public bodies.

6. The rules contained in the preceding paragraphs shall apply whenever an express legal provision fails to distribute the burden of proof of the relevant facts on the basis of special criteria.

7. To implement the provisions set forth in the preceding paragraphs of this article, the court shall take into account the availability of evidence and the ease of proving it corresponding to each of the parties to the litigation.

Article 218. *Exhaustive effect and coherence of the judgements. Motivation.*

1. The judgements must be clear, precise and coherent with the claims and with the other pleas of the parties, as deduced in due time during the proceedings. They shall make the statements required by the latter, convicting or acquitting the defendant and resolving on all issues in dispute that were the object of the debate.

The court, without deviating from the cause availing of factual grounds or fundamental points of law different from those the parties had the intention to enforce, shall resolve in accordance with the rules applicable to the case, even if they have not been correctly mentioned or alleged by the litigants.

2. The judgements shall be motivated expressing the factual and legal arguments leading to the appreciation and evaluation of the evidence, as well as the application and the construction of the law. The motivation shall stress the various factual and legal elements of the proceedings, considering them individually and as a whole, al all times complying with the rules of logic and or reason.

3. If there were various issues object of the litigation, the court shall pronounce itself on each one of them duly separated.

Article 219. *Judgements subject to settlement.*

1. In the event of a trial claiming the payment of a specific amount of money or of proceeds, rents, utilities or products of any nature whatsoever, the claim shall not be limited to request a merely declaratory judgement confirming the right to receive the former but shall also request the order to

pay them, indicating their exact amount, and may not request its determination during the execution of the judgement, or clearly establishing the bases on which the settlement shall be carried out, in such a way that the latter shall consist of a mere arithmetic operation.

2. In the cases referred to in the preceding paragraph, the judgement for the plaintiff shall establish the exact amount of the respective sums, or shall specify clearly and precisely the basis for their settlement, which shall consist of a simple arithmetic operation to be carried out during the execution.

3. Apart from the preceding cases, the plaintiff shall not intend and the court shall not be given permission to establish in the judgement that the conviction shall be carried out subject to settlement during the execution. The above notwithstanding, the plaintiff shall be given permission to request and the court shall be authorised to pass a judgement ordering the payment of a sum of money, proceeds, rents, utilities or product when such is the exclusive claim submitted, leaving the problems of the specific settlement of the amounts for subsequent proceedings.

Article 220. *Deferred sentences.*[151]

1. If payment of interest or periodic payments are claimed, the judgment may include the order to pay the interest or make the payments accruing at times subsequent to when the sentence is passed.

2. In the cases of claims for periodic payments of rents, when the claim is accumulated to the action for eviction due to non-payment or legal or contractual expiry of the term, and the plaintiff has expressly so requested in his writ of claim, the judgment, order or decree shall include the sentence that, in addition, rents due which become payable after the presentation of the claim must be paid until the delivery of the effective possession of the property, taking as basis for the settlement of the future rents the amount of the last monthly payment claimed at the time of filing the claim.

Article 221. *Judgements issued in proceedings brought by consumer or users associations.*[152]

1. Notwithstanding the provisions set forth the preceding articles, any judgements issued as a result of claims brought by consumer or users

[151] Paragraph 2 amended by Article 2.3 of Law 4/2013 of 4 June.

Article worded in accordance with Act 19/2009 of 23 November.

[152] Paragraph 2 added by Act 39/2002 of 28 October.

associations having the legal capacity referred to in Article 11 herein shall be subject to the following rules:

a) Should a monetary sanction have been sought for doing or failing to do a specific or generic thing, the judgement upholding the claim shall individually determine the consumers and users who shall be deemed as benefiting from the judgement in keeping with the laws protecting them.

Where individually determining such users or consumers may not be possible, the judgement shall set forth the necessary details, characteristics and requirements to be in a position to require payment or, as appropriate, apply for enforcement or be a party to it should the association that had brought the claim do so.

b) Should a specific activity or type of behaviour be judged illicit or not in keeping with the law as the grounds for the sanction or as the main or single verdict, the judgement shall determine whether such verdict shall have procedural effects beyond those who had been a party to the corresponding proceedings.

c) Should individual consumers or users have entered an appearance, the judgement shall expressly issue a ruling on their pleas.

2. In judgements upholding a stay to defend group interests and the diffuse interests of consumers and users, the Court, should it so deem, may order the judgement's total or partial publication at the defendant's expense or, where the effects of the infringement may persist over time, a rectifying statement.

Article 222. *Material res judicata.*

1. The res judicata of final and unassailable judgements, whether they uphold or dismiss the claim, shall exclude pursuant to the law any subsequent proceedings whose matter at issue is identical to the matter of the proceedings from which it arose.

2. Res judicata shall include the both the claim's and the counterclaim's pleas, as well as the points referred to in items 1 and 2, Article 408 herein.

Facts subsequent to the final deadline for of pleas in the proceedings in which they were filed shall be construed as new and different facts as regard the grounds for the aforementioned pleas.

3. Res judicata shall affect the parties to the proceedings in which it is ruled, as well as their heirs and successors and any non-litigants holding rights upon which the parties' capacity to act is grounded in accordance with the provisions set forth in Article 11 herein.

In the judgements on marital status, matrimony, kinship, paternity, maternity or incapacity and the recovery of capacity, res judicata shall take effect from the moment such judgements are duly registered or entered in the Civil Registry.

Any judgements issued on claims contesting corporate decisions shall affect all partners, including those not involved in the litigation.

4. Any matter resolved through the force of a final and unassailable judgement's res judicata that has brought proceedings to a close shall bind any court of subsequent proceedings where it may appear as a logical precedent of the matter at issue, as long as the litigants of both proceedings are the same or should res judicata cover them both according to a legal provision.

Section 3. On orders to move the proceedings forward

Articles 223-224[153]

Without content.

CHAPTER IX

ON THE NULLITY OF PROCEDURES[154]

Article 225. *Full nullity.*[155]

Procedural actions shall be fully null and void under the following circumstances:

(i). Where they are performed by or before a Court lacking objective or functional jurisdiction or competence.

(ii). Where they are performed under violence or intimidation.

153 Articles lacking any content in accordance with Act 13/2009 of 3 November.

154 Header worded in accordance with Act 13/2009 of 3 November.

155 Article worded in accordance with Act 13/2009 of 3 November.

(iii). Where the essential rules of the procedure are disregarded, as long as a lack of proper defence may have come about as a result thereof.

(iv). Where they are performed without the involvement of an attorney under circumstances in which the law may require it.

(v). Where hearings are held without the compulsory involvement of the Court Clerk.

(vi). Where matters are resolved through orders to move the proceedings forward or decisions where, according to the law, they should be resolved by means of procedural court orders, court orders or judgements.

(vii). In any other cases set forth by this Act.

Article 226. *Manner of proceeding in the event of intimidation or violence.*

1. Any courts whose procedural actions may have come about under violence or intimidation shall declare null and void any procedures they have conducted as soon as they are free from such violence or intimidation and shall encourage the bringing of proceedings against the guilty parties by informing the Public Prosecution Service about the facts thereof.

2. They shall also declare the actions of the parties and the persons involved in the proceedings null and void should it be proven that such actions came about under intimidation or violence. The nullity of such actions shall necessarily involve the nullity of any others linked to them or any that may have been substantially conditioned by or influenced by a null and void action.

Article 227. *Declaration of nullity and pleas for the annulment of procedural actions.*

1. Full nullity and any, in any event, formal defects in procedural actions involving the absence of the essential requirements to attain their ends or that effectively determine a lack of proper defence shall be applied for by means of the appeals set forth by the law against the ruling in question.

2. notwithstanding the preceding, the court may, on an ex officio basis or at the request of a party, declare all the procedures null and void or any of them in particular, as long as a rectification thereof does not proceed, after holding a hearing with the parties and before a judgement bringing the proceedings to an end is issued.

In the event of an appeal, under no circumstances may a court declare procedures null and void on an ex officio basis which have not been requested in such appeal, except where it should appreciate a lack of objective or functional jurisdiction or competence or where violence or intimidation affecting such court may have come about.

Article 228. *Exceptional incident of nullity of procedures.*[156]

1. Incidents of the nullity of procedures on a general basis shall not be given permission to proceed. Nonetheless, on an exceptional basis, whoever may be a legitimate party or should have been so may seek through a written statement the nullity of any procedures on the grounds of the violation of any of the fundamental rights referred to in Article 53.2 of the Constitution, as long as such violation could not have been denounced before the ruling bringing the proceedings to an end and as long as such ruling is not subject to either an ordinary appeal or an extraordinary appeal.

The same court that issued the final and unassailable ruling shall hold competence for dealing with such an incident. The time limit to apply for nullity shall be twenty days from the date notice of the ruling is served or, in any event, from the date the defect leading to a lack of proper defence is known. Nonetheless, in the latter case, the nullity of the procedures may not be requested once five years have elapsed from the date notice of the judgement has been served.

The Court shall not give any incident seeking to raise any other matters leave to proceed by means of a procedural court order. No appeals may be lodged against a ruling rejecting the incident leave to proceed.

2. Once the written statement requesting nullity on the grounds of the defects referred to in the preceding paragraph of this article is given leave to proceed, the enforcement or effects of the judgement or ruling against which an appeal has been lodged shall not be suspended to prevent the incident from losing sight of its purpose. The Court Clerk shall transfer such written statement along with any documents attached thereto seeking to prove the defect upon which the plea is grounded, if any, to the other parties, who may file their pleas within five days by means of a written statement, to which they may attach any documents they may deem relevant.

Should the plea for nullity be upheld, the procedures shall be reversed to the stage immediately prior to the defect that gave rise to it and the legally

[156] Article worded in accordance with Act 13/2009 of 3 November.

established procedures shall proceed. Should the plea for nullity be dismissed, the applicant thereof shall be sanctioned to pay all the costs arising from the incident by means of a court order and, should the Court deem it was recklessly filed, it shall additionally impose a fine ranging from ninety to six hundred euros.

No appeals may be lodged against the ruling resolving the incident.

Article 229. *Court procedures performed beyond the time limit set.*

Any court procedures conducted beyond the time limit set may only be annulled should the nature of the term or time limit so require.

Article 230. *Keeping of actions.*[157]

The nullity of an action shall not lead to subsequent independent actions being null and void, nor shall any be null and void whose contents would have remained unchanged, even if the infringement giving rise to nullity had not been committed.

Article 231. *Rectification.*[158]

The Court and the Court Clerk shall take care to ensure any defects in the parties' procedural actions can be rectified.

CHAPTER X

ON THE RECONSTITUTION OF RECORDS[159]

Article 232. *Public Prosecution Service's competence and involvement.*[160]

1. The Court Clerk Office where the disappearance or destruction of the records of proceedings has taken place shall hold competence for conducting their full or partial reconstitution.

2. The Public Prosecution Service shall always be a party to any proceedings seeking the reconstitution of records.

157 Article worded in accordance with Act 13/2009 of 3 November.

158 Worded in accordance with Act 13/2009 of 3 November.

159 Header worded in accordance with Act 13/2009 of 3 November.

160 Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

Article 233. *Initiation of proceedings on the reconstitution of records.*[161]

The Court or the Court Clerk, as regards procedures under his exclusive competence, on an ex officio basis, or the parties or their successors, as appropriate, may seek the reconstitution of records. Should the proceedings be initiated at the request of a party, they shall commence through a written statement containing the following details:

(i). When the disappearance or destruction took place, as accurately as possible.

(ii). The procedural stage of the matter.

(iii). The details known and the means of investigation which may lead to the reconstitution.

Wherever possible, authentic and private copies which may have been conserved of the documents shall be attached to the written statement, otherwise any files or records appearing in master documents or any entries or registrations shall be indicated. Rulings of any kind issued in the proceedings shall also be attached to the copies of the written statements thus filed, along with any other documents that may be useful to reconstitute the records.

Article 234. *Summoning the parties to appear. Effects of the failure to appear.*[162]

1. Once the Court has agreed upon the initiation of the reconstitution of the records through a procedural court order or, as appropriate, by the Court Clerk through a decision, the Court Clerk shall summon the parties to appear in a hearing before him, which shall be held within at most ten days. The parties and their attorneys shall attend such hearing, as long as long as the involvement of the latter may be required in the proceedings whose records are to be reconstituted.

2. The failure of any of the parties to appear shall not prevent the hearing from being held with those in attendance. Should no parties appear, the hearing shall be held with the Public Prosecution Service.

[161] Paragraph 1 worded in accordance with Act 13/2009, of 3 November.

[162] Article worded in accordance with Act 13/2009 of 3 November.

Article 235. *Initiation of the hearing. Lack of dispute. Evidence and decision.*[163]

1. The hearing shall commence by requiring the parties to state either their agreement or disagreement with the accuracy of the written statements and documents filed by the party requesting the proceedings, as well as with any others that may have been submitted by the other parties in the same procedure.

2. Once the parties have been heard and the written statements and documents thus filed have been examined, the Court Clerk shall determine, after having considered the Prosecutor's report, the details upon which the litigants may have reached agreement and any others which may be in dispute, disregarding incidental differences.

3. Should there be no dispute regarding the details affecting the reconstitution, the Court Clerk shall issue a decision declaring the records reconstituted and setting the procedural stage from whence the subsequent course of the proceedings in question shall proceed.

4. Should there be either a full or partial disagreement among the parties, the Court Clerk shall summon the parties and the Public Prosecution Service to a hearing before the Court, which shall be held within the next ten days and at which the necessary evidence shall be put forward and taken and, should this not be possible, within fifteen days. The Court shall then decide by means of a court order stating the records as reconstituted, or alternatively the impossibility of their reconstitution. An appeal may be lodged against such court order.

TITLE VI

ON THE CESSATION OF COURT PROCEDURES AND ON THE EXPIRY OF THE CASE

Article 236. *Moving the proceedings forward by the parties and expiry.*

The parties or interested parties failing to move the proceedings forward shall not lead to the expiry of the case or appeal.

[163] This article is worded in accordance with Act 13/2009, of 3 November.

Article 237. *Expiry of the case.*[164]

1. Cases and appeals of all kinds of proceedings shall be deemed to have been set aside should, despite being moved forward on an ex officio basis, no procedural activity come about within a time limit of two years where the proceedings are in the first instance; or within a time limit of one year if they are in the second instance or pending an extraordinary appeal against a breach of procedure or an appeal in cassation.

These time limits shall run from the date the last notice is served to the parties.

2. Only an appeal for judicial review may be lodged against an order declaring expiry.

Article 238. *Exclusion of expiry due to force majeure or against the shall of the parties.*

The expiry of a case or appeal shall not come about should the proceedings be held up due to force majeure or due to any other cause contrary and not imputable to the shall of the parties or interested parties.

Article 239. *Exclusion of expiry at the instance of enforcement.*

The provisions of the preceding article shall not apply to compulsory enforcement procedures.

Such procedures shall proceed until the judgement is fulfilled, despite not having been moved forward during the time limits set forth in this Title.

Article 240. *Effects of the case's expiry.*

1. Should expiry come about in the second instance or during the extraordinary appeals mentioned in Article 237, such appeals shall be deemed to have been set aside and the ruling appealed against as final and unassailable and the records shall then be returned to the court from whence they came.

2. Should expiry come about in the first instance, it shall be construed that abandonment has come about in such instance and a new claim may therefore be brought notwithstanding the action's expiry.

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164 Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

3. The declaration of expiry shall not impose any costs. Each party shall incur their own costs and any common costs shall be shared.

TITLE VII

ON THE APPRAISAL OF COSTS

Article 241. *Payment of the proceedings' costs and expenses.*[165]

1. With the exception of provisions of the Free Legal Aid Act, each party shall pay for the costs and expenses of the proceedings incurred at such party's request as they come about.

Proceedings' expenses shall be construed to be any payments that directly and immediately arise from the existence of such proceedings and costs shall be construed as the part of any payments referring to the following items:

(i) Fees for the defence and for technical representation where they may be compulsory.

(ii) The placement of advertisements or public notices that may have to be published during the course of the proceedings.

(iii) Deposits required to lodge appeals.

(iv) Experts' fees and any other payments which may have to be made to people involved in the proceedings.

(v) Copies, certifications, notes, affidavits and similar documents that may have to be requested in accordance with the law, except for any the court may request from public registries and records, which shall be free.

(vi) Duties which may have to be paid as a result of any procedures needed to conduct the proceedings.

(vii) The fee for exercising jurisdictional authority, where mandatory. The amount of the fee paid in repossession proceedings relating to mortgages taken out to acquire a permanent family residence shall not be included in the costs of the proceedings. Nor shall it be included in other enforcement proceedings arising from such loans and mortgages

[165] Point (vii) of paragraph 1 amended by article 3 of Royal Decree-Law 3/2013 of 22 February.
Point (vii) of section 1 is amended by final provision 3 of Law 10/2012 of 20 November

where they are brought against the debtor in person or against their guarantors.

2. The holders of any credit rights arising from procedural actions may claim them from the party or parties owing such rights without waiting for the proceedings to come to an end and independently of any eventual ruling imposing costs against them.

Article 242. *Application for the appraisal of costs.*[166]

1. Should costs be imposed, they shall be retrieved through distraint proceedings as soon as the ruling is final and unassailable, after being appraised, should the party thus sanctioned have failed to pay them before the other had filed an application for such appraisal.

2. The party applying for the appraisal of costs shall attach any receipts proving the payment of the amounts whose reimbursement is being sought.

3. Once the ruling imposing costs is final and unassailable, the court representatives, attorneys, experts and other people who were involved in the proceedings and holding any credit rights against the parties to be included in the appraisal of such costs may submit a detailed invoice before the Court Office stating their credit rights or fees, along with detailed accounts justifying any expenses they may have paid in advance.

4. Officials, court representatives and professionals subject to fee schedules shall be governed by them.

5. Attorneys, experts and other professionals and officials who are not subject to fee schedules shall set their fees in accordance with any rules, if any, governing their professions.

Article 243. *Conducting the appraisal of costs.*[167]

1. The appraisal of costs shall be carried out, in all kinds of proceedings and cases, by the Clerk of the Court who had dealt with the proceedings or appeal, respectively, or, as appropriate, by the Clerk of the Court in charge of the enforcement action.

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[166] Paragraph 3 worded in accordance with Act 13/2009, of 3 November.

[167] Paragraph 2 is amended by single article 28 of Law 42/2015, of 5 October.

Sections 1 and 2 of this article are worded in accordance with Act 13/2009, of 3 November.

2. Any duties relating to writs and proceedings that may have turned out to be useless, superfluous or not authorised under the law shall not be included in the appraisal, nor shall any invoice items that have not been duly broken down or which refer to fees which did not become due during the proceedings.

The appraisal of costs for procurators' fees accrued for performance of procedural acts of notification, cooperation and assistance to the Justice Administration will also not be included, nor will other merely facilitative acts that may have been carried out, on the other hand, by the Court offices.

The Clerk of the Court shall reduce the amount of the fees of lawyers and other professionals who are not subject to fee scales or tariffs where the fees claimed exceed the limit referred to in section 3 of Article 394 and should the litigant sanctioned to pay costs have not been deemed to have acted in a reckless manner.

Appraisals of costs will include Value Added Tax, in accordance with the provisions of the law regulating it, on lawyers' and procurators' fees. The amount of that tax will not be calculated for the purposes of section 3 of article 394.

3. Neither shall the costs of any procedures or incidents be included for which the party favoured by the ruling as to costs in the main matter at issue has been expressly sanctioned.

Article 244. *Transfer to the parties. Approval.*[168]

1. Once the appraisal of costs has been conducted by the Court Clerk, it shall be transferred to parties during a common time limit of ten days.

2. Once the transfer referred to in the preceding paragraph has been agreed upon, the inclusion or addition of any other items shall not be allowed and the interested party's rights to claim them, as appropriate, from whoever may correspond shall be reserved.

3. Once the time limit set forth in the preceding paragraph has elapsed without the appraisal of costs thus conducted being contested, the Court Clerk shall approve it through a decision. An appeal for judicial review may

[168] Paragraph 3 has been added and a new wording has been given to this article's header in accordance with Act 13/2009 of 3 November.

be lodged against such decision, but no appeal may be lodged against the court order resolving such appeal for review.

Article 245. *Contesting the appraisal of costs.*[169]

1. The appraisal of costs may be contested within the time limit referred to in paragraph 1 of the preceding article.

2. The challenge may be grounded on the inappropriate inclusion of items, rights or expenses in the appraisal. However, in case of the fees of attorneys, experts or professionals not subject to a fee schedule, the appraisal may also be contested by alleging that the amount of such fees is excessive.

3. The party favoured by the ruling on costs may contest the appraisal based on the failure to include therein any duly justified costs that have been claimed. Such party may also ground the plea on a failure to include all the fees corresponding to the party's attorneys, experts or officials not subject to a fee schedule who had taken part in the proceedings at the party's request, or on the grounds of the court representative's fees not having been properly included.

4. The written statement contesting the appraisal shall mention the accounts or invoices, as well as the specific items involved in the dispute and the reasons thereof. Should such details not be mentioned, the Court Clerk shall not give the challenge leave to proceed by means of a decision. Solely an appeal for reversal may be lodged against such decision.

Article 246. *Conducting the challenge and decision thereof.*[170]

1. Should the appraisal be contested due to the attorney's legal fees being deemed excessive, the attorney in question shall be heard within five days and, if he does not agree to lower the fees claimed, a certified copy of the records or, the part thereof which may be necessary, shall be passed on Bar Association so that it may issue a report.

2. The provisions set forth in the preceding paragraph shall likewise apply to any challenge made to experts' fees and, in such an event, an opinion from the professional Society, Association or Body to which the expert belongs may be sought.

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[169] Paragraph worded in accordance with Act 13/2009 of 3 November.

[170] Paragraphs 3 and 4 of this article have been worded in accordance with Act 13/2009 of 3 November.

3. In view of the procedures conducted and of the opinions issued, the Court Clerk shall issue a decision either maintaining the appraisal thus conducted or, as appropriate, introducing any changes he may see fit.

Should the challenge be totally dismissed, costs shall be imposed on the party contesting the appraisal. Should it be totally or partially upheld, costs shall be imposed on the attorney or expert whose fees had been deemed excessive.

An appeal for judicial review may be lodged against such decision.

No kind of appeal may be lodged against the court order resolving the appeal for judicial review.

4. Where the appraisal has been contested for including inappropriate rights or fees, or for not including duly justified costs that have been claimed, the Court Clerk shall transfer the challenge to the other party for three days, so that they may state their position on the inclusion or exclusion of the items thus claimed.

The Court Clerk shall resolve the issue within the next three days by means of a decision. A direct appeal for judicial review may be lodged against such decision, but no appeal may be lodged against the court order resolving such appeal for review.

5. Where it is alleged that any items for attorneys' or experts' fees included in the appraisal of costs is inappropriate and, should it not be the case, for being excessive, both challenges shall be dealt with simultaneously in keeping with each of the paragraphs above. Nonetheless, the decision on whether such fees are excessive shall be suspended until a decision is taken on whether the item contested is appropriate or not.

6. Where one of the parties is entitled to free legal assistance, no matter at issue in the cost appraisal incident concerning the public administration's obligation to pay for the amounts claimed shall be discussed or resolved pursuant to the Free Legal Assistance Act.

TITLE VIII

ON PROCEDURAL GOOD FAITH

Article 247. *On the rules of procedural good faith. Fines for breaching good faith.*[171]

1. The parties involved in any kind of proceedings shall act in keeping with the rules of good faith.

2. The courts shall reject any claims filed in abuse of the law or that involve the abuse of procedural rules, stating the grounds for such decisions.

3. Should the courts deem that any of the parties has acted by breaching the rules of procedural good faith, they shall impose on such party through a separate file and respecting the principle of proportionality a fine that may reach one hundred and eighty-six thousand euros. However, such fine may under no circumstances exceed a third of the amount at issue.

In order determine the amount of the fine, the Court shall take into consideration the circumstances surrounding the facts in question, along with any harm that may have been caused to the proceedings or to the other party.

In any event, the Court Clerk shall record the fact leading up to the corrective action, the pleas filed by the party involved and the ruling issued by the Judge or Chamber.

4. Should the courts deem that the action breaching the rules of good faith may be imputable to any of the professionals involved in the proceedings, they shall transfer such circumstance, notwithstanding the provisions set forth in preceding paragraph, to the respective professional associations in case the imposition of any kind of disciplinary penalties should proceed.

5. The sanctions imposed under this article are subject to the system of appeals set forth in Title V, Book VII of the Organic Act on the Judicial Branch.

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[171] Paragraph 3 worded in accordance with Act 3/13 of 2009 November, and paragraph 5 has been added in keeping with such Act.

BOOK II

ON DECLARATORY PROCEEDINGS

TITLE ONE

ON COMMON PROVISIONS REGARDING DECLARATORY PROCEEDINGS

CHAPTER ONE

ON THE RULES TO DETERMINE THE APPROPRIATE PROCEEDINGS

Article 248. *Types of declaratory proceedings.*

1. Any judicial dispute between the parties for which the law does not lay down any other proceedings shall be dealt with and decided upon in the corresponding declaratory proceedings.

2. The following belong to the class of declaratory proceedings:

(i). Declaratory actions.

(ii). Oral trials.

3. The rules to determine the type of trial for reasons of amount shall solely apply should a rule for reasons of the matter at issue be lacking.

Article 249. *Scope of declaratory actions.*[172]

1. The following shall be decided upon declaratory actions, regardless of the amount involved:

(i). Claims concerning personal honorary rights.

(ii). Claims seeking the protection of the right to honour, privacy and to a person's image, and any seeking civil judicial protection for any other fundamental right, except any seeking the right of rectification. The Public Prosecution Service shall always be a party to these proceedings and they shall be dealt with on a preferential basis.

[172] Item 1.(vi) worded in accordance with Act 19/2009 of 23 November .

Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

Item 1.(iv) worded in accordance with Act 15/2007 of 3 July.

Item worded in accordance with Act 39/2002 of 28 October.

(iii). Claims contesting corporate decisions taken by general or special meetings or assemblies of partners or bondholders, or by collegiate management bodies in commercial institutions.

(iv). Claims regarding unfair competition or fair trading pursuant to Articles 81 and 82 of the Treaty establishing the European Community or Articles 1 and 2 of the Free Competition Act, Industrial Property, Intellectual Property and Advertising, as long as they do not solely deal with pleas for amounts, in which case they shall be conducted through the corresponding proceedings on the basis of the amount claimed. Nonetheless, the provisions set forth in item 12, paragraph 1, Article 250 herein shall be abided by where an action for cessation is exercised to defend group interests and the diffuse interests of consumers and users as regards advertising.

(v). Claims in which actions are exercised regarding general contracting terms and conditions in the cases set forth by legislation on the subject, apart from the provisions set forth in item 12, paragraph 1, Article 250.

(vi). Claims dealing with any matters concerning urban or rural property leases, except where they deal with pleas for rent or amounts owed by the lessee or for eviction due to the failure to pay or to the leasing relationship's expiry.

(vii). Claims exercising any kind of rights of pre-emption or first refusal.

(viii). Where actions are exercised to grant condominium property owners' meetings and property owners any rights under the Condominium Property Act, as long as they do not deal with pleas for amounts, in which case they shall be conducted through the corresponding proceedings.

2. Any claims whose amount may exceed six thousand euros and any whose economic interests cannot be calculated in even a relative fashion shall likewise be decided upon in an declaratory action.

Article 250. *Scope of oral trials.*[173]

1. The following claims shall be decided upon through oral trials, regardless of their amount:

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[173] Item (xi), paragraph 1 amended by Article 4.4 of Act 37/2011 of 10 October
Paragraph 1.(i) worded in accordance with Act 19/2009 of 23 November.
Paragraph 2 worded in accordance with Act 13/2009 of 3 November.
Item 1.(xiii) added by Act 42/2003 of 21 November.
Item 1.(xii) added by Act 39/2002 of 28 October .

(i). Claims for amounts owed due to the failure to pay rent or any amounts owed, as well as claims seeking the recovery of a property by the owner, usufructuary or any other person entitled to possess a rented urban or rural property, be it through an ordinary, financial or sharecropping lease, likewise due to the tenant failing to pay rent or any amounts he may owe, or due to the expiry of a time limit set contractually or legally.

(ii). Claims seeking the recovery of a precariously ceded rural or urban property by the owner, usufructuary or any other person holding entitlement of possess such property.

(iii). Claims seeking the court to grant the possession of assets to those who have acquired them through inheritance if such assets are not in anybody's possession through a title of ownership or usufruct.

(iv). Claims seeking summary protection to hold or possess an asset or right by those who have been stripped of them or whose enjoyment of them has been disturbed.

(v). Claims seeking a summary court ruling on the suspension of new construction works.

(vi). Claims seeking a summary court ruling on the demolition or felling of building works, buildings, trees, pillars or any other similar object in a ruinous state, which threaten to cause damage to whomever may have brought the claim.

(vii). Claims brought by the holders of rights in rem which are duly registered in the Land Registry seeking that such rights take effect against whoever may contest them or disturb their enjoyment without holding a duly registered title to legitimise the challenge or disturbance.

(viii). Claims seeking alimony owed through a legal provision or any other title.

(ix). Claims in which an action is exercised to rectify inaccurate or harmful facts.

(x). Claims seeking a summary court ruling on the breach by the buyer of any obligations arising from agreements registered in the Moveable Property Hire Purchase Registry, which were entered into through the official form set forth for such purposes, in order to obtain a verdict allowing enforcement actions to be ordered solely on the asset or assets acquired or financed through hire purchase.

(xi). Claims seeking a summary court ruling on the breach of a financial leasing agreement, a moveable property leasing agreement or a hire

purchase agreement reserving ownership, provided they have been duly registered in the Moveable Property Hire Purchase Registry and entered into through the official form set forth for such purposes, by exercising an action solely aimed at obtaining the immediate delivery of the asset to the financial lessor, lessor, seller or financier at the place indicated in the agreement after the agreement's termination has been declared, as appropriate.

(xii). Claims in which an action is exercised for cessation in the defence of group interests or the diffuse interests of consumers and users.

(xiii). Claims seeking the effectiveness of the rights recognised by Article 160 of the Civil Code. In such cases, the oral trial shall be conducted with the peculiarities set forth in Chapter I, Title I, Book IV herein.

2. Any claims whose amount does not exceed six thousand euros and which do not deal with any of the matters set forth in paragraph 1 of the preceding article shall also be decided upon in an oral trial.

Article 251. *Rules for determining the amount.*[174]

The amount shall be established in accordance with the financial interest of the claim, whose calculation shall be based on the following rules:

a) If a specific sum of money is claimed, the amount of the claim shall be the said sum and, failing such specification, the claim shall be considered to be of an unspecified amount.

b) If the purpose of the proceedings is a conviction ordering the delivery of moveable or real property, regardless of whether the claim is based on rights in rem or personal rights, the amount shall be the value of the said property at the time of lodging the claim, in accordance with current prices on the market or the contracting of property of the same kind.

For the purposes of this calculation the claimant may use any official assessments of the assets in dispute if their value cannot be established by other means, although the real property cannot be assigned a value below that specified in the land registry.

c) The preceding calculation rule shall also apply:

[174] Rule i worded in accordance with Act 19/2009 of 23 November.

(i).To claims aimed at guaranteeing the enjoyment of the benefits deriving from ownership.

(ii).To claims affecting the validity, nullity or efficacy of the title of ownership and to the existence or the extension of ownership as such.

(iii).To applications other than those established in the two preceding cases, in which compliance with the plea depends on the plaintiff proving his condition of owner.

(iv). To claims based on the right to acquire the ownership of a property or a set of assets, either on the grounds of a right to credit acknowledging the said right of acquisition, or by any other means of acquisition of ownership or by exercising the right of redemption, pre-emption or option to purchase; if the property is claimed as the object of a transaction of purchase and sale, the prevailing assessment criterion shall be the price agreed upon in the contract, provided that, in the case of real properties, the said price is not lower than its land registry value.

(v). If the proceedings deals with possession and no other rule set forth in this article applies.

(vi). To actions of survey, marking of boundaries and division of common property.

d) In cases where the claim refers to the usufruct or the bare legal title, the use, habitation, exploitation by shifts or any other right in rem restricting ownership and not subject to any special rule, the value of the claim shall be established in accordance with the assessment base for the tax levied on the establishment or transfer of these rights.

e) The value of a claim relating to an easement shall be the price paid when the easement was established, if known, and if the date does not go back more than five years. Otherwise, the price shall be estimated pursuant to the legal rules used to set the price of the easement at the time of the litigation, regardless of the method of acquisition, and, in the absence of such rules, the amount shall be one twentieth of the value of the dominant and servient tenements, taking into account the second rule of this article concerning moveable and real property.

f) In claims relating to the existence, non-existence, validity or efficacy of a pledge, the value shall be the sum of the amounts guaranteed on any grounds.

g) In trials concerning the right to claim temporary or lifelong periodic benefits, the value shall be calculated according to the amount for one annual payment multiplied by ten, unless the term of the benefit is less than one year, in which case it shall be the total amount of the said benefit.

h) In trials dealing with the existence, validity or efficacy of an obligational title, its value shall be calculated according to the total amount due, even if payable by instalments. This assessment criterion shall apply to trials whose object is the creation, modification or extinction of an obligational title or a right of a personal nature, provided no other rule of this article applies.

i) In trials concerning the lease of property, except when referring to claims of rents or sums due, the amount of the claim shall be the amount of one year's lease, regardless of the periodicity of the latter as established in the contract

j) In cases where the claim refers to Stock Exchange securities, the amount shall be determined by the average of their weighted average exchange rate, determined in accordance with applicable legislation during the calendar year prior to the lodging of the claim, or by the average of the weighted average exchange rate of the securities for the period during which they were being dealt in on the Stock Exchange if the said period was less than one year.

Where securities negotiated on another secondary market are concerned, the amount shall be determined by their average dealing rate during the calendar year prior to the lodging of the claim on the secondary market where they are being dealt in, or by the average dealing rate during the time when they were being dealt in on the secondary market if the securities were dealt in on the said market for a period of less than one year.

The average dealing rate or the average of the weighted average exchange rate, as applicable, shall be evidenced by a certificate issued by the governing body of the relevant secondary market.

If the securities are not being dealt in, the amount shall be calculated in accordance with the accounting assessment standards in force at the time when the claim is lodged.

k) If the purpose of the claim is an affirmative obligation, the amount claimed shall be the cost of the act whose performance is being requested, or the amount for the damages deriving from its non-performance; in this case, the two amounts cannot be accumulated

unless, in addition to claiming compliance, a compensation is claimed. The amount or calculation of the damages shall be taken into account when the performance is of a highly personal nature or consists of a negative obligation, even if the principal claim is one of compliance.

l) In cases concerning an inheritance or a gross estate or separate inheritances, the preceding rules shall apply to the assets, rights or credits included in the inheritance or the estate object of the litigation.

Article 252. *Special rules for proceedings with multiple objects or parties.*[175]

When proceedings involve multiple objects or parties, the amount of the claim shall be calculated in accordance with the following rules:

a) When a claim concerns several principal actions not deriving from the same title, the amount of the claim shall be determined by the amount of the action of the highest value. An identical criterion shall be applied in the event of a contingent joinder of actions.

b) If them accumulated actions originate from the same title or if, accessory to the principal action, interest, yields, rents or damages are claimed, the amount shall be determined by the total value of all the actions joined. However, if the amount of any of the actions is not certain and clear, only the value of the actions whose amount is certain and clear shall be taken into account.

For the purposes of establishing the value, the future yields, interest or rents shall not be taken into account, but only those that are due. Nor shall the application for an order to pay court costs be taken into account.

The above notwithstanding, if the joinder of actions involves an action for eviction for non-payment or legal or contractual expiry of the term and a claim for rents or amounts due, the amount of the claim shall be determined by the action of the highest value.

c) When several actions in rem are accumulated in the same claim referring to the same moveable or real property, the amount shall under no circumstances by higher than the value of the matter at issue.

d) When several expired periods of the same obligation are claimed, the amount taken into account shall be the sum of the amounts claimed, unless the claim contains a requests for an explicit statement on the validity and efficacy of the obligation, in which case the amount taken into consideration shall be the total value of the said obligation.

[175] Rule b worded in accordance with Act 19/2009 of 23 November.

If the value of any of the periods is not certain, the said value shall be excluded from the calculation of the amount.

e) Neither the counterclaim nor the joinder of causes of action shall affect the amount of the claim or the type of trial.

f) The existence of several plaintiffs or several defendants in the same claim shall have no effect whatsoever on the determination of the amount if the claim is the same for all of them. The same shall apply when the plaintiffs or defendants are acting as such by virtue being bound by several liability.

g) If the plurality of parties also determines the plurality of confirmed actions, the amount shall be determined in accordance with the rules set forth in this article for determining the amount.

h) In the event of an extension to the claim, the preceding rules shall likewise apply.

Article 253. *Expression of the amount of the claim.*

1. In his initial claim, the plaintiff shall give a substantiated indication of the amount of the claim. The said amount shall, in any case, be calculated in accordance with the rules set forth in the preceding articles.

Changes in the value of the property object of the litigation occurring after the claim has been lodged shall not imply the modification of the amount nor of the type of trial.

2. The amount of the claim shall be expressed in a clear and precise manner. However, the said amount may be indicated in a relative manner if the plaintiff duly evidences that the financial interest of the litigation is at least equal to the minimum amount corresponding to actions for a declaratory judgement or does not exceed the maximum amount of the oral trial. Under no circumstances may the plaintiff confine himself to indicating the type of trail or place the burden of determining the amount on the defendant.

3. If the plaintiff cannot determine the amount, not even in a relative manner, because the object lacks any financial interest, because the said interest cannot be determined in accordance with any of the legal rules for determining the amount, or because, notwithstanding the existence of an applicable calculation rule, the said amount cannot be determined at the time of making the claim, the amount shall be substantiated in accordance with the procedure for actions for a declaratory judgement.

Article 254. *Ex officio control of the type of lawsuit by reason of the amount.*[176]

1. Initially, the trial shall be processed following the plaintiff's indication in his claim.

If, however, in view of the allegations of the claim, the Court Clerk verifies that the action chosen by the plaintiff does not correspond to the value indicated or to the subject matter to which the claim refers, he shall issue an order resolving the matter to be processed in the appropriate way. A direct appeal for judicial review may be lodged against this order with the Court, which shall have no suspensory effects.

The Court shall not be bound by the type of trial requested in the claim.

2. If, contrary to the plaintiff's indication, the Court Clerk considers that the amount of the claim cannot be appraised or determined, not even in a relative manner, and that, consequently, it is not appropriate to apply the procedures of an oral trial, he shall, by virtue of his office, issue an order to deal with the matter in a declaratory action, provided the appointment of a court representative and the signature of an attorney is recorded in the complaint.

3. Arithmetic errors of the plaintiff when determining the amount may be corrected ex officio. So can those consisting of an erroneous choice of the legal rule to calculate the amount if the claim contains sufficient factual elements for an accurate determination by simple arithmetic operations.

Once the amount has been calculated correctly, the proceedings shall continue as appropriate.

4. Under no circumstances may the Court reject the claim because it considers the procedure inadequate by reason of the amount. However, if the claim is confined to the mere indication of the corresponding action or if, after the Clerk of the Court has determined ex officio that the amount established is incorrect, the claim does not contain sufficient elements for an accurate calculation, the case shall not go ahead until the plaintiff has rectified the defect concerned.

The time limit for the correction shall be ten days, upon expiry of which the Court shall resolve whatever is appropriate.

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[176] Paragraphs 1, 2 and 4 of this article have been worded in accordance with Act 13/2009 of 3 November.

Article 255. *Contesting the amount and the type of hearing by reason of the amount.*[177]

1. The defendant may contest the amount of the claim if they consider that, had it had been determined accurately, the procedure to be followed would have been different or appeal proceedings would have been in order.

2. In the declaratory action, the appropriateness of the procedure by reason of the amount shall be contested in the answer to the claim and the matter shall be resolved at the pre-hearing.

3. At the oral hearing, the defendant shall contest the amount or the type of hearing by reason of the amount in the response to the claim, and the court shall resolve the matter immediately, before examining the merits of the case and after having heard the plaintiff.

CHAPTER II

ON PRELIMINARY PROCEEDINGS

Article 256. *Types of preliminary proceedings and how to apply for them.*[178]

1. Any hearing may be prepared by:

(i) An application for the individual against whom the claim may be lodged to declare under oath or promise to tell the truth on a fact concerning his capacity, representation or legal competency required to be known for the case, or to exhibit the documents proving such capacity, representation or legal competence.

(ii) An application for the individual who is to be claimed against to exhibit the object in his possession that shall be referred to at the hearing.

(iii) An application filed by the individual considering themselves to be an heir, co-heir or legatee for the exhibition of the deed of last will of the testator of the inheritance or legacy by whoever has the such deed in their possession.

(iv) An application made by a partner or a joint owner for the exhibition of the documents and accounts of the company or condominium,

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177 Paragraph 3 is amended by single article 29 of Law 42/2015, of 5 October.

178 Point (vii) amended and points (x) and (xi) added to section 1 by article 2.1 of Law 21/2014, of 4 November.

Point (vii) has been added by Act 19/2006 of 5 June.

Points (vii), (viii) and (v) added by Act 19/2006 of 5 June.

directed to the latter or to the consortium or joint owner who has such documents in his possession.

(v) An application by the individual considering themselves damaged by an event that may be covered by civil liability insurance for the exhibition of the insurance policy by whoever has possession of it.

(v.a). An application for medical records addressed to the health centre or professional having custody of such records, under the terms and with the content provided for by the law.

(vi) By an application by whoever intends to initiate legal action for the defence of the collective interests of consumers and users with a view to specifying the members of the group of aggrieved parties when, not having been determined, it can easily be determined. To this end, the court shall take the appropriate measures to verify the members of the group, in accordance with the circumstances of the case and the details provided by the applicant, including a request to the defendant to cooperate in such determination.

(vii) An application, made by whoever intends to take action due to infringement of an industrial property right or of an intellectual property right committed by acts that cannot be considered to be carried out by mere end consumers in good faith and without the intention of obtaining financial or commercial benefits, or legal measures to obtain information about a possible offender, the origin and distribution networks for the works, goods or services infringing an intellectual property or industrial property right and, in particular, the following:

a) The names and addresses of the producers, manufacturers, distributors, suppliers and providers of the goods and services, as well as of those who, for commercial purposes, have been in possession of the goods.

b) The names and addresses of the wholesalers and retailers to whom the goods or services have been distributed.

c) The amounts produced, manufactured, delivered, received or ordered and the amounts paid as price for the goods or services concerned, as well as the models and technical specifications of the goods.

(viii) An application by the party intending to bring legal action for infringement of an industrial or intellectual property right committed through acts carried out at a commercial level, for the exhibition of bank, financial, commercial or customs documents issued within a specific period of time and assumed to be in possession of whoever may be

sued as liable. The application shall be accompanied by prima facie evidence of the existence of the infringement, which may consist of the presentation of a sample of the specimens, goods or products in which such infringement has occurred. The applicant may request that the Clerk issue a declaration of the exhibited documents if the party served is unwilling to hand over the document for its incorporation into the proceedings conducted. The same application may be made in relation to the provisions of the final sub-paragraph of the preceding number.

For the purposes of numbers (vii) and (viii) of this paragraph, acts carried out on a commercial level shall mean acts carried out in order to obtain direct or indirect financial or commercial benefits.

(ix) An application for the legal measures and verifications established by the relevant special laws for the protection of certain specific rights.

(x) An application by the party intending to bring legal action for infringement of an industrial or intellectual property right requiring identification of an information society service provider where there are reasonable indications that they are making available or disseminating, directly or indirectly, content, works or services which are subject to that right without complying with the requirements provided for in industrial or intellectual property legislation, it being considered that there is a substantial audience in Spain for that provider or a volume, which is also substantial, of protected works and services made available or disseminated without authorisation.

The application will refer to obtaining the necessary information to carry out identification and may be addressed to information society, electronic payment and advertising service providers that maintain, or have maintained within the last twelve months, a relationship of provision of a service to the information society service provider that it is wished to identify. These providers will provide the information requested, as long as this can be extracted from the data that they have available or store as a result of the service relationship they maintain or have maintained with the service provider subject to identification, except for data which were exclusively processed by an Internet service provider in accordance with the provisions of Law 25/2007, of 18 October, on storage of data relating to electronic communications and the public communications networks.

(xi) An application, lodged by the holder of an intellectual property right intending to take action due to its infringement, for an information society service provider to provide the information needed to identify the identity of a user of their services, with whom it maintains, or has

maintained within the last twelve months, the relationship of service provider, where there are reasonable indications that the user is making available or disseminating, directly or indirectly, content, works or services subject to that right without complying with the requirements provided for by intellectual property legislation, and by acts which cannot be considered to be carried out by mere end consumers in good faith and without the intention of obtaining financial or commercial benefits, taking into account the substantial volume of the works and services protected made available or disseminated without authority.

2. The application for preliminary proceedings shall specify its grounds, with a detailed reference to the matter subject to the legal action that the applicant intends to prepare.

3. The costs incurred by the individuals who have to intervene in the proceedings shall be for the account of the applicant for the preliminary proceedings. When applying for the latter, the applicant shall provide a bond to cover both such costs and any damages that may be caused to them. The bond shall be forfeited in favour of such individuals if, one month has passed after the conclusion of the proceedings, the claim is not lodged as, in the opinion of the court there is insufficient cause.

The bond may be given in the form established in the second sub-paragraph of paragraph 2 of article 64 of the Act.

Article 257. *Jurisdiction.*[179]

1. The decision on petitions and applications referred to in the preceding article shall correspond to the judge of the Court of First Instance or the commercial court, as applicable, of the place of residence of the individual who may be called to declare, exhibit or otherwise intervene in such procedures as may be agreed to prepare the trial.

In the cases of numbers 6, 7, 8 and 9 of paragraph 1 of the preceding article, the jurisdiction shall correspond to the court with which the specific claim shall have to be lodged. If, in these cases, new proceedings are applied for in view of the result of those conducted so far, such proceedings may be applied for before the same court or before the court which, on the basis of the facts ascertained in the previous proceedings, is competent to hear the same plea or any new pleas that may be joined to it.

[179] Paragraph 1 worded in accordance with Act 9/2006 of 5 June.

2. No declinatory plea shall be admitted during the preliminary proceedings, but the Judge who is requested to do so shall review his competence ex officio and, if he considers that he is not competent to hear the application, he shall abstain from doing so and shall indicate to the applicant the Court of First Instance which he should address. If the latter refrains from hearing the case for lack of competence, the negative conflict shall be resolved by the immediately higher ordinary court, in accordance with article 60 herein.

Article 258. *Decision on the preliminary proceedings and appeal.*[180]

1. If the court finds that the proceedings are in accordance with the object pursued by the applicant and that just cause and legitimate interest exist in the application, it shall admit the cause of action and establish the surety to be constituted. The court shall reject the application for proceedings if it does not consider them to be justified. The application shall be resolved within five days following its presentation.

2. No appeal of any nature may be lodged against the order resolving the proceedings to be held. A remedy of appeal may be lodged against the order rejecting the proceedings.

3. If the bond ordered by the court is not constituted within three days as of the issuance of the court order granting the proceedings, the Clerk of the Court shall, by order issued to this end, resolve the final shelving of the procedures.

Article 259. *Summons for conducting preliminary proceedings.*[181]

1. In the order granting the application, the interested parties shall be given notice and summoned to conduct the proceedings sought and

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[180] Paragraph worded in accordance with Act 13/2009 of 3 November ("Official State Gazette" no. 266 of 4 November).

[181] Paragraph 2 is amended by single article 30 of Law 42/2015, of 5 October.

Please note that the provisions relating to the obligation on all court professionals and court and tax offices and bodies who are not yet doing so to use the Justice Administration's existing computer systems for submission of writs and documents and carrying out acts of procedural communication under the terms of procedural law and Law 18/2011 of 5 July, will come into force on 1 January 2016 with respect to proceedings commenced from that date. The provisions relating to the electronic "apud acta" powers of attorney file and the use by interested parties who are not legal professionals of the Justice Administration's existing computer systems for submission of writs and documents and acts of procedural communication under the afore-mentioned terms will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law 42/2015.

Paragraph 1, 2 worded in accordance with Act 13/2009 of 3 November.

Paragraph 3,4 added by Act 19/2006 of 5 June («Official State Gazette» number 134 of 6 June).

granted at the seat of the Judicial Office or at the place and in the manner considered appropriate within the following ten days.

2. The documents and instruments referred to in the proceedings shown in paragraph 1 of article 256 may be submitted to the court for their exhibition by computer or electronic means, in which case they will be examined at the court office and the applicant may obtain an electronic copy of them using media provided by them.

In all cases, the applicant may appear with an expert in the subject to advise them, who will always act at the cost of the applicant.

3. In the case of the proceedings of article 256.1.(vii), in order to safeguard the confidentiality of the information requested, the court may order that the questioning shall take place behind closed doors. This decision shall be adopted in the manner provided for article 138.3 and at the request of any party proving a legitimate interest.

4. The information obtained by means of the proceedings in numbers (vii), (viii), (x) and (xi) of paragraph 1 of article 256 shall be used exclusively for the jurisdictional protection of the industrial or intellectual property rights of the party applying for the measures and shall not be disclosed or communicated to third parties. The court may decide to keep the proceedings secret at the request of any party in order to ensure the protection of confidential data and information.

Article 260. *Objection to the conducting of preliminary proceedings. Effects of the decision.*[182]

1. Within five days following the date on which the summons was received, the person summoned to the preliminary hearing may object to it In this case, the objection will be communicated to the applicant who may contest it in writing within a period of five days. The parties, in their respective writs of objection and challenge, may request an oral hearing, following the procedures provided for oral hearings.

2. Once the hearing has been held, the court shall resolve, by a court order, whether it considers the objection to be justified or, on the contrary, unjustified.

[182] Paragraph 1 is amended by single article 31 of Law 42/2015, of 5 October.

3. If the court considers that the objection is unjustified, it shall order the served party to pay the costs incurred as a result of the incident. This decision shall be adopted by means of a court order against which no appeal of any kind may be lodged.

4. If the court considers that the objection is justified, it shall so declare in a court order, against which a remedy of appeal may be lodged.

Article 261. *Refusal to carry out the proceedings.*[183]

If the party notified and summoned fails to comply with the request and does not file any objection, the court shall, to the proportionate extent, adopt the following measures by means of a court order, in which it shall set forth the reasons why the said measures are required:

a) If a statement has been requested concerning facts relating to the capacity, representation or legal competence of the summoned party, the questions which the applicant had intended to ask him shall be considered replied to in the affirmative and the corresponding facts shall be considered admitted for the purposes of the subsequent trial.

b) If an application has been made for the exhibition of titles and documents and the court finds that there are sufficient indications that the said titles and documents may be at a specific place, it shall order the entry to and search of the said place and, if found, shall take possession of the documents and put them at the disposal of the applicant at the court premises.

c) If it concerns the exhibition of an object and the place where the latter is located is known or can be reasonably presumed, the court shall proceed in a manner similar to that established in the preceding number and the object shall be presented to the applicant, who may request its deposit or the most appropriate means of guarantee for the preservation of the said object.

d) If the exhibition of accounting documents has been requested, the accounts and particulars submitted by the applicant may be considered authentic for the purposes of the subsequent trial.

e) In the case of the proceedings established in Article 256.1.6, in the event of refusal by the served party or any other individual who could cooperate in the determination of the members of the group, the court shall order that the necessary intervention measures be adopted,

[183] Article worded in accordance with Act 19/2006 of 5 June.

including entry and search, with a view to finding the documents or particulars required, notwithstanding the criminal liability that may be incurred for contempt of court. The same measures shall be ordered by the court in the cases of numbers 5 bis, 7 and 8 of paragraph 1 of article 256, in the event of refusal by the served party to exhibit documents.

Article 262. *Decision on the application of the surety.*

1. If the agreed proceedings have been conducted or the court has rejected them considering the objection to be justified, the court shall, by means of a court order issued within a five day time limit, resolve on the application of the surety in view of the request for compensation and the justification of the expenses incurred presented to it, after having heard the applicant.

The decision on the application of the surety may be appealed against without suspensory effects.

2. If, after applying the surety in accordance with the preceding paragraph, a surplus remains, the latter shall not be returned to the applicant for the proceedings until one month has elapsed, as established in paragraph 3 of Article 256.

Article 263. *Preliminary proceedings established in special laws.*[184]

In the case of the proceedings referred to in Article 256.1.9, the provisions of this chapter shall apply to the extent that they are not contrary to the provisions contained in the special legislation on the subject matter concerned.

CHAPTER III

ON THE PRESENTATION OF DOCUMENTS, OPINIONS, REPORTS AND OTHER MEANS AND INSTRUMENTS

Article 264. *Procedural documents.*[185]

The following must be submitted with the claim or the response:

(i) The power of attorney granted to the procurator, provided that the latter appears in the action and representation is not granted “apud acta”.

(ii) The documents proving the representation which the litigant claims to hold.

[184] Article worded in accordance with Act 19/2006 of 5 June.

[185] Amended by single article 32 of Law 42/2015, of 5 October.

(iii) The documents or opinions proving the value of the object in dispute, for the purposes of jurisdiction and procedure.

Article 265. *Documents and other writs and objects relating to the grounds of the case.*[186]

1. All claims and responses shall be accompanied by:

(i) The documents on which the parties base their right to the judicial protection they claim.

(ii) The means and instruments referred to in paragraph 2 of article 299 if they are the basis for the claims for protection formulated by the parties.

(iii) The certifications and notes concerning any registry entries or the contents of the register books, procedures or proceedings of any nature whatsoever.

(iv) The expert opinions on which the parties base their claims, notwithstanding the provisions of articles 337 and 339 of this Act. Any party entitled to free legal aid shall not be bound to present the opinion together with the claim or the response, but may simply announce it in accordance with paragraph 1 of article 339.

(v) The reports, worded by legally qualified private investigation professionals, concerning relevant facts on which the parties base their claims. If such facts are not acknowledged as true, oral evidence shall be taken.

2. Only where the parties, when submitting their claim or response, do not have the documents, means and instruments referred to in the first three points of the previous paragraph, they may designate the file, protocol or place where they are to be found or the registry, register book, acts or proceedings from which a certification is intended to be obtained.

If what the parties intend to present at the hearing is contained in a file, protocol, proceedings or registry from which they may request and obtain authentic copies, the plaintiff shall be deemed to have them at his disposal and shall be bound to attach them to the claim and cannot confine themselves to the designation referred to in the preceding paragraph.

[186] Paragraph 3 amended and paragraph 4 deleted by single article 33 of Law 42/2015 of 5 October

3. Notwithstanding the provisions of the preceding paragraphs, the plaintiff may, at the pre-hearing, submit the documents, means, instruments, opinions and reports relating to grounds for the case, whose interest or relevance has only become evident as a result of the allegations made by the defendant in his response to the claim.

Article 266. *Documents required in special cases.*[187]

The following must be attached to the claim:

(i) The documents which duly justify the entitlement to maintenance payments, when this is the subject of the claim.

(ii) The documents which constitute a principle of the evidence of title on which claims for pre-emption are based when the deposit of the price is required by law or by contract, the document which accredits the deposit, if known, the price of the subject of pre-emption or if a surety was constituted to guarantee the deposit as soon as the price was known.

(iii) The document which reliably records succession mortis causa in favour of the claimant, as well as the list of the witnesses who can declare on the absence of a holder in the capacity of owner or in usufruct, when it is intended that the court give possession of assets to the claimant due to this succession.

(iv) Any other documents which this or another Act expressly requires for the admission of the claim.

Article 267. *Manner of presentation of public documents.*[188]

When the documents which have to be provided in accordance with the provisions in Article 265 are public and may be presented as a simple copy, on paper, electronically through a digitalised image enclosed as a schedule which shall have to be signed with a recognised electronic signature and, if its authenticity is challenged, the original records, copy or certification of the document may be consulted in order to provide evidence.

Article 268. *Manner of presentation of private documents.*[189]

1. Private documents which must be submitted shall be presented as originals or as copies authenticated by a Notary Public and shall be

[187] Amended by final provision 4.10 of Law 7/2015 of 21 July.

[188] Article worded in accordance with Act 41/2007, of 7 December.

[189] Article worded in accordance with Act 41/2007, of 7 December.

attached to the court orders or testimony shall be given of these, with the return of the irrefutable originals or copies submitted, if this is requested by the parties concerned. These documents may be submitted through digitalised images, incorporated to electronically signed annexes.

2. If the party has only a simple copy of the private document, he may submit this copy, on paper or through a digitalised image as described in the preceding paragraph, which shall give rise to the same effects as the original, on condition that agreement with the latter is not questioned by any of the other parties.

3. In the event that the original of the private document is in a record, protocol, file or public register, an authentic copy shall be submitted or a file, protocol or register shall be submitted as stipulated in section 2 of Article 265.

Article 269. *Consequences of the lack of preliminary submittal. Special cases.*

1. When the claim, response or, as the case may be, the pre-trial hearing, the documents, resources, instruments decisions and reports which, in accordance with the provisions herein should be submitted at this time or the place where the document should be is not located, if the latter is not available, the party may not subsequently submit the document, nor may it be submitted in proceedings except in the cases stipulated in the following article.

2. Claims to which the documents referred to in article 266 have not been attached shall not be admitted.

Article 270. *Submittal of documents after the commencement of proceedings.*

1. After the claim and the response to the pre-trial hearing, or whenever it is appropriate, the documents, resources and instruments related to the merits of the case presented by the claimant, or the defendant shall only be admitted in the following cases:

(i). They are dated subsequent to the claim or the response or, possibly, subsequent to the pre-trial hearing, on condition that it was not possible to draft or obtain them prior to the proceedings.

(ii). They are documents, means or instruments prior to the claim or response or, as appropriate, to the pre-trial hearing, when the party which submits them justifies not having known of their existence before.

(iii). It was not possible to obtain the documents, means or instruments due to reasons which are not attributable to the party, providing the designation

referred to in section 2 of article 265 was duly made or, as appropriate, the announcement referred to number 4. in section 1 of article 265 herein.

2. When a document, means or instrument regarding facts related to the merits of the case, are presented once the acts referred to in the previous section have concluded, the other parties may allege the inadmissibility of taking these into consideration in the proceedings or hearing as they do not come under any of the cases referred to in the previous section. The court shall decide immediately and, if it considers that there is an intention to delay or procedural bad faith in the presentation of the document, it may also impose a fine of € 180 to € 1200 on the guilty party.

Article 271. *Definitive conclusion of submittal and exceptions to the rule.*[190]

1. No document, instrument, means, report or opinion which are submitted after the hearing or proceedings shall not be accepted from the parties, notwithstanding the provisions in the third rule of article 435, on final proceedings in declaratory actions.

2. Judgements, rulings of a court or administrative authority that are issued or notified on a date not prior to the time at which the conclusions are arrived at shall be exceptions to the provisions in the preceding paragraph, providing they are not conditional or decisive for decisions made by a Court of First Instance or an appeal.

Such decisions may even be submitted within the time limit set for pronouncing a judgement, and notice given to the other parties by an order of the Court Clerk so that they may allege and request what they consider to be advisable within a common period of five days, with suspension of the period for pronouncing a judgement.

The court shall decide on the admission and scope of the document in the same judgement.

Article 272. *Inadmissibility of a document unjustifiably not submitted at the commencement of the proceedings.*

When a document is submitted after the procedural times established herein, depending on the cases and circumstances, the court shall issue a procedural court order refusing to admit it, either ex officio or at the request of a party, and an order would be given to return it to the person who had submitted it.

[190] Section 2 worded in accordance with Act 13/2009, of 3 November.

There shall be no appeal against a decision of inadmission, notwithstanding an appeal in the second instance.

CHAPTER IV

ON COPIES OF WRITTEN STATEMENTS AND DOCUMENTS AND THEIR TRANSFER

Article 273. *Method of submission for writs and documents.*[191]

1. All justice professionals are under the obligation to use the computer or electronic systems at the Justice Administration to submit writs, whether initial or not, and other documents, in such a way that the authenticity of the submission is guaranteed and that there is a written record of despatch and receipt in their entirety, along with the date on which this was done.

2. Parties who are not represented by a procurator may, at all times, choose if they act before the Justice Administration via electronic means or not, except where they are under the obligation to deal with it by electronic means. The means chosen may be changed at any time.

3. In all cases the following parties will be under the obligation to deal with the Justice Administration by electronic means:

a) Corporate entities.

b) Entities with no legal personality.

c) Those practising a professional activity which requires compulsory membership of an official association for procedures and acts carried out with the Justice Administration in the exercise of their professional activity.

d) Notaries and registrars.

e) Those representing a party who is under the obligation to communicate with the Justice Administration electronically.

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[191] Amended by single article 34 of Law 42/2015, of 5 October.

Please note that the provisions relating to the obligation on all court professionals and court and tax offices and bodies who are not yet doing so to use the Justice Administration's existing computer systems for submission of writs and documents and carrying out acts of procedural communication under the terms of procedural law and Law 18/2011 of 5 July, will come into force on 1 January 2016 with respect to proceedings commenced from that date. The provisions relating to the electronic "apud acta" powers of attorney file and the use by interested parties who are not legal professionals of the Justice Administration's existing computer systems for submission of writs and documents and acts of procedural communication under the afore-mentioned terms will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law 42/2015.

f) Public Authority civil servants for the procedures and acts which they carry out due to their post.

4. Writs and documents submitted by computer or electronically must show the file type and number and the year they refer to and will be duly page referenced with an electronic index which allows their due localisation and consultation. The submission will be made using a recognised electronic signature and will be in line with the provisions of Law 18/2011, of 5 July, regulating the use of information and communications technologies at the Justice Administration.

Solely for writs and documents submitted via computer or electronically which give rise to a first subpoena, summons o injunction of the defendant or person served, hard copies must be provided, within the following three days, of as many verbatim copies as there are other parties.

5. Non-compliance with the duty to use the technologies provided for in this article or the technical specifications provided for will involve the Clerk of the Court granting a maximum of five days for this to be rectified. If this is not rectified with the time limit, the writs and documents will be taken as not having been submitted, for all purposes.

6. Without prejudice to the provisions of this article, hard copies of writs and documents will be submitted where expressly provided for by law.

All writs and documents provided or submitted in hard copy and in hearings will be accompanied by as many verbatim copies as there are other parties.

Article 274. *Transfer by the court office of copies to the other interested parties where there are no procurators intervening.*[192]

Where the parties are not represented by a procurator, they will sign the copies of the writs and documents which they submit, and shall be

[192] Amended by single article 35 of Law 42/2015, of 5 October.
Please note that the provisions relating to the obligation on all court professionals and court and tax offices and bodies who are not yet doing so to use the Justice Administration's existing computer systems for submission of writs and documents and carrying out acts of procedural communication under the terms of procedural law and Law 18/2011 of 5 July, will come into force on 1 January 2016 with respect to proceedings commenced from that date. The provisions relating to the electronic "apud acta" powers of attorney file and the use by interested parties who are not legal professionals of the Justice Administration's existing computer systems for submission of writs and documents and acts of procedural communication under the afore-mentioned terms will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law 42/2015.

responsible for their accuracy, and such copies will be delivered by the Clerk of the Court to the counter party or parties.

If submission is made by electronic means as they are under the obligation or have chosen to do so, as long as the premises and requirements demanded are complied with, copies will be transferred to the other parties by the court office by the most appropriate means.

Article 275. *Effects of not submitting copies.*[193]

In the cases referred to in the previous article, failure to submit copies of the written statements and documents shall not be a reason for not admitting these.

The party shall be notified of this omission by the Court Clerk and the party shall have five days in which to rectify this. When the omission is not rectified within the aforesaid time limit, the Court Clerk shall issue the copies of the written statements and documents at the expense of the party who had failed to submit these, unless they are written statements of a claim or response, or the documents which must be attached to these, in which case, these shall be considered not to be admitted or not provided for all purposes.

Article 276. *Transfer of copies of writs and documents when a procurator intervenes.*[194]

1. When the parties are represented by a procurator, copies of the writs and documents submitted to the court must be transferred to the procurators of the other parties.

2. Transfer of copies of writs and documents submitted electronically will be made by electronic means simultaneously with the submission and will

[193] Paragraph 2 worded in accordance with Act 13/2009, of 3 November.

[194] Amended by single article 36 of Law 42/2015, of 5 October.
Please note that the provisions relating to the obligation on all court professionals and court and tax offices and bodies who are not yet doing so to use the Justice Administration's existing computer systems for submission of writs and documents and carrying out acts of procedural communication under the terms of procedural law and Law 18/2011 of 5 July, will come into force on 1 January 2016 with respect to proceedings commenced from that date. The provisions relating to the electronic "apud acta" powers of attorney file and the use by interested parties who are not legal professionals of the Justice Administration's existing computer systems for submission of writs and documents and acts of procedural communication under the afore-mentioned terms will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law 42/2015.

Sections 1 and 2 of this article are worded in accordance with Act 13/2009, of 3 November.

be understood to have been made on the date and at the time recorded on the proof of delivery of the submission. In the event that the transfer takes place on a non-working day and a non-working time, for procedural effects in accordance with the law the transfer shall be understood to have been made on the first following working day and time.

3. In the event that the submission is in hard copy in accordance with paragraph 4 of article 135, the procurator must transfer copies of the writs and documents that will be submitted to the court to the procurators of the other parties beforehand and by electronic means.

4. The provisions in the preceding paragraphs of this article shall not apply when dealing with the transfer of the claim or of any other writ which might give rise to the first appearance in the proceedings. In these cases, the procurator must attach copies of these writs and the documents attached and the Clerk of the Court shall transfer these in accordance with the provisions of articles 273 and 274 of this Act. If the procurator fails to submit these copies, the writs shall be considered as not presented and the documents as not provided, for all purposes.

Article 277. *Effects of the failure to transfer through a court representative.*[195]

When the first two paragraphs of the preceding article apply, the Court Clerk shall not admit the submittal of drafts and documents if the transfer of the copies to the other parties is not recorded.

Article 278. *Effects of the transfer as regards filing and the calculation of time limits.*[196]

When the transfer in the manner set out in article 276 determines the opening of a time limit to carry out a procedural step, according to law, the period shall commence without the intervention of the court and must be

[195] Article worded in accordance with Act 13/2009 of 3 November.

[196] Amended by single article 37 of Law 42/2015, of 5 October.

Please note that the provisions relating to the obligation on all court professionals and court and tax offices and bodies who are not yet doing so to use the Justice Administration's existing computer systems for submission of writs and documents and carrying out acts of procedural communication under the terms of procedural law and Law 18/2011 of 5 July, will come into force on 1 January 2016 with respect to proceedings commenced from that date. The provisions relating to the electronic "apud acta" powers of attorney file and the use by interested parties who are not legal professionals of the Justice Administration's existing computer systems for submission of writs and documents and acts of procedural communication under the afore-mentioned terms will come into force on 1 January 2017, as provided for in final provision 12.2 of the afore-mentioned Law 42/2015.

Article worded in accordance with Act 41/2007 of 7 November.

calculated from the day following the date which is recorded on the copies handed over or the day following the date on which the transfer is understood to have been made when the technical means referred to in article 135 are used.

Article 279. *Function of the copies.*[197]

1. The pleas of the parties shall be deduced in the light of the copies of the drafts, of the documents and of the decisions of the court or the Court Clerk, which each litigant must keep in his possession.

2. The original records shall not be handed over to the parties, notwithstanding the fact that they may obtain copies of a draft or document at their own expense.

Article 280. *Denouncement of inaccuracy in a copy and the effects thereof.*

If a denouncement is made that the copy handed over to a litigant does not correspond to the original, once the court hears the other parties, it shall declare the nullity of what has been done since the hand-over of the copy if its imprecision might have affected the defence of the party, notwithstanding the liability incurred by the person who presented the inaccurate copy.

On declaring nullity the court shall order the delivery of the copy in accordance with its original, with the appropriate effects in each case.

CHAPTER V

ON EVIDENCE: GENERAL PROVISIONS

Section 1. On the purpose, need for and initiation of evidence

Article 281. *Purpose and need for evidence.*

1. The purpose of the evidence shall be the facts which are related to the judicial protection it is intended to obtain from the proceedings.

2. The subject of the evidence shall also include custom and foreign law. The evidence of custom shall not be necessary if the parties are in

[197] Section 1 worded in accordance with Act 13/2009, of 3 November.

agreement concerning its existence and content and its rules do not affect public order. Foreign law must be proved as regards its content and validity, and the court may use any means of verification it considers to be necessary for its implementation.

3. Facts which the parties fully agree to are exempt from evidence, except in the cases in which the subject of the proceedings is outside the power of the litigants to decide.

4. It shall not be necessary to prove the facts which absolutely public knowledge.

Article 282. *Initiative of evidence activity.*

The evidence shall be examined at the request of the party. However, the court may agree ex officio that certain evidence be examined or that documents, opinions or other means of evidence and instruments be provided when this is stipulated by law.

Article 283. *Irrelevance or useless nature of evidence activity.*

1. No evidence must be admitted which is considered to be irrelevant as it has no relation to the subject of the proceedings.

2. The evidence which, according to reasonable and secure rules and criteria, in no case can contribute to clarifying controversial facts must not be admitted owing to their useless nature.

3. Any activity forbidden by law can never be admitted as evidence.

Section 2. On proposal and admission

Article 284. *Manner of the proposal of evidence.*

The proposal of several different means of evidence shall be done by stating them separately. The address or place of residence of the persons who may have to be summoned in order to examine the evidence shall also be stated.

In a declaratory action, when the parties do not have data related to the said persons upon proposing the evidence, they may provide the court with this data within the following five days.

Article 285. *Decision on the admissibility of the evidence put forward.*[198]

1. The court shall decide on the admission of each piece of evidence which has been put forward.

2. Only an appeal for reversal may be lodged against the decision to admit or reject each piece of evidence, which must be substantiated and decided immediately, and, if it is dismissed, the party may formally protest in order to uphold their rights in the second instance.

Article 286. *New facts or new information. Evidence.*[199]

1. If the final date for the pleas stipulated herein has ended before the time limit for pronouncing a judgement has commenced, and a fact occurs or is known that is relevant for the decision regarding the proceedings, the parties may use this fact, alleging this immediately via a draft, which shall be called extension of facts, unless the allegation can be made at the trial or during the hearing. In this case, at these acts all that is stipulated in the following sections shall be carried out.

2. The Court Clerk shall notify the counter-party of the extension of the facts so that, within five days, he may recognise the fact alleged as true or deny it. In this case, he may submit anything that clarifies or detracts from the fact stated in the extension.

3. If the new fact or news is not recognised as true, the appropriate and useful evidence stipulated herein shall be examined in accordance with the type of procedure when this is possible at that stage of the procedure. Otherwise, in declaratory actions, the final proceedings shall apply.

4. Through a procedural court order, the court shall dismiss the allegation of a fact occurring after the acts intended to hear the allegations if this circumstance is not duly accredited when the allegation is filed. And when a fact is alleged after the acts intended to hear the fact have concluded, the court may decide, through a court order, that the fact cannot be taken into consideration if, in view of the circumstances and the allegations of the other parties, there seems to be no justification for not alleging the fact during the time ordinarily stipulated for allegations during procedures.

In this latter case, the court shall appreciate an intention to cause delay or procedural bad faith in the allegation, and may impose a fine of €120 to €600.

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[198] Paragraph 2 is amended by single article 38 of Law 42/2015, of 5 October.

[199] Paragraph 2 worded pursuant to Act 13/2009, of 3 November.

Article 287. *Illegality of evidence.*

1. When one of the parties deems that fundamental rights have been infringed upon when obtaining evidence or in the origin of evidence, the party shall allege this immediately, and the other parties shall be notified of the fact, as the case may be.

As regards this matter, which can also be requested ex officio by the court, it shall be resolved in the judgement, or, if the proceedings are oral, at the beginning of the hearing, before the taking of evidence. For this purpose, the parties shall be heard and, as appropriate, the pertinent and useful evidence proposed in the act on the specific point of the aforementioned illicitness shall be taken.

2. Against the resolution referred to in the preceding paragraph there is only an appeal for reversal, which shall be lodged, substantiated and decided in the trial or hearing, and the right of the parties to reproduce the challenge of the illicit evidence against the final judgement shall remain safeguarded.

Article 288. *Sanctions for not having examined the evidence within the time limit.*

1. The litigant due to whom evidence was not examined in time shall be sanctioned by the court with a fine which shall not be lower than € 60 or higher than € 600, unless accreditation is given of a lack of mens rea or the litigant abandons the taking of this evidence.

2. The fine stipulated in the preceding paragraph shall be imposed on during the trial or at the hearing after hearing the parties.

Section 3. On other general provisions on the taking of evidence

Article 289. *Manner of taking evidence.*[200]

1. The evidence shall be taken by cross-examination and in a public hearing, or with similar publicity and documentation if this is not carried out in the court premises.

2. The presence of a judge shall be mandatory during the questioning of the parties and witnesses, the examination of places, objects and persons,

[200] Paragraph 3 worded in accordance with Act 13/2009, of 3 November.

in the reproduction of words, sounds, images and, as the case may be, sounds, images, figures and data, as well as during the explanations, challenges, rectification's or extensions of the expert opinions.

3. The presentation of original documents or true copies, the presentation of other methods of evidence or instruments, the examination of the authenticity of private documents, the collection of documents with which to compare writing and the mere ratification of the authorship of an expert opinion shall be made before the Court Clerk, on condition that this takes place outside the public hearing or the Court Clerk is present at the act. However, it shall be the duty of the court to examine documentary evidence, written reports and opinions, and any other methods or instruments which are provided.

Article 290. *Setting a date for the taking of evidence to be done separately.*[201]

All evidence shall be taken at the same time and in the same place. Exceptionally, the court may agree, through a procedural court order, that certain evidence be presented outside the trial or hearing; in such cases, the Court Clerk shall state the day and the time for any taking of evidence which cannot be performed during the trial or a hearing. Exceptionally, if the evidence is not taken in the court premises, the court shall establish a place and give notice thereof.

In any case, such evidence shall be taken before the trial or hearing.

Article 291. *Summons and the possible intervention of the parties in the taking of evidence outside of the trial.*

Although they are not the subjects or objects of evidence, the parties shall be summoned sufficiently in advance, which shall be, at least, forty-eight hours, for the taking of evidence which must be done outside the trial or hearing.

In the evidence procedure, the parties and their attorneys shall have the interventions authorised by law in accordance with the means of evidence involved.

Article 292. *The obligation to appear at the hearing. Fines.*[202]

1. The witnesses and the experts summoned shall have the duty to appear in the trial or hearing which is finally arranged. Failure to carry out this duty

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[201] Article worded in accordance with Act 13/2009, of 3 November.

[202] Sections 1 and 2 of this article are worded in accordance with Act 13/2009, of 3 November.

shall be sanctioned by the court with a fine of one hundred and eighty to six hundred euros, with a previous hearing for five days.

2. On imposing the fine referred to in the preceding paragraph, the court shall request the fined party to appear when he is again summoned by the Court Clerk, through a procedural court order, with a warning that action might be taken against him for contempt of court.

3. When there is no previous excuse, and a witness or expert fails to appear at the trial or hearing, the court shall hear the parties who have appeared and shall decide through a procedural court order whether the hearing must be suspended or must continue.

4. When there is no previous excuse and a litigant who has been summoned to respond to questioning fails to appear, the provisions in article 304 shall apply and the litigant shall be fined as stipulated in section 1 of this article.

Section 4. On advance examination and seizure of evidence

Article 293. *Cases and reasons for examining evidence in advance. Competence.*

1. Prior to the commencement of any proceedings, the party which intends to initiate this, or any of the parties during the course of the proceedings, may request the court to examine evidence in advance, when there is grounded fear that, due to the persons or due to the state of things, these acts cannot take place at the generally stipulated procedural time.

2. The request for advance procedure regarding evidence shall be addressed to the court which is considered to be competent for the main case. This court shall take care ex officio that its jurisdiction and objective jurisdiction, as well as territorial jurisdiction founded on imperative rules, and a declinatory plea is not admissible.

Once the proceedings commence, the request for advance taking of evidence shall be addressed to the court which is dealing with the case.

Article 294. *Proposal for the advance taking of evidence, admission, time and appeals.*[203]

1. The proposal for the advance taking of evidence shall be processed in accordance with the provisions herein for each piece of evidence, putting forward the reasons for the request.

2. If the court upholds the request, it shall agree to it, and, through a procedural court order, it shall provide that the procedure be carried out when it is considered to be necessary previous to the proceedings or the hearing, and an appropriate date shall be set by the Court Clerk.

Article 295. *Cross-examination taking of evidence in advance.*

1. When taking of evidence in advance is sought and an agreement is made to carry out the examination before the commencement of proceedings, the party who requested this shall appoint the person or persons he proposes to make a claim against and they shall be summoned, at least five days in advance, so that they may intervene in the procedure for the taking of evidence as authorised by law, depending on the evidence in question.

2. If the proceedings are pending when evidence is taken in advance, the parties may intervene in the taking of evidence as set forth herein for each means of evidence.

3. In the cases in which evidence is taken pursuant to section 1 of this article, evidence value shall not be granted to the procedure if the claim was not lodged within the time limit of two months from the time evidence was taken in advance, unless it is accredited that, due to force majeure or a similar reason, the proceedings could not commence within this time limit.

4. Advance taking of evidence may be carried out again if, at the time the evidence was proposed, it was possible to do this and any of the parties requested this. In this case, the court shall admit the taking of the evidence concerned and shall evaluate what was carried out in advance and what was subsequently carried out in accordance with the rules of sound critique.

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[203] Section 2 worded in accordance with Act 13/2009, of 3 November.

Article 296. *Custody of the material of the procedure for the taking of evidence in advance.*

1. The documents and the other conviction material of the advance taking of evidence or which is obtained as a consequence of the taking of evidence, as well as the materials which might truly reflect the evidence procedure carried out and its results, shall remain in the custody of the Court Clerk of the court which had agreed to the taking of evidence until the claim is lodged, and they shall be attached to this, or until the procedural time comes to know these and evaluate them.

2. If the claim has to be dealt with definitively by a court other than the court which agreed to or taken the evidence in advance, the former shall request the minutes, documents and other material from the procedure to be forwarded, through an official channel.

Article 297. *Measures for the seizure of evidence.*[204]

1. Before the commencement of any proceedings, the party which intends to initiate these or any of the litigants during the course of the proceedings, may request that the court adopt useful measures to ensure that through human conduct or natural events which might destroy or alter physical objects or states of things, with a procedural court order, in order to prevent it becoming impossible to carry out a relevant taking of evidence or that it is meaningless to propose this .

2. The measures shall consist of the arrangements which, in the opinion of the court, make it possible to conserve things or situations or reliably put on record their actual existence and characteristics. In order to seize evidence, mandates may be sent in order to carry out action or to refrain from action, with a warning that action shall be taken due to contempt of court if the mandates are infringed.

In the cases of infringement of industrial and intellectual property rights, once the applicant for measures has submitted the reasonably available evidence of infringement, these measures may consist especially of a detailed description, with or without samples, of the effective seizure of the goods and the matter in dispute, as well as the materials and instruments used in the production and distribution of these goods and the documents related to these.

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[204] Section 2 worded in accordance with Act 19/2006, of 5 June. Paragraph 4 added by Act 19/2006 of 5 June.

3. As regards jurisdiction and competence for seizing the evidence, the provisions on the taking of evidence in advance shall apply.

4. When the measures for seizing the evidence were agreed to before the commencement of the proceedings, these shall have no effect if the applicant does not submit his claim within the period of twenty days following the date of the effective adoption of the measures for seizing the evidence agreed to. The court shall agree, ex officio through a court order, that the acts of compliance which might have been carried out be filed or revoked. The court shall order the applicant to pay the costs and shall declare that he is liable for the damages which might have been caused to the party regarding whom the measures were adopted.

Article 298. *Requirements. Procedure to adopt measures to seize evidence Surety.*[205]

1. The court shall agree to adopt the appropriate measures in each case through a procedural court order if the following requirements are met:

(i). That the evidence to be seized is possible, relevant and useful at the time its seizure is sought.

(ii). That reasons exist to fear it would be impossible to take such evidence in the future if the measures to seize it are not adopted.

(iii). That the seizure measures sought, or any other measures leading to the same end which the court may deem preferable, may be considered appropriate and may be performed within a short space of time without causing serious disproportionate harm to the parties or third parties involved.

2. In order to decide upon the adoption of measures to seize evidence, the court shall take into consideration and may accept any offer the party seeking the measure may make to provide surety to cover any damages such measures may cause.

3. Instead of the seizure measure, the court may also agree by means of a procedural court order to accept any offer made by the party meant to undergo such measure to post sufficient surety pursuant to item 2, paragraph 2, Article 64 to ensure the evidence whose seizure is sought

[205] Header worded in accordance with Act 19/2006 of 5 June.

4. Measures to seize evidence shall be adopted after a hearing of the person who is meant to undergo them has been held. Should they be sought once the proceedings are underway, the defendant shall also be heard. Solely the defendant or whoever may have already been a defendant may allege the impossibility, irrelevance or uselessness of the evidence when contesting the adoption of such measures.

5. Notwithstanding the provisions set forth in the preceding paragraph, the court may agree upon the measures without any further ado through a procedural court order where it is likely that a delay arising from such prior hearing may cause irreparable harm to the rights of the party seeking them or where a demonstrable risk should exist of the evidence being destroyed or the taking thereof in another manner made impossible. Such procedural court order shall state the requirements that made it necessary and the reasons that have lead to its approval without a hearing of the defendant or whoever may become the defendant. No appeals may be lodged against such procedural court orders and notice thereof shall immediately be given to the parties and to whoever may have to undergo the measures. Should giving such notice be impossible before the execution of the measures, it shall be given immediately afterwards.

6. Should the seizure measures have been adopted without a prior hearing, whoever shall be the defendant or whoever may already be the defendant or whoever may have to undergo the measures may contest them within twenty days from the date notice of the procedural court order agreeing upon the measures is served.

7. Challenges to such measures may be grounded on the inexistence of any irreparable harm to the right of taking the evidence at a future date, as well as on the possibility of agreeing upon other equally appropriate measures that may turn out to be less harmful. They may also be replaced for the surety set forth in paragraph 3. Solely the defendant or whoever may have already been a defendant may allege the impossibility, irrelevance or uselessness of the evidence when contesting the adoption of such measures.

8. The written statement contesting the measures shall be transferred to the applicant and, as appropriate, to the defendant or whoever may have to undergo the measures. All of them shall be summoned to a hearing within five days. After such hearing is held, a decision shall be taken on the challenge within three days by means of a unappealable court order.

CHAPTER VI

ON THE TAKING OF EVIDENCE AND PRESUMPTIONS

Article 299. *Taking of evidence.*

1. The taking of evidence in trials shall include:

(i). Questioning the parties.

(ii). Public documents.

(iii). Private documents.

(iv). Experts' opinions.

(v). Taking of evidence by the court.

(vi). Questioning witnesses.

2. Pursuant to the provisions set forth herein, any means to record words, sounds and images shall also be admitted, as shall any instruments that allow words, data and mathematical operations carried out for accounting purposes or any other purposes, which are relevant to the proceedings, to be saved, known or reproduced.

3. Where certainty about relevant facts may be attained by any other means not expressly set forth in the preceding paragraphs of this Article, the court may, at the request of a party, admit such means as evidence and shall adopt any measures which may turn out to be necessary in each case.

Article 300. *Order of the taking of evidence.*

1. Unless the court should agree upon otherwise on an ex officio basis or at the request of a party, evidence shall be taken in trials in the following order:

(i). Questioning the parties.

(ii). Questioning witnesses.

(iii). Experts' statements about their opinions or submission thereof, where they exceptionally have to be admitted at that moment.

(iv). Taking of evidence by the court, where it does not have to be conducted outside the court's premises.

(v). Reproduction before the court of any words, images and sounds captured through filming, recording and other similar instruments.

2. Where any of the evidence admitted cannot be taken at the hearing, the hearing shall continue so that the rest of the evidence may be taken in the appropriate order.

Section 1. On questioning the parties

Article 301. *Questioning the parties: Notion and subjects.*

1. Any party may request the court to question the other parties about any facts and circumstances they may be aware of that have some bearing on the matter at issue in the trial. A joint litigant may request another joint litigant to be questioned, providing a dispute or conflict of interests exists between them in the proceedings.

2. Where the party holding legal capacity to act in the trial is neither the subject of the legal relationship at issue nor entitled to the right by virtue of which action has been brought, the questioning of such subject or holder may be sought.

Article 302. *Contents of the questioning and admission of questions.*

1. Questions shall be asked orally, using affirmative sentences and with all due clarity and accuracy. They may not include judgements or qualifications and, should they do so, the questions shall be deemed as not having been asked.

2. The court shall ensure that the questions have some bearing on the facts about which the questioning has been admitted and shall decide on the questions' admissibility at the same hearing in which the questioning is conducted.

Article 303. *Objecting to questions.*

The party submitted to questioning or, as appropriate, his attorney may object to the admissibility of the questions and note any judgements and qualifications contained in them which, to their mind, are inappropriate and should be deemed as not having been asked.

Article 304. *Failure to appear and implicit admission of the facts.*

Should a party summoned to questioning not appear at the trial, the court may ascertain the facts in which such person may have been personally involved as recognised and whose ascertainment as being true is entirely

harmful to him, in addition of imposing on such party the fine referred to in paragraph 4, Article 292 herein.

The party in question shall be warned in the summons that the effects set forth in the preceding paragraph shall come about should he fail to appear without justification.

Article 305. *Manner of responding to questioning.*

1. The party submitted to questioning shall respond on his own behalf without using draft responses. Nonetheless, such party shall be allowed to consult documents and notes wherever the court may deem they are convenient to jog his memory.

2. The responses shall be either affirmative or negative and, should this be impossible due to the questions asked, they shall be precise and to the point. The party summoned to testify may, in any event, add any explanations he may deem relevant which have some bearing on the questions raised.

Article 306. *Powers of the court and involvement of attorneys. Cross-examination.*

1. Once the questions raised by the attorney who sought the taking of evidence have been answered, the attorneys of the other parties and of the party called to testify may, in that order, ask the party called to testify new questions which they deem may lead to ascertaining the facts. The court shall reject any irrelevant or useless questions.

In order to obtain clarifications and additional information, the court may question the party summoned to testify.

2. Where the involvement of an attorney is not compulsory, the parties may mutually question each other and make any observations which are appropriate to ascertain the relevant facts in the trial, ensuring that they do not cross words or interrupt each other. The court may reject any irrelevant or useless interventions and may question the party summoned to testify.

3. The party called to testify or his attorney may object to the questions referred to in the preceding paragraphs contained in this provision. They may likewise make the observations set forth in Article 303. The court shall decide, as appropriate, before giving the floor to respond.

Article 307. *Refusal to testify, evasive or inconclusive responses and admission of personal facts.*

1. Should a party summoned to testify refuse to do so, the court shall warn him at the hearing that the facts referred to in the questions may be ascertained as being true unless a legal obligation to keep a secret should exist, as long as the person called to testify has been personally involved in them and their ascertainment as being true may turn out to be fully or partially harmful to him.

2. Where the responses given by the party called to testify are evasive or inconclusive, the court shall warn him as set forth in the preceding paragraph on an ex officio basis or at the request of a party.

Article 308. *Testimony about non-personal facts by the party submitted to questioning.*

Where any question should refer to non-personal facts with regard to the party submitted to questioning, such party shall respond on the basis of his knowledge and account for such knowledge. He may nonetheless propose that a third party having personal knowledge about the facts due to his involvement in the matter should also testify, accepting the consequences of such testimony.

The party who has sought the taking of evidence shall have to accept such substitution for it to be admitted. Should such acceptance not come about, the deponent may seek to have the said person questioned as a witness and the court shall decide thereon as appropriate.

Article 309. *Questioning of legal persons or entities lacking legal personality.*

1. Where the party called to testify is a legal person or an entity lacking legal personality and their representative in the trail has not been involved in the matter at issue in the trial, such circumstance shall be alleged at the pre-trial hearing and the identity of the person involved on behalf of the legal person or entity questioned shall be provided, so that such person may be summoned to attend the trial.

The representative may seek that the person thus identified be summoned as a witness if he should no longer form part of the legal person or identity lacking legal personality.

2. Where any question should refer to facts in which the representative of the legal person or entity lacking legal personality may not have been involved, he shall nonetheless have to respond on the basis of his knowledge and account for such knowledge. He shall likewise have to identify the person who had been involved in those facts on behalf of the party. The court shall then summon such person for questioning outside the trial as a final procedure pursuant to the provision set forth in rule 2, paragraph 1, Article 435.

3. Should, in the circumstances set forth in the preceding paragraphs, the representative of the legal person or entity lacking legal personality state that he does not know the person involved in the facts, the court shall deem such a statement as an evasive response or a refusal to testify giving rise to the effects set forth in paragraphs 1 and 2, Article 307.

Article 310. *No communication between those called to testify.*

Where two or more parties or persons related to them are summoned to testify on the same facts in dispute in which they have been involved in accordance with paragraph 2, Article 301, the necessary measures shall be adopted to ensure they cannot communicate amongst themselves and know the contents of the questions and responses beforehand.

A similar safeguard shall be taken where several joint litigants are to be questioned.

Article 311. *Questioning in the home.*

1. Should the person summoned to testify be unable to appear at the court's premises due to illness or any other special circumstances, the questioning may be performed at the request of a party or on an ex officio basis at such person's home or residence before the Judge or member of the corresponding court in the presence of the Court Clerk.

2. The other parties and their attorneys may attend the home questioning should the circumstances not make this impossible or highly inconvenient. Nonetheless, should the court deem their presence inappropriate in light of the circumstances of the person and of the place, the questioning shall take place before the presence of the court and the Court Clerk, and the party that has sought the taking of such evidence may submit a list of questions to be asked by the court should they be deemed relevant.

Article 312. *Recording the questioning in the home for the records.*

In the cases set forth in the preceding Article, the Court Clerk shall draw up a sufficiently detailed record containing the questions and the responses, which the person questioned may read. Should he be unable to do so, it shall be read out to him by the Court Clerk and the court shall ask him if he has anything to add or change, recording whatever he may state. The person who has testified and others attending shall then sign the certificate in the Court Clerk’s presence.

Article 313. *Questioning in the home by means of legal assistance.*

Where the party summoned to questioning resides outside the court’s court district and any of the circumstances referred to in the second sentence in paragraph 4 of Article 169 should arise, such party may be questioned through legal assistance.

In such cases, a list of questions raised by the party that has sought the taking such evidence shall be attached to the formal request, should it have been requested, due to such party being unable to attend the questioning. The questions shall have to be deemed relevant by the court dealing with the matter at issue.

Article 314. *Prohibition of repeating the questioning of parties.*

The parties or persons referred to in paragraph 2, Article 301 may not be questioned again on the same facts on which they were questioned previously.

Article 315. *Questioning in special cases.*

1. Where the State, an autonomous region, a local authority or any other kind of public body should be a party to the proceedings and the court should accept their testimony, they shall be sent a list containing the questions put forward by the party seeking the taking of evidence and which the court may deem relevant once the taking of such evidence is admitted without waiting for the trial or hearing, so that they may be answered in writing and the responses filed before the court before the date set for such hearing or trial.

2. Once the written answers are read at the trial or hearing, any additional questions which the court may deem relevant and useful shall be answered by the court representative of the party that had sent such questions. Should such court representative justify that he is unable to answer the questions, a new set of written questions shall once again be sent as a final procedure.

3. The provisions set forth in Article 307 shall apply to the testimonies described in this Article.

Article 316. *Assessment of the questioning of parties.*

1. Should they not contradict the other evidence, the facts that a party may have recognised as being true shall be construed as such in the judgement if such party had been personally involved in them and their ascertainment as being true is entirely harmful to such party.

2. In all other cases, the courts shall assess the testimonies of the parties and persons referred to in paragraph 2, Article 301 according to the rules of fair criticism notwithstanding the provisions set forth in Articles 304 and 307.

Section 2. On public documents

Article 317. *Classes of public documents.*

For the purposes of evidence in proceedings, the following shall be deemed as public documents:

(i). Court rulings and procedures of all kinds and any attestations thereof Court Clerks may issue.

(ii). Documents duly authorised by notaries public under the law.

(iii). Documents executed with the involvement of Registered Commercial Notaries and any certifications of transactions in which they may have intervened which have been issued by them with reference to the Registry Book they keep in accordance with the law.

(iv). Certifications of registry entries issued by Property and Company Registrars.

(v). Documents issued by civil servants legally empowered to certify matters lying within the scope of their functions.

(vi). Documents referring to archives and records belonging to the bodies of the State, the public administrations or any another public law entities issued by civil servants duly empowered to certify the provisions and actions of such bodies, administrations or entities.

Article 318. *Manner of taking evidence from public documents.*[206]

Public documents shall have the probative force set forth in Article 319 should the original, a certified copy or an irrefutable certification thereof be submitted on hard copy or on electronic media, or if a non-certified copy on hard copy or a digitised image thereof is submitted pursuant to Article 267 without its authenticity being contested.

Article 319. *Probative force of public documents.*

1. The public documents included under items (i) to (vi) of Article 317 shall provide full proof of the fact, action or state of affairs documented by them, as well as of the date in which such documents were produced, of the identity of those certifying them and of any other persons, if any, intervening in them with the requirements and in the cases set forth in the following articles.

2. The probative force of administrative documents not included under items 5 and 6 of Article 317 to which the laws grant the nature of public documents shall be as laid down by the laws granting them such nature. Failing an express provision in such laws, the facts, actions and state of affairs recorded in the aforementioned documents shall be construed as true for the purposes of the judgement to be issued, except where other means of proof should diminish the certainty of what is documented by them.

3. With regard to usury, the courts shall in each case decide freely without taking into consideration the provisions set forth in paragraph 1 of this Article.

Article 320. *Contesting the probative value of public documents. Authentication or verification.*[207]

1. Should the authenticity of a public document as evidence be contested, the following formalities shall be observed:

(i) Copies, certificates or written evidence will be authenticated or verified against the originals, wherever they may be and whether they were submitted in hard copy or in electronic, computer or digital format.

(ii) Any policies in which a registered broker has intervened shall be verified against the entries of their Registry Book.

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[206] Article worded in accordance with Act 41/2007 of 7 November.

[207] Paragraphs 1 and 2 are amended by single article 39 of Law 42/2015, of 5 December.

2. The authentication or verification of public documents against their originals shall be performed by the Clerk of the Court by going to the archive or premises in which the original or master document is kept in the presence, should they attend, of the parties or their attorneys, who shall be summoned for such a purpose.

If public documents are on electronic media, authentication of the originals will be carried out by the Clerk of the Court at the court office in the presence, should they attend, of the parties and their attorneys, who shall be summoned for that purpose.

3. Where the authenticity or accuracy of the copy or evidence challenged is proven through authentication or verification, any costs, expenses and fees that such authentication or verification may give rise to shall be incurred by whoever may have lodged the challenge. Should the court deem that such challenge was lodged recklessly, it may additionally impose a fine ranging from €120 to €600.

Article 321. *Incomplete attestations or certifications.*

Any attestation or certification of only a part of a document shall not constitute full evidence, as long as it is not completed with the additions the litigant who may be harmed by it may seek.

Article 322. *Public documents not susceptible to authentication or verification.*

1. Such documents shall constitute full evidence without the need for verification or authentication unless evidence to the contrary and the possibility of seeking an authentication of handwriting should exist:

(i). Old deeds lacking protocol files and any others whose protocol files or original deeds have disappeared.

(ii). Any another public document which by its very nature lacks an original or record against which it can be authenticated or verified.

2. The provisions set forth in Article 1,221 of the Civil Code shall apply in cases where the protocol files, the master document or the original proceedings have disappeared.

Article 323. *Foreign public documents.*

1. For procedural purposes, any foreign documents which have to be attributed with the probative force set forth in Article 319 herein by virtue of

international treaties of conventions herein shall be deemed as public documents.

2. Where no international treaty, convention or law should apply, the following documents shall be construed as public documents, providing that:

(i). All the requirements laid down by the country in which the document was executed have been met in its execution or drafting for it to have full probative force in a trial.

(ii). The document contains the legalisation or apostille and any other necessary requirements for its authenticity in Spain.

3. Where the foreign documents referred to in the preceding paragraphs of this Article include declarations of will, the existence of such declarations shall have to be proven. Nonetheless, their effects shall be determined by the Spanish and foreign laws that may apply concerning the legal capacity, purpose and form of the legal dealings.

Section 3. On private documents

Article 324. *Classes of private documents.*

For the purposes of evidence in proceedings, any documents not included under the cases set forth in Article 317 shall be construed as private documents.

Article 325. *Manner of producing evidence.*

Private documents shall be submitted as set forth in the Article 268 herein.

Article 326. *Probative force of private documents.*[208]

1. Private documents shall provide full evidence in proceedings under the terms set forth in Article 319, where their authenticity is not contested by the party which they may harm.

2. Where the authenticity of a private document is contested, whoever may have filed such document may seek an expert's authentication of handwriting or any other means of proof that may turn out to be useful and relevant for such a purpose.

[208] Paragraph 3 added by Act 59/2003 of 19 December .

Should the document's authenticity be verified by authentication or any other means of proof, the provisions set forth in paragraph 3, Article 320 shall be followed. Where the authenticity of such document cannot be deduced or should there be no proof thereof, the court shall assess it in accordance with the rules of fair criticism.

3. Where the party having an interest in an electronic document's effects should seek them or where such document's authenticity is challenged, the provisions set forth in Article 3 of the Electronic Signature Act shall apply.

Article 327. *Traders' books.*

Where traders' books are used as evidence, the provisions set forth by commercial laws shall apply. The court may exceptionally request, stating its grounds, that such books or their computer media be filed before it, a long as the items to be examined are specified.

Section 4. On provisions common to the two preceding sections

Article 328. *Duty of exhibiting documents amongst the parties.*[209]

1. Each party may seek that the other parties exhibit any documents that are not in his possession and which refer to the matter at issue in the proceedings or the value of the evidence.

2. A non-certified copy of the document shall be attached to such application and, should it not exist or be unavailable, the document's contents shall be indicated as accurately as possible.

3. In proceedings dealing with an infringement of industrial or intellectual property rights committed on a commercial scale, the plea for exhibition may particularly extend to any bank, financial, commercial and customs documents produced during a specific period of time and which are assumed to be in the defendant's possession. Preliminary evidence shall be attached to such plea, which may consist of the submission of a sample of the copies, goods or products through which the infringement may have come about. The court may decide to keep the proceedings secret at the request of any party in order to ensure the protection of confidential data and information.

[209] Paragraph 3 added by Act 19/2006 of 5 June

Article 329. *Effects of a refusal to exhibit.*

1. Should an unjustified refusal to exhibit pursuant to the preceding Article come about, the court may, taking into consideration the other evidence, attribute probative value to the non-certified copy filed by the applicant of the exhibition or the version such document's contents may have given.

2. In the case of the unjustified refusal referred to in the preceding paragraph, the court may issue a requirement by means of a procedural court order instead of the provisions set forth in such paragraph, so that the contents whose exhibition has been sought are filed in the proceedings, where the characteristics of such documents, the other evidence provided, the contents of the pleas sought by the applicant and the allegations to ground them should so suggest.

Article 330. *Exhibition of documents by third parties.*[210]

1. Unless set forth otherwise with regard to preliminary proceedings, non-litigant third parties shall solely be required to exhibit documents owned by them and sought by one of the parties where the court should deem that knowledge of such documents is transcendental for the purposes of issuing judgement.

In such cases, the court shall order the personal appearance of whomever may have such documents in their possession through a procedural court order and, after hearing them, shall rule as appropriate. Such rulings shall not be subject to any kind of appeal. Nonetheless, the party holding an interest in the matter may reiterate his plea in the second instance.

Should they be prepared to show the documents voluntarily, they shall not be obliged to appear at the Judicial Office and, should they so wish, the Court Clerk shall go to their address to draw up an attestation of the documents.

2. For the purposes of the preceding paragraph, any parties involved in the legal relationship at issue or that may have been the cause of such relationship though they do not appear as parties to the trial shall not be construed as third parties.

[210] Paragraph 3 (1) worded in accordance with Act 13/2009 of 3 November.

Article 331. *Attestation of documents exhibited.*

Should a person required to exhibit a document pursuant to the provisions set forth in the preceding articles not be willing to let go of the document for its inclusion in the records, an attestation thereof shall be drawn up by the Court Clerk at the court's premises should the exhibitor so wish.

Article 332. *Public bodies' duty to exhibit.*

1. Agencies dependent on the State, autonomous regions, provinces, local authorities and any other public law bodies may not refuse to issue any certifications and attestations that they may be required to submit by the courts or refuse to exhibit any documents kept in their premises and archives, unless the document is legally declared or classified as reserved or secret. In such a case, a grounded exposition of such reserved or secret nature shall be sent to the court.

2. Unless a special legal duty to secrecy or reservation should exist, any entities and companies that perform public services or that are in charge of activities of the State, autonomous regions, provinces, local authorities and any other local entities shall also be subject to the obligation of exhibiting documents and issuing certifications and attestations under the terms set forth in the preceding paragraph.

Article 333. *Obtaining copies of documents which are not written texts.*[211]

In the case of drawings, photographs, sketches, plans, maps and others documents which are not mainly comprised of written texts, if only the original exists, a party may request that a copy be obtained when they are exhibited in the presence of the Clerk of the Court, who shall certify that it is a true and faithful reproduction of the original.

If these documents are provided in electronic format, the copies made by electronic means by the court office will be considered to be true copies.

Article 334. *Probative value of reprographic copies and authentication.*

1. Should a party harmed by a document filed through a reprographic copy thereof contest the faithfulness of the reproduction, such copy shall, if possible, be authenticated against the original and, should this not be the

[211] Amended by single article 40 of Law 42/2015, of 5 October.

case, its probative value shall be determined according to the rules of fair criticism, taking into consideration the results of the other evidence.

2. The provisions set forth in the preceding paragraph shall also apply to drawings, photographs, paintings, sketches, plans, maps and other similar documents.

3. The authentication referred to in this article shall be verified by the Court Clerk, except where the parties are entitled to seek an expert's opinion.

Section 5. On experts' opinions

Article 335. *Aim and purpose of experts' opinions. Swearing or promising to act objectively.*[212]

1. Where scientific, artistic, technical or practical knowledge may be necessary to ascertain any facts or circumstances that are relevant to the matter or to acquire certainty about them, the parties may bring to the proceedings the opinions of experts having the relevant knowledge or seek that court-appointed expert should issue an opinion in the cases set forth herein.

2. Upon issuing an opinion, all experts shall state under oath or promise to say the truth and that they have acted or, as appropriate, shall act as objectively as possible, taking into consideration both what may favour as well as whatever may harm any of the parties, and that such expert is aware of the penalties that may be imposed on him should he fail to fulfil his duty as an expert.

3. Unless an agreement otherwise has been reached by the parties, an opinion may not be sought from an expert who has been involved in mediation or arbitration proceedings concerning the matter at issue.

Article 336. *Submission with the claim and the response to the claim of opinions drawn up by experts appointed by the parties.*[213]

1. The opinions that the litigants have available, prepared by experts appointed by them and which they consider necessary or appropriate for the defence of their rights, must be provided with the claim or the response to the claim, without prejudice to the provisions of article 337.

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[212] Paragraph 3 added by final provision 3.7 of Law 5/2012 of 6 July.

[213] Paragraphs 1 and 4 are amended and article 5 added by single article 41 of Law 42/2015, of 5 October.

2. The opinions shall be formulated in writing, accompanied, as appropriate, by the other documents, instruments or materials suitable to put forward the opinion of the expert regarding the subject matter of the expert examination. If it is impossible to present such materials and instruments, the written opinion shall contain sufficient indications regarding them. The opinion may also be accompanied by the documents deemed suitable for a more accurate assessment of it.

3. The claimant shall be deemed to be in a position to submit written opinions drawn up by an expert appointed by them together with the claim if they fail to duly justify that the defence of their right did not allow them to delay lodging the claim until such opinion was obtained.

4. A defendant who is not able to provide written opinions with the response to the claim must justify the impossibility of requesting them and receiving them within the time limit for response.

5. At the request of one of the parties, the court or tribunal may agree to allow the defendant, using a lawyer or expert, to examine the objects and places the state and circumstances of which are relevant to their defence or for the preparation of the expert reports that they intend to submit. Furthermore, in claims for personal injury, they may demand that the claimant allows their examination by a physician in order to prepare an expert report.

Article. 337. *Announcement of opinions when the latter cannot be attached to the claim or the statement of defence. Submission at a later stage.*[214]

1. If the parties are unable to submit the opinions drawn up by experts appointed by them together with the claim or the statement of defence, they shall indicate in one or the other the opinions that, as appropriate, they intend to use, which they shall submit for their transfer to the counter-party as soon as they have them at their disposal and in any event five days before commencement of the hearing prior to the declaratory action or the hearing in the oral trial.

2. Once the opinions have been submitted in accordance with the preceding paragraph, the parties shall indicate whether they wish the experts who issued the opinions to appear at the trial regulated in Article 431 and subsequent articles herein or, as the case may be, at the hearing of the trial, specifying whether they shall put forward or explain the opinion

[214] Section 1 worded in accordance with Act 13/2009, of 3 November.

or reply to questions, objections or proposals of rectification or intervene in any other manner useful to understand and assess the opinion in connection with the subject matter of the case.

Article 338. *Submission of opinions depending on the procedures subsequent to the claim. Application for the intervention of the experts at the hearing or oral hearing.*[215]

1. The provisions of the preceding article shall not apply to opinions whose necessity or usefulness becomes evident as a result of the allegations of the defendant in the response to the claim or the supplementary allegations or claims admitted at the hearing pursuant to Article 426 of this Act.

2. The opinions whose necessity or usefulness results from the statement of defence or the allegations and pleas set forth at the pre-hearing shall be submitted by the parties for their transfer to the counterparties at least five days prior to the holding of the hearing or oral hearing, with the parties indicating to the Court whether they consider it necessary for the authors of the opinions to appear at the hearing or oral hearing, expressed as provided for in paragraph 2 of Article 337.

In this case, the Court may also decide on the presence of the experts at the hearing or oral hearing in accordance with the terms set out in paragraph 2 of the preceding article.

Article 339. *Application for the appointment of experts by the court and the court decision on such application. Appointment of experts by the court, without a request by any party.*[216]

1. If either of the parties is entitled to free legal aid, such party shall not be bound to submit the expert opinion attached to the claim or the response to the claim, but shall merely announce such opinion, for the purpose of proceeding to the appointment of an expert by the court, in accordance with the provisions of the Free Legal Aid Act.

2. The plaintiff or defendant, even if they are not included under the preceding paragraph, may also request, in their respective preliminary writs, that the court appoints an expert if they deem that the issue of an expert's report is appropriate or necessary for their interests. In this case, the court will proceed with the appointment. Such an opinion shall be at

[215] Paragraph 2 is amended by single article 42 of Law 42/2015, of 5 October.

[216] Paragraphs 1 and 3 are amended by single article 43 of Law 42/2015, of 5 October.

the expense of the applicant, without prejudice to whatever may be decided as to the legal costs.

Unless it refers to allegations or claims which are not contained in the claim, an expert's report drawn up by a court appointed expert may not be requested after the claim or the response to the claim is made.

Court appointment of an expert must be made within five days of submission of the response to the claim, regardless of who may have requested such appointment. If both parties initially applied for one, the Court may, if the parties agree, appoint one single expert to issue the requested report. In this case, the fees of the expert shall be paid by both litigants in equal shares, without prejudice to whatever may be decided as to legal costs.

3. In an ordinary hearing, if, as a result of the supplementary allegations or claims allowed at the hearing, the parties request, in accordance with the provisions of paragraph 4 of article 427, appointment by the court of an expert to issue an opinion, this will be agreed, as long as the opinion is considered to be pertinent and useful.

The court may do the same in an oral hearing where the parties request the appointment of an expert at the hearing, in which case it will be suspended until the opinion is issued.

4. In the cases indicated in the two preceding paragraphs, if the parties seeking the appointment of an expert by the court also agree that the opinion shall be issued by a specific individual or entity, the Court shall resolve to do so. Failing such agreement between the parties, the expert shall be appointed by the procedure provided for in Article 341.

5. The Court can appoint an expert ex officio if expert examination is relevant in proceedings concerning a declaration or contest of kinship, paternity or maternity, on the capacity of the individuals or in matrimonial proceedings.

6. The court will not appoint more than one incumbent expert for each matter or set of matters which are to be the subject of expert examination and do not require, due to the diversity of their subject matter, various experts to appear.

Article 340. *Conditions of the experts.*

1. The experts shall hold the official title corresponding to the subject matter and the nature of the opinion. In the case of matters not included in

official professional titles, the experts shall be appointed among individuals well acquainted with the subjects concerned.

2. The opinion may also be sought of Academies and cultural and scientific institutions dedicated to the study of the subjects corresponding to the expert examination. An opinion may also be issued on specific matters by legal persons legally qualified for these purposes.

3. In the cases of the preceding paragraph, the institution commissioned with the opinion shall specify within the shortest possible delay the name of the person or persons who shall be directly in charge of issuing the opinion, who shall be required to make the oath or promise referred to in the second paragraph of Article 335.

Article 341. *Procedure for the court appointment of an expert.*

1. In the month of January of each year, the various professional associations or, failing them, similar entities, as well as the cultural and scientific Academies and institutions referred to in the second paragraph of the preceding article shall be requested to forward a list of members or associates willing to act as experts. The first appointment of each list shall be made by drawing lots in the presence of the Court Clerk and, after that, the next appointments shall be made in correlative order.

2. If a person without official title, experienced or knowledgeable in the subject has to be appointed as an expert, after summoning the parties, the appointment shall be made by the procedure established in the preceding paragraph, using to this end a list of individuals that shall be requested each year from the appropriate syndicates, associations and entities and shall be composed of a minimum of five of such individuals. If, due to the singular nature of the subject matter of the opinion, the name of only one single knowledgeable or experience person is available, the consent of the parties shall be requested and the said individual shall be appointed as expert only if the parties grant their consent.

Article 342. *Citation of the appointed expert, acceptance and appointment. Provision of funds.*[217]

1. On the same day of the appointment or on the following working day, the Court Clerk shall notify the said appointment to the expert concerned, requesting him to indicate whether he accepts the post within a time limit

[217] Article worded in accordance with Act 13/2009 of 3 November.

of two days. If he does accept, the appointment shall be made and the expert shall, in the manner decided, make the statement under oath or promise established in paragraph 2 of Article 335.

2. If the expert alleges a just cause preventing him from accepting and the Court Clerk deems it sufficient, he shall be replaced by the next person on the list, and so on successively, until the appointment can be made.

3. The appointed expert may request, within the three days following that of his appointment, the provision of funds he considers necessary, which shall be provided on account of the final settlement. The Court Clerk shall resolve by order on the requested provision and shall order the party or parties who proposed the expert evidence and are not entitled to free legal assistance to pay the amount established in the deposit and consignments account of the Court within a time limit of five days.

If, upon expiry of the said time limit, the established amount has not been deposited, the expert shall be released from his obligation to issue the opinion and no new appointment can be made.

If the expert has been appointed by mutual agreement and one of the litigants fails to pay his share of the deposit, the Court Clerk shall offer the other litigant the possibility to complete the amount lacking, indicating the points on which the opinion shall be issued, or, alternatively, to recover the amount deposited, in which case the provisions of the preceding subparagraph shall apply.

Article 343. *Challenging of the experts. Time and form of the challenges.*

1. Only the experts appointed by the Court can be disqualified.

On the other hand, experts who cannot be disqualified can be subject to challenge if they incur in any of the following circumstances:

(i). Being the spouse or a relation by consanguinity or affinity up to the fourth degree of one of the parties or their attorneys or court representatives.

(ii). Having a direct or indirect interest in the matter or in another similar matter.

(iii). Being or having been in a situation of dependency or community or conflict of interests in relation to either of the parties or their attorneys or court representatives.

(iv). Close friendship with or hostility to either of the parties or their attorneys or court representatives.

(v). Any other duly evidenced circumstance making them unsuitable from a professional point of view.

2. Challenges cannot be formulated after the trial or the hearing in oral trials. In the case of declaratory actions, challenges to experts who issued the opinions submitted with the claim or statement of defence shall be proposed at the pre-trial hearing.

When formulating challenges of experts, the evidence aimed at justifying them may be presented, except evidence of witnesses.

Article 344. *Contradiction and evaluation of the challenge. Penalty in case of groundless or unfair challenge.*

1. Any of the interested parties may address the Court in order to deny or contradict the challenge, submitting the documents they consider relevant to the effect. If the challenge damages the professional or personal reputation of the expert, the latter may request the Court to declare at the termination of the proceedings by means of a procedural court order that the challenge is groundless.

2. Without further ado, the Court shall take into consideration the challenge and, as appropriate, its denial or contradiction, at the time of assessing the evidence, formulating, as appropriate, a procedural court order declaring the lack of grounds of the challenge referred to in the preceding paragraph. If it finds recklessness of procedural unfairness in the challenge, in view of its motivation or the time when it was submitted, it may sentence the party responsible, after hearing the latter, to a penalty of between €60 to €600.

Article 345. *Expert operations and possible interventions of the parties in the said operations.*

1. If the issuance of the opinion requires the examination of certain places, objects or individuals or the performance of analogue operations, the parties and their counsel shall be allowed to be present at any of them, provided such presence does not prevent or impair the work of the expert and the accuracy and impartiality of the opinion can be guaranteed.

2. If any of the parties requests to be present at the expert operations referred to in the preceding paragraph, the Court shall decide whatever is

appropriate and, if the said presence is admitted, shall order the expert to notify the parties directly, at least forty/eight days in advance, of the day, time and place for the said operations to be carried out.

Article 346. *Issue and ratification of the opinion by the expert assigned by the Court.*[218]

The expert assigned by the Court shall issue his opinion in writing and remit it to the Court using electronic means within the time limit notified to him. The opinion shall be transferred to the parties by the Clerk of the Court to allow them to decide whether it is necessary for the expert to be present at the hearing or oral hearing for the purposes of giving the appropriate clarifications or explanations. The Court may at all events, by means of a procedural court order, declare that it considers it necessary for the expert to be present at the hearing or oral hearing with a view to a better understanding and evaluation of the opinion issued.

Article 347. *Possible intervention of the experts at the trial or hearing.*[219]

1. The experts shall intervene at the trial or hearing as requested by the parties, to the extent allowed by the Court.

The court may only reject applications for intervention which have to been deemed improper or useless due to their purpose and contents, or where a duty of confidentiality exists arising from the expert's intervention in a prior mediation procedure involving the parties.

More specifically, the parties and their counsel may request:

(i). The complete explanation of the opinion if the said explanation requires the performance of other operations, complementary to the writ submitted, by means of the use of documents, materials and other elements referred to in paragraph 2 of Article 336.

(ii). An explanation of the opinion or one or more of its points, the significance whereof is not considered to be sufficiently eloquent for the purposes of the evidence.

(iii). Replies to questions and objections as regards the method, premises, conclusions and other aspects of the opinion.

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218 Amended by single article 44 of Law 42/2015, of 5 October.

Article worded in accordance with Act 13/2009 of 3 November.

219 Paragraph 1 (2) amended by final provision 3.8 of Law 5/2012 of 6 July.

(iv). Replies to applications for an extension of the opinion to other connected issues, in case this may be carried out in the same act and for the purposes, at all events, of knowing the opinion of the expert on the possibility and usefulness of the extension, as well as the time required to carry out such extension.

(v). Critical evaluation of the opinion concerned by the expert of the counter-party.

(vi). Formulation of the challenges that may affect the expert.

2. The Court may also pose questions to the experts and request explanations from them regarding the subject matter of the submitted opinion, although it cannot resolve its extension ex officio, except in the case of experts appointed ex officio in accordance with paragraph 5 of Article 339.

Article 348. *Evaluation of the expert opinion.*

The Court shall evaluate the expert opinions in accordance with the rules of sound criticism.

Article 349. *Comparison of handwriting.*

1. The expert shall carry out a comparison of handwriting when the authenticity of a private document is denied or put into question by the party damaged by it.

2. A comparison of handwriting may also be carried out when the authenticity is denied or put into question of any public document lacking the original and irrefutable copies in accordance with Article 1.221 of the Civil Code, provided that the said document cannot be recognised by the civil servant who issued it or by the individual mentioned as the intervening Notary Public.

3. The comparison of handwriting shall be carried out by the expert appointed by the Court in accordance with Articles 341 and 342 herein.

Article 350. *Unquestioned documents or original deed for comparison.*

1. The party requesting the comparison of handwriting shall indicate the unquestioned document or documents with which such comparison shall be carried out.

2. The following shall be considered unquestioned documents for the purposes of comparison of handwriting:

(i). The documents acknowledged as such by the parties to whom this expert testimony may affect.

(ii). The public deeds and those filed in the public records relating to the National Identity Document.

(iii). The private documents whose handwriting or signature has been acknowledged at the trial by the individual to whom the questionable handwriting or signature is being attributed.

(iv). The challenged written document, concerning the part of which the handwriting is acknowledged as his own by the party prejudiced by it.

3. Failing the documents enumerated in the preceding paragraph, the party to whom the challenged document or the signature. Authorising it may be required, at the request of the counter-party, to draw up an original deed which shall be dictated to the said party by the Court or the Court Clerk.

If the summoned party refuses to do so, the challenged document shall be deemed acknowledged.

4. If there are no unquestioned documents and it is impossible to compare the handwriting with an original deed due to the death or absence of the individual who must formulate it, the Court shall assess the value of the challenged document in accordance with the rules of sound criticism.

Article 351. *Presentation and evaluation of the opinion concerning the comparison of handwriting.*

1. The expert carrying out the comparison of handwriting shall explain in writing the operations of comparison and their results.

2. The provisions of Articles 346, 347 and 348 herein shall apply to the expert opinion of comparison of handwriting.

Article 352. *Other instrumental expert opinions on different means of evidence.*

If required or convenient in order to know the contents or the meaning of evidence or to proceed to its most accurate evaluation, the parties may submit or propose expert opinions regarding other means of evidence admitted by the Court pursuant to paragraphs 2 and 3 of Article 299.

Section 6. On the examination of evidence

Article 353. *Object and objective of the examination of evidence and initiative to resolve such examination.*[220]

1. The examination of evidence shall be resolved when, for the purposes of clarification and evaluation of the facts, it is necessary for the Court to examine a certain place, object or individual in person.

2. notwithstanding the extension of the examination of evidence required in the opinion of the Court, the party seeking such examination shall specify the main points to which he wishes it to refer and shall indicate whether he wishes to attend the act with a person with technical knowledge or experience in the subject matter.

The other party may, prior to the examination of evidence, propose other issues of interest to him and may also indicate whether he shall attend accompanied by an individual of those indicated in the preceding paragraph.

3. Once the Court has decided to carry out the examination of evidence, the Court Clerk shall notify at least five days in advance the day and time when the said examination shall take place.

Article 354. *Performance of the examination of evidence and intervention of the parties and knowledgeable individuals.*

1. The Court may establish any measures that are necessary to achieve the effectiveness of the examination, including that of ordering the entry to the place to be examined or where the object or the individual to be examined is present.

2. The parties, their court representatives and attorneys may attend the examination of evidence and make the verbal observations they deem appropriate to the Court.

3. If, ex officio or at the request of a party, the Court considers it convenient to hear the observations or statements of the individuals referred to in paragraph 2 of the preceding article, it shall previously request them to take the oath or promise to tell the truth.

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[220] Section 3 worded in accordance with Act 13/2009, of 3 November.

Article 355. *Examination of individuals.*

1. The examination of an individual shall be carried out by means of an interrogatory performed by the Court, which shall be adjusted to the requirements of each specific case. At the said interrogatory, which, if advisable in view of the circumstances, may be held with closed doors or outside the court premises, the parties shall be allowed to be present, provided the Court does not consider such presence to be a disturbance for the proper execution of the proceedings.

2. At all events, the performance of the examination of evidence shall guarantee the respect for the dignity and privacy of the individual.

Article 356. *Simultaneous performance of the examination of evidence and the expert examination.*

1. If considered convenient, the Court may resolve, by means of a procedural court order, that the examination of evidence and the expert examination shall take place in one single act in relation to the same place, object or individual, following the procedure set forth in this Section.

2. The parties may also request the simultaneous performance of both examinations and the Court shall so order if it deems it appropriate.

Article 357. *Simultaneous performance of the examination of evidence and the evidence of witnesses.*

1. At the request of a party and at the expense of the latter, the Court may by procedural court order resolve that the witnesses shall be heard immediately after the examination of evidence if the examination of the objects or individuals may contribute to the clarity of their testimony.

2. At the request of a party, the interrogatory of the counter-party may also be carried out under the same circumstances as those set forth in the preceding paragraph.

Article 358. *Records of the examination of evidence.*

1. The Court Clerk shall draw up a detailed record of the examination of evidence, clearly specifying therein the perceptions and appreciations of the Court, as well as the observations made by the parties as referred to in Article 354.

2. The record shall also contain the result of all other procedures of taking evidence that may have been carried out at the same time of the examination of evidence by the court, in accordance with Article 356 y 357.

Article 359. *Use of technical means to record the examination of evidence.*[221]

Means of recording of images and sound or other similar instruments to demonstrate the object of the examination of evidence shall be used, but the drawing up of the record shall not be omitted and the latter shall include all indications required to identify the recordings, reproductions or examinations carried out, which shall be kept by the Clerk Court in a manner ensuring that they are not altered in any way.

If it is possible to copy the recordings or reproductions by the means or instruments mentioned above guaranteeing their authenticity, the party concerned may, at its expense, request and obtain such a copy from the Court.

Section 7. On the questioning of witnesses

Article 360. *Contents of the evidence.*

The parties may request the declaration as witnesses of the individuals acquainted with the facts at issue relating to the subject matter of the trial.

Article 361. *Suitability to be witnesses.*

All individuals may act as witnesses, except those who are of permanent unsound mind or unable to use their senses in relation to the facts they can only be acquainted with using the said senses.

Those under fourteen years of age may declare as witnesses if, in the opinion of the Court, they possess the necessary capacity of judgement to know and to declare truthfully.

Article 362. *Designation of the witnesses.*

When proposing the evidence of witnesses, their identity shall be specified indicating, to the extent possible, the given name and family names of each of them, their profession and their address or place of residence.

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[221] Subparagraph 1 worded in accordance with Act 13/2009 of 3 November.

The designation of witnesses may also be made expressing the post held by the latter or any other circumstances of identification, as well as the place where they can be summoned.

Article 363. *Limitation of the number of witnesses.*

The parties may propose as many witnesses as they deem appropriate, but the costs of those exceeding three for each fact at issue shall at all events be for the account of the party presenting them.

When the Court has heard the testimony of at least three witnesses in relation to a fact at issue, it may omit the remaining testimonies concerning the same fact if it considers that the fact has been illustrated sufficiently by those already given.

Article 364. *Domiciliary testimony of the witness.*

1. If, due to illness or any other reason referred to in the second subparagraph of paragraph 4 of Article 169, the Court considers that a witness is unable to appear at the court premises, it may take his statement at his place of residence, either directly or through judicial assistance, depending on whether or not the said place of residence is located within the jurisdiction of the court.

The statement may be attended by the parties and their attorneys and, if the latter are unable to assist, they shall be authorised to submit a prior written interrogatory containing the questions they wish to put to the examined witness.

2. If, considering the circumstances, the Court considers it advisable not to allow the presence of the parties and their attorneys at the domiciliary testimony, the parties shall be allowed to examine the replies obtained in order to allow them to request, within the next three days, that new complementary questions be put to the witness or the appropriate clarifications be asked from the said witness, in accordance with Article 372.

Article 365. *Oath or promise of the witnesses.*

1. Before making his statement, each witness shall make an oath or promise to tell the truth, cautioning him on the penalties established for the offence of false testimony in civil cases, which the Court shall explain to him should he declare that he ignores them.

2. In the case of witnesses under the legal age of criminal responsibility, they shall not be required to make an oath or promise to tell the truth.

Article 366. *Manner of statement of the witnesses.*

1. The witnesses shall declare separately and successively, in the order in which they have been specified in the proposals, unless the Court considers there exists a reason to alter the said order.

2. The witnesses shall not be allowed to communicate among themselves and no witness shall be allowed to be present at the statements made by other witnesses.

To this end, all necessary steps shall be taken.

Article 367. *General questions to the witness.*

1. The Court shall start by asking each witness, in any case:

(i). His given name, family names, age, civil status, profession and address.

(ii). Whether or not he is the spouse or a relation by consanguinity or affinity and, if so, in what degree, of any of the litigants, their attorneys or court representatives, or if they are related to them through adoption, guardianship or other similar links.

(iii). Whether or not he is or has been dependant or is or has been at the service of the party that proposed him or the court representative or attorney of the latter or has had or continues to have any relation that may give rise to common or conflicting interests.

(iv). If he has a direct or indirect interest in the matter or in any other similar matter.

(v). Whether he is a close friend or enemy of any of the litigants or their court representatives or attorneys.

(vi). If he has been convicted at any time for giving false testimony.

2. In view of the replies given by the witness to the questions of the preceding paragraph, the parties may indicate to the Court the existence of circumstances relating to their impartiality.

The Court may interrogate the witness on the said circumstances and shall order that the questions and replies be placed on the record to allow the due evaluation of the statements at the time of passing judgement.

Article 368. *Contents and admissibility of the questions formulated.*[222]

1. The questions put to the witness shall be formulated verbally and with due clarity and precision. No valuations nor qualifications shall be included and, if they are included, they shall be deemed not made.

2. The Court shall decide on the questions raised in the same act as the questioning, admitting those that may prove appropriate to ascertain the facts and circumstances at issue, which are related to the subject matter of the trial.

The questions not referring to the personal knowledge of the witness shall not be admitted, in accordance with Article 360.

3. If a question is replied to in spite of not having been admitted, the said reply shall not be placed on the record.

Article 369. *Contesting of the admission of questions and objection to their inadmission.*

1. In the same act as the questioning, the parties other than those who formulated the question may contest its admission and put forward the valuations and qualifications they deem inappropriate and which, in their opinion, should not have been made.

2. The party that indicates his disconformity with the inadmission of questions may so indicate and may request that his objection be placed on the record.

Article 370. *Examination of the witness with the questions admitted. Expert witness.*

1. Once the general questions are answered, the witness shall be examined by the party which proposed him, and if he has been proposed by both parties, the questions formulated by the claimant shall be asked first.

[222] Section 1 worded in accordance with Act 13/2009, of 3 November.

2. The witness shall respond by himself, verbally, and shall not use a draft of responses. When the question refers to accounts, books or documents, he shall be allowed to examine these before answering.

3. In each of his responses, the witness shall express the reason for his statements.

4. When the witness has scientific, technical, artistic or practical knowledge of the matters referred to in the facts of the questioning, the court shall admit the statements added by the witness to his answers on the facts due to this knowledge.

As regards these statement, the parties may inform the court of the occurrence of any of the circumstances of objection related to Article 343 herein.

Article 371. *Witnesses with the duty to maintain silence.*

1. When the witness has the duty to maintain silence as regards facts he is questioned on due to his state or profession, he shall state his reasons for this and the court shall consider the grounds for the refusal to declared and shall decide what is right in law through a procedural court order. If the witness is released from responding, this shall be recorded in the minutes.

2. If the witness alleges that the facts he is asked about belong to matters which are legally declared to be classified as reserved or secret, in the cases in which the court considers it necessary in order to satisfy the interests of the administration of justice, it shall ex officio request the competent organism for the official document which accredits this fact, through a procedural court order.

Once it has verified the grounds of the plea of a reserved or secret nature, the court shall order the document to be attached to the records, with a record of the questions affected by official secrets.

Article 372. *Intervention of the parties in the questioning extension of this.*

1. Once the questions formulated by the attorney of the party which proposed the oral evidence, the attorneys of any of the other parties may ask the witness questions which they consider may lead to determining the facts. The court shall reject any irrelevant or useless questions.

In the event of the inadmission of these questions, the provisions in paragraph 2 of Article 369 on unconformity with the inadmission.

2. in order to obtain clarifications and additions, the court may also question the witness.

Article. 373. *Confrontation of witnesses and between these and the parties.*

1. When the witnesses incur serious contradictions, the court may ex officio or at the request of a party, agree that they submit to a confrontation.

2. It may also be agreed that, due to the respective declarations, a confrontation is held between the parties and one or some of the witnesses.

3. The procedure referred to in this article shall have to be requested at the end of the questioning and, in this case, the witness shall be advised not to leave so that this procedure may take place next.

Article 374. *The manner for consigning oral declarations.*

The oral declarations made at hearings or trials shall be documented in accordance with the provisions in paragraph 2 of Article 146.

Article. 375. *Witness Compensation.*[223]

1. The witnesses who, complying with the summons, appear before the court, shall have the right to obtain compensation for the expenses and damages due to their appearance from the party which proposed them, notwithstanding what might be agreed as regards costs. If several parties propose the same witness, the compensation shall be paid proportionally by them.

2. The cost of the compensation shall be established by the court Clerk by an order, which shall take into account the data and circumstances which have been contributed. This order shall be dictated once the trial or hearing has finalised.

If the party or parties who have to pay compensation fail to do so within a time limit of ten days from the final decision mentioned in the preceding paragraph, the witness may directly have recourse to distraint proceedings.

Article 376. *Evaluation of the declarations of witnesses.*

The courts shall evaluate the strength of the declarations of the witnesses as evidence in accordance with the rules of sound criticism, taking into

[223] Article worded in accordance with Act 13/2009, of 3 November.

consideration the reason which they have given, the circumstances involved and, as appropriate, the objections formulated and the results of the evidence examined on these.

Article 377. *Objections to the witnesses.*

1. Regardless of the provisions in paragraph 2 of Article 367, each party may reject the witnesses proposed by the counter party for any of the following reasons regarding these witnesses:

(i). Being or having been a spouse or blood relative or having kinship within the fourth grade with the party who has presented the witness or with his attorney or court representative, or is related to these through adoption, protection, or a similar tie.

(ii). On declaring, the witness is dependent on the party which proposed him or on his court representative or attorney or is at their service or has ties with any of these through any society relationship or a relationship of interest.

(iii). The witness has a direct or indirect interest in the case being dealt with.

(iv). The witness is a close friend or an enemy of one of the parties or of his lawyer or court representative.

(v). The witness had been convicted for false testimony.

2. The party proposing the witness may also reject the witness if, subsequent to the proposal, he knows of the existence of any of the reasons for rejection set forth in the previous paragraph.

Article 378. *Time for rejections.*

The rejections shall have to be formulated from the time that the oral evidence is admitted until the trial or hearing begins, notwithstanding the obligation which the witnesses have to recognise any reason for rejection on being questioned in accordance with the provisions in Article 367 herein, in which case, it shall be possible to act in accordance with what is stipulated in paragraph 2 of this article.

Article 379. *Evidence and opposition to rejections.*

1. With the allegation for the rejection, it is possible to propose the evidence leading to the justification of this, except oral evidence.

2. If the rejection of a witness is formulated and the other parties do not oppose this by the third day following its formulation, it shall be understood that they recognise the grounds for the rejection. If they oppose the rejection, they shall allege what they consider to be advisable, and may provide documents.

3. In order to judge the rejection and the evaluation of the declarations of witnesses, the provisions in paragraph 2 of Article 344 and Article 376 shall apply.

Article 380. *Questioning about the facts which are recorded in written reports.*

1. Pursuant to number 4 of paragraph 1 of Article 265, or at a later time, pursuant to paragraph three of the same precept, if reports on facts had been provided for the records which had not been recognised as certain by all the parties who might be damaged, the writers of the reports shall be questioned as witnesses in the manner stipulated herein, with the following special rules:

a) The rejection of a witness due to interest in a case is not considered to be right when the report has been drafted on order from one of the parties.

b) Once the professional authorisation of the author of the report has been accredited, the report shall have to be recognised and its content ratified before the relevant questions are asked.

c) The questioning shall be restricted to the facts consigned in the reports.

2. If the reports also contain evaluations grounded on scientific, artistic, technical or practical knowledge of their authors, the provisions in paragraph 4 of Article 370, on the witness/expert shall apply.

Article 381. *Written responses from legal persons and public entities.*[224]

1. When it is pertinent for legal persons and public entities, as such, to inform on facts which are relevant for the proceedings, as these facts refer to their activities, and it is not applicable or necessary to individualise the knowledge of interest for the proceedings in determined natural persons, the party this evidence is of use to can propose that a legal person or

[224] Subparagraph (2.3) worded in accordance with Act 13/2009 of 3 November.

entity respond in writing about the facts within the ten days previous to the trial or hearing, at the request of the court.

2. In the proposal of evidence referred to in the previous paragraph, the points which the declaration or written report must deal with shall be stated precisely. The other parties may allege what they consider to be advisable and, specifically, if they wish other points to be added to the request for a written declaration or that that the points stated by the proposer of the evidence be rectified or added to.

Once the parties have been heard, as appropriate, the court shall decide on the relevance and usefulness of the proposal, and shall precisely determine, as appropriate, the terms of the question or questions which must be the subject of the declaration of the legal person or entity and shall request it to provide the declaration and forward it to the court within the established time limit, with the caution of a fine of €150 to €600 and shall take action against the person personally responsible for the omission, for disobeying the authority. The examination of this evidence shall not suspend the course of the procedure unless the judge considers this necessary to prevent the lack of proper defence of one or both parties.

Once the written responses have been received, the Court Clerk shall transfer these to the parties for the effects stipulated in the following paragraph.

3. In the light of the written responses, or the refusal or omission of these, the court may provide, ex officio or at the request of any o the parties, through a procedural court order, that the natural person or persons whose testimony may be relevant and useful in order to clarify or complete the declaration of the legal person if this were obscure or incomplete, be summoned to the trial or hearing. At the request of a party, any evidence which is relevant and useful in order to contradict this declaration may also be admitted.

4. The provisions in the previous paragraphs shall not apply to public entities when, in an attempt to know of facts with the characteristics set forth in paragraph 1, these can be obtained from those certifications or testimony subject to being provided as documentary evidence.

5. The other rules of this section shall be applied to the declarations regulated in previous paragraphs, insofar as this is possible.

Section 8. On the reproduction of speech, sound and image and the instruments which make it possible to file and know data relevant to the proceedings

Article 382. *Instruments for filming, recording and similar instruments. Value as evidence.*[225]

1. In court, the parties may propose the reproduction of speech, images and sounds recorded through instruments for filming, recording and other similar instruments as means of evidence. On proposing this evidence, the party may, as appropriate, attach a written transcription of the words contained in the media in question which are relevant to the case.

2. The party which proposes this means of evidence may provide the opinions and instrumental means of evidence it considers to be advisable. The other parties may also provide opinions and means of evidence when they question the authenticity and precision of what has been reproduced.

3. The court shall evaluate the reproductions referred to in paragraph 1 of this article in accordance with the rules of fair criticism.

Article 383. *Certificate of the reproduction and custody of the relevant materials.*[226]

1. An appropriate certificate shall be drafted of the acts carried out in application of the previous article, and this shall contain all that is necessary for the identification of the filming, recording and reproductions made, and, as appropriate, the justifications and opinions provided or the evidence examined.

2. The material which contains the speech, image or sound reproduced related to the court records must be kept by the Clerk of the Court so that it does not undergo any alterations.

Article 384. *On the instruments which make it possible to file, know or reproduce data relevant to the proceedings.*

1. The instruments which make it possible to file, know or reproduce speech, data, figures and mathematical operations carried out for

[225] Paragraph 1 is amended by single article 45 of Law 42/2015, of 5 October.

[226] Paragraph 1 is amended by single article 46 of Law 42/2015, of 5 October.

Paragraph 2 worded in accordance with Act 13/2009, of 3 November.

accounting purposes or for other purposes, which, as they are relevant to the proceedings, must be admitted as evidence, shall be examined by the court through the means which the party proposing provides or which the court decides shall be in such a way that the other parties to the proceedings can allege and propose what is convenient for their rights with identical knowledge to the court.

2. The provisions in paragraph 2 of Article 382 shall apply to the instruments stipulated in the previous paragraph. The documentation in the records shall be kept in the manner most appropriate to the nature of the instrument, in the trust of the Court Clerk, who, as appropriate, shall also adopt the measures required for their custody.

3. The court shall evaluate the instruments referred to in the first paragraph of this article in accordance with the rules of sound criticism applicable to these depending on their nature.

Section 9. On presumption

Article 385. *Legal presumption.*

1. The presumption which the law establishes shall be dispensed to the presumed evidence of fact for the party which this evidence favours.

Such presumption shall only be admissible when the certainty of the fact indicates which party has the presumption through admission or evidence.

2. When the law establishes presumption, except if there is counter evidence, this can be used to prove the non-existence of the presumed fact and, in the case in question, to demonstrate that the link which there must be between the fact presumed and the fact proven or admitted which constitutes the grounds for the presumption does not exist.

3. The presumption established by law shall admit counter evidence except in the cases in which this is expressly forbidden by law.

Article 386. *Judicial presumption.*

1. based on an admitted or proven fact, the court may presume certainty, for the purposes of the proceedings, of another fact, if there is a precise and direct link between what is admitted or demonstrated and the presumption in accordance with the rules of human criteria.

The judgement to which the preceding paragraph is applied must include the reasoning whereby the court established the presumption.

2. In opposition to the possible formulation of judicial presumption, the litigant damaged by this can always have the counter evidence referred to in paragraph 2 of Article 2 above examined.

CHAPTER VII

ON INCIDENTAL MATTERS

Article 387. *The concept of incidental matters.*

Incidental matters are those which are different from those which constitute the main subject of the case, but have an immediate relationship thereto, as well as those which might arise concerning procedural presuppositions and requirements which might have a bearing on the proceedings.

Article 388. *The general rule on procedure.*

Incidental matters for no other formalities are provided herein shall be dealt with in the manner set forth in this chapter.

Article 389. *Incidental matters with special pronouncements.*

Incidental matters shall have special pronouncements if they require that the court decide on these separately in the judgement before deciding the main purpose of the case.

Such matters shall not suspend the ordinary course of the proceedings.

Article 390. *Incidental issues to be decided beforehand.*

Suspension of the course of the claim. When the nature of issues entail an obstacle to the continuation of the trial through its ordinary steps, the course of the procedure shall be suspended until such issues are resolved.

Article 391. *Issues to be decided beforehand. Cases.*

Besides those expressly determined in law, incidental issues which refer to the following shall be given the same consideration as in the preceding case:

(i). To the capacity and representation of any of the litigants regulated in Articles 414 et seq.

(ii). To the defect in another procedural presupposition or the event of an obstacle of the same nature, on condition that these arose after the hearing stipulated in the articles cited in the preceding number.

(iii). To any other incident which might arise during the trial, on which decision is absolutely necessary, de facto or de iure, in order to decide on the continuance of the trial through its ordinary steps or its termination.

Article 392. *Putting forward incidental issues. Inadmission of issues which are not incidental.*

1. Incidental issues shall be put forward in writing, with the relevant documents attached and the proposal of evidence which might be necessary, and it shall be stated whether, in the opinion of the party proposing the issue, the normal course of the procedure must be suspended until the issue has been decided.

2. The court shall reject the presentation of any issues which are not in any of the preceding cases by means of a court order.

Article 393. *Admission, performance and decision on incidental issues.*[227]

1. In ordinary procedure, once the trial begins, the presentation of incidental issues shall not be admitted, and in verbal procedure, once the evidence proposed is admitted.

2. In the procedural court order, which shall give the succinct reasons for admitting the posing of the issue, it shall be decided whether the issue must be considered beforehand or by special pronouncement, and, in the former case, the ordinary course of procedure shall be suspended.

3. The Court Clerk shall transfer the draft with the issue to the other parties, who may respond as they deem appropriate within a time limit of five days and, once this time limit has elapsed, the Court Clerk shall summon the parties to appear before the court, stating the day and time for the hearing which shall be held in accordance with the provisions for hearings in oral trials.

4. Once the allegations have been formulated and, as appropriate, the evidence which is admitted at the same hearing has been examined, if the

[227] Paragraph 3 worded in accordance with Act 13/2009, of 3 November.

question involves a previous pronouncement, within a time limit of ten days, a court order shall be issued with a decision on the issue and providing what is appropriate as regards the continuation of the proceedings.

If the question involves a special pronouncement, it shall be decided, duly separated, in the final judgement.

5. When the issue is decided through a court order, and the decision is to terminate the proceedings, an appeal may be lodged, and, if the decision is that the proceedings shall continue, there shall be no appeal, notwithstanding the fact that the party damaged may challenge the decision and appeal the final judgement.

CHAPTER VIII

ON ORDERS TO PAY COSTS

Article 394. *Orders to pay costs in the first instance.*

1. In declaratory proceedings, the costs in the first instance shall be imposed on the party who has had his pleas rejected unless the court considers and reasons that the case may pose serious de facto or de iure doubts.

For the purposes of ordering a party to pay costs, in order to verify that the case is legally doubtful, the jurisprudence of similar cases shall be taken into account.

2. If the upholding or dismissal of the pleas is partial, each party shall pay the costs involved in his proceedings and the common costs shall be shared equally, unless there are reasons to impose the costs on one of these as he litigated recklessly.

3. In application of the provisions in paragraph 1 of this article, when the costs are imposed on the litigant who has lost the case, only he shall be obliged to pay the full amount of the part which corresponds to the attorneys and other professionals who are not subjects to rates or dues, which shall not exceed one third of the cost of the proceedings, for each of the litigants in this situation. Solely for such effects, the pleas which cannot be estimated shall be valued at €18000, unless, due to the complexity of the case, the court decides otherwise.

The provisions in the preceding paragraph shall not apply when the court declares the recklessness of the litigant ordered to pay costs.

When the party ordered to pay costs is the holder of the right to free legal assistance, he shall only be obliged to pay the costs arising in defence of the counter-party in the cases expressly stated in the Free Legal Assistance Act.

4. In no case shall the costs of the Public Prosecution Service be imposed in the proceedings where this Service intervenes as a party.

Article 395. *Orders to pay costs in cases of acceptance of a claim.*[228]

1. If the defendant accepts the claim before responding, there shall be no imposition of costs unless the court duly reasons the matter and observes bad faith in the defendant.

In any case, it shall be understood that there is bad faith if, before the claim is filed, an irrefutable and justifiable requirement for payment is served on the defendant, or if mediation proceedings have been initiated or a request for reconciliation has been brought against them.

2. If the acceptance of claim occurs after the response to the claim, paragraph 1 of the preceding article shall apply.

Article 396. *Orders to pay costs when the proceedings terminate in abandonment.*

1. If the proceedings terminate due to abandonment by the claimant, and the defendant does not consent, the claimant shall be ordered to pay all the costs.

2. If the abandonment which terminated the proceedings is consented by the defendant or the defendants, none of the litigants shall be ordered to pay costs.

Article 397. *Appeals concerning costs.*

The provisions in Article 394 shall apply in order to decide remedies to appeal in the second instance, which shall challenge the order or the absence of an order to pay the costs of the first instance.

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[228] Paragraph 1 is amended by final provision 3.2 of Law 15/2015, of 2 July.

Paragraph 1(2) amended by final provision 3.9 of Law 5/2012 of 6 July.

Article 398. *Costs in appeal, extraordinary appeal for breach of procedure and cassation.*

1. When all the pleas for a remedy of appeal, extraordinary appeal for breach of procedure or cassation are dismissed, Article 394 shall apply with regard to the costs of the appeal.

2. In the event that a remedy of appeal, recourse to appeal for breach of procedure or cassation is upheld either in full or in part, none of the litigants shall be ordered to pay the costs of such appeals.

TITLE II

ON DECLARATORY ACTIONS

CHAPTER ONE

ON THE INITIAL ALLEGATIONS

Section 1. On the claim and its purpose

Article 399. *The claim and its content.*

1. The proceedings shall begin with a claim in which, once the identification data and circumstances of the claimant and the defendant and the address or place of residence where they can be ordered to attend are consigned pursuant to Article 155, the facts and the grounds in law shall be put forward numbered and separately, and what is requested shall be established clearly and with precision.

2. Together with the designation of the claimant, mention shall be made of the names and surnames of the court representative and the attorney, when these intervene.

3. The facts shall be narrated in an orderly and clear manner in order to facilitate their admission or rejection by the defendant when he replies. The documents, means and instruments which are provided in relation to the facts on which the pleas are based shall be stated with the same order and clarity and, finally, evaluations or reasoning shall be formulated regarding these if this appears to be advisable for the rights of the litigant.

4. In fundamental points of law, besides those which refer to the grounds of the case in question, the proper allegations on the capacity of the

parties, their representation or that of the court representative, jurisdiction, competence and type of proceedings in which the claim must be substantiated shall be included, with the proper separation, as well as any other facts on which the validity of the proceedings and the correctness of the judgement on the grounds of the case might depend.

5. In the petition, when several judicial rulings are sought, these shall be stated duly separated. Petitions formulated subsidiarily in case the main petitions are dismissed, shall be recorded in order and separately.

Article 400. *Final deadline for the allegation of facts and legal grounds.*

1. When what is requested in the claim may be based on several facts or on different legal grounds or entitlements, the claim must include all those which are known or may be invoked when the claim is lodged, and it is not admissible to reserve an allegation for subsequent proceedings.

The burden of the allegation referred to in the preceding paragraph shall be understood notwithstanding any additional allegations or new facts or news permitted under this Act at times subsequent to the claim and the defence.

2. In accordance with the provisions in the preceding paragraph, for the purposes of lis pendens and res judicata, the legal facts and the grounds put forward in a lawsuit shall be considered to be the same as those alleged in previous proceedings, if this was possible.

Article 401. *The precluding time for the joinder of actions. Objective and subjective extension of the claim.*

1. A joinder of actions shall not be permitted after the claim has been answered.

2. Before the answer, the claim may be extended in order to accrue actions other than those lodged or these may be directed against other defendants. In this case, the time limit for answering the claim shall count from the time notice was served of the extension of the claim.

Article 402. *Opposition to the joinder of actions.*

The defendant may oppose the intended joinder of actions in the statement of defence when this is not in consonance with the provisions in Articles 71 et seq. herein. This opposition shall be resolved in a pre-trial hearing.

Article 403. *Admission and exceptional cases of non-admission of the claim*[229]

1. Claims shall not be admitted only in the cases and for the reasons expressly stipulated herein.

2. Claims shall not be admitted when the documents which the law expressly requires for their admission are not attached or attempts at reconciliation have not been made or the demands, claims or deposits required in special cases have not been made.

Article 404. *Admission of the claim, order to the defendant to attend and time limit for the defence.*[230]

1. Having examined the claim, the Court Clerk shall issue an order admitting the claim and shall give notice of this to the defendant so that he might respond within a time limit of twenty days.

2. However, the Court Clerk shall notify the court so that it might decide on the admission in the following cases:

1. when it considers that there is a lack of jurisdiction or competence of the court or

2. when the claim has formal defects and these have not been rectified by the claimant within the time limit granted for this by the Court Clerk.

3. In proceedings in which Articles 81 and 82 of the European Community Treaty apply or Articles 1 and 2 of the Defence of Free Competition Act apply, the Court Clerk shall give notice of the decision to admit the claim to the National Free Competition Commission within the time limit stipulated in the first paragraph.

Section 2. On the statement of defence and the counterclaim

Article 405. *Statement of defence and the manner of the statement of defence.*[231]

1. In the statement of defence, which shall be drafted in the manner set forth in Article 399, the defendant shall put forward the grounds for his

[229] Amended by final provision 4.11 of Law 7/2015 of 21 July.

[230] Article worded in accordance with Act 13/2009 of 3 November.

[231] Paragraph 4 added by Act 13/2009, of 3 November.

opposition to the claimant's pleas, alleging the material exceptions which he considers convenient. If the joinder of actions is considered to be inadmissible, he shall state this, expressing the reasons for this inadmissibility. He may also state in his statement of defence his acceptance of the claim as regards one or some of the pleas of the claimant, as well as his acceptance of part of a single plea put forward.

2. In the statement of defence, the facts put forward by the claimant shall have to be denied or admitted. The court may consider silence or the evasive responses of the defendant as tacit admission of the facts which might be damaging to him.

3. In the statement of defence, the defendant shall also have to put forward the procedural exceptions and the other allegations which show the obstacles to the valid processing and termination of the proceedings through a judgement on the grounds of the case.

4. As regards the rectification of possible defects in the drafting of the statement of defence, the provisions in sub-paragraph 2 of paragraph 2 of the preceding article shall apply.

Article 406. *Content and manner of the counterclaim. Inadmissibility of the counterclaim not connected to the claim and the implicit counterclaim.*

1. On responding to the claim through a counterclaim, the defendant may formulate the plea or pleas which he believes are within his competence in relation to the claimant. A counterclaim shall only be admitted if there is a connection between his pleas and those which are the subject of the main claim.

2. A counterclaim shall not be admitted when the court lacks objective jurisdiction due to the matter or the amount or when the action which is brought must be dealt with in proceedings of a different type or nature.

However, a connected action may be brought through a counterclaim when, due to the amount, it must be dealt with in an oral trial.

3. A counterclaim shall be proposed after the defence and shall be in consonance with what is established for the claim in Article 399. A counterclaim must clearly state the specific judicial protection it is intended to obtain with regard to the claimant and, as appropriate, with regard to other parties. In no case shall a counterclaim be considered as formulated

in the draft of the defendant which finalises by seeking his acquittal as regards the plea or pleas of the main claim.

4. The provisions for the claim set forth in Article 400 shall apply to the counterclaim.

Article 407. *Recipients of the counterclaim. Answer to the counterclaim.*

1. The counterclaim may also be brought against non-claimants, as long they can be considered as the voluntary or necessary joint litigants of the claimant against whom the counterclaim was filed due to their relationship with the counterclaim's matter at issue.

2. The claimant against whom the counterclaim is filed and the individuals set forth in the preceding paragraph may file an answer to the counterclaim within twenty days from the date on which notice of the counterclaim is served. Such defence shall be in accordance with the provisions set forth in Article 405.

Article 408. *Procedural treatment of pleas for compensation and for the nullity of the legal dealings upon which the claim is grounded. Res judicata.*[232]

1. Should the defendant allege the existence of credit that may be offset against the claimant's plea for an order involving the payment of an amount of money, such plea may be contested by the claimant in the manner set forth for filing a defence to the counterclaim, even where the defendant should solely seek his absolution and not an order for the balance that may turn out to be in his favour.

2. Should the defendant allege in his defence facts that would lead to the total nullity of the dealings upon which the claimant's plea or pleas are grounded and should the claim have taken the validity of such dealings for granted, the claimant may request the Court Clerk to respond to the aforementioned plea for nullity within the same time limit for filing an answer to the counterclaim, and the Court Clerk shall do so by means of a decision.

3. The judgement that may definitively be issued shall rule on the points referred to in the preceding paragraphs of this Article and the decisions the judgement may contain on such points shall have the force of res judicata.

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[232] Section 2 worded in accordance with Act 13/2009, of 3 November.

Article 409. *Conducting and deciding on the pleas contained in the defence and the counterclaim.*

Any pleas the defendant may set forth in the defence and, as appropriate, in the counterclaim shall be conducted and decided upon at the same time and in the same manner as the pleas contained in the main claim.

Section 3. On the effects of lis pendens

Article 410. *Commencement of lis pendens.*

Lis pendens along with all its procedural effects shall come about from the moment the claim is brought, should it then be given leave to proceed.

Article 411. *Perpetuation of jurisdiction.*

Any changes that may come about to the parties' domiciles, the situation of the matter at issue and the purpose of the trial once the proceedings have been initiated shall not lead to a change in jurisdiction or competence, which shall be determined according to whatever may have been established at the initial moment of lis pendens.

Article 412. *Prohibition of changes in the claim and admissible amendments.*

1. Once the matter at issue of the proceedings has been established in the claim, in the defence of claim or, as appropriate, in the counterclaim, the parties may not subsequently change it.

2. The provision set forth in the preceding paragraph shall be construed to be notwithstanding the entitlement to enter additional pleas under the terms set forth herein.

Article 413. *Influence of a change of circumstances in the judgement on the grounds. Out-of-court satisfaction. Loss of legitimate interest.*

1. Any changes the parties or third parties may introduce to the state of affairs or to the persons that gave rise to the claim and, as appropriate, the counterclaim once the trail has commenced shall not be taken into account in the judgement, except where such changes should definitively lead to a loss of legitimate interest of the pleas contained in the claim or in the counterclaim as a result of such pleas having been satisfied outside the court or due to any other reason whatsoever.

2. Where pleas have been left without a legitimate interest in accordance with the provisions set forth in the preceding paragraph, those set forth in Article 22 shall apply.

CHAPTER II

ON THE PRELIMINARY HEARING BEFORE THE TRIAL

Article 414. *Purpose, procedural stage and individuals involved at the hearing.*[233]

1. Once the defence to the claim or, as appropriate, the counterclaim has been filed or the corresponding time limits have elapsed, the Court Clerk shall summon the parties within three days to a hearing, which shall be held within twenty days from the date it is called.

If they had not been informed beforehand, the parties shall be informed in the summons of the possibility of recurring to negotiations in an effort to resolve the dispute, including the recourse to mediation, in which case the parties shall inform about their decision in this regard and the reasons thereof at the hearing.

The hearing shall be conducted in accordance with the provisions set forth in the following articles in order to attempt to reach an agreement or settlement between the parties which brings the proceedings to an end, to examine any procedural issues that may hinder the course of the proceedings and their termination through a judgment on the matter at issue, to establish such matter accurately along with any facts and legal details in dispute among the parties and, as appropriate, to propose and admit evidence.

Depending on the matter at issue in the proceedings, the court may invite the parties to attempt to reach an agreement which brings the proceedings to an end through a mediation procedure, urging them to attend an informative session.

2. The parties shall appear at the hearing with the assistance of their attorneys.

Where the parties do not attend in person but do so through their court representative, they shall grant powers of attorney to the latter to waive,

[233] Paragraph 1 amended by final provision 3.10 of Law 5/2012 of 6 July.

acquiesce or reach a settlement for the purposes of attempting to reach an agreement or settlement. Should they neither appear in person nor grant such power of attorney, they shall be construed to have failed to appear at the hearing.

3. Should neither party appear at the hearing, a certificate recording such fact shall be drawn up and the court shall issue a court order without further ado dismissing the proceedings, ordering the case to be shelved.

The proceedings shall also be dismissed should only the defendant appear at the hearing and fail to enter a plea of legitimate interest in continuing with the proceedings so that a judgement on their grounds may be issued. Should it be the defendant who fails to appear, the hearing shall be held with the claimant to deal with any matters that may turn out to be appropriate.

4. Should the claimant's attorney fail to appear at the hearing, the proceedings shall be dismissed, except where the defendant should enter a plea of legitimate interest in continuing with the proceedings so that a judgement on their grounds may be issued. Should the defendant's attorney fail to appear, the hearing shall be held with the claimant to deal with any matters that may turn out to be appropriate.

Article 415. *Attempt at conciliation or settlement. Dismissal due to abandonment by the parties. Validation and effectiveness of the agreement.*[234]

1. Once the parties have appeared, the court shall declare the hearing open and verify if the dispute between them persists.

Should the parties state they have reached an agreement, or show they are ready to do so immediately, they may abandon the proceedings and seek the court's validation of the matters agreed upon.

The parties may also jointly request a stay of the proceedings in accordance with the provisions of paragraph 4 of article 19 in order to submit to mediation.

In this case, the court shall previously verify that the requirements have been met regarding the legal capacity and power of disposition of the

[234] Paragraph 1 is amended by single article 47 of Law 42/2015, of 5 October.
Paragraphs 1 and 3 amended by final provision 3.11 of Law 5/2012 of 6 July.

parties, or their duly accredited legal representatives, attending the hearing.

2. The agreement validated by the court shall have the effects granted by the law to court settlements and may be put into effect through the procedures laid down to execute judgments and court-approved agreements. Such agreement may be contested on the basis of the causes and in the manner laid down for court settlements.

3. Should the parties fail to reach agreement, or show they are unwilling to do so immediately, the hearing shall proceed in accordance with the articles below.

Where the proceedings have been stayed in order to resort to mediation, either of the parties may request the stay to be lifted and a date to be set for the hearing to continue once the mediation procedure has come to an end.

Article 416. *Examination of and decision on procedural issues, exclusion of issues concerning jurisdiction and competence.*

1. Once an agreement between the parties has been discarded, the court shall issue a decision on any circumstances which may impede the proceedings from being validly conducted and brought to an end through a judgement on their grounds and, in particular, on the following:

a) The litigants' lack of capacity or representation of several kinds;

b) Res judicata or lis pendens;

c) Lack of due joint litigation;

d) Inappropriateness of the proceedings;

e) Legal defect in the way the claim or, as appropriate, the counterclaim has been filed due to a lack of clarity or accuracy with regard to determining the parties or the plea to be deduced.

2. The defendant may not plead the court's lack of jurisdiction or competence at the hearing, which shall be done by means of a declinatory plea in accordance with Articles 63 and the following herein.

The provision set forth in the preceding paragraph shall be construed to be notwithstanding the court appreciating its lack of jurisdiction or competence on an ex officio basis in accordance with the provisions laid down by the law.

Article 417. *Order to examine procedural issues and decision on them.*

1. Where the hearing should deal with several of the circumstances referred to in the preceding article, they shall be decided in the order in which they appear in the following articles.

2. Where the hearing should deal with one or more of the issues and circumstances set forth in the preceding article, the court shall decide in the same court order on all of them which may have been raised and have not been resolved orally at such hearing in accordance with the following article within five days.

Article 418. *Defects of capacity or representation. Effects of not rectifying or correcting such defects. Declaring default.*

1. Where the defendant has alleged in the defence of claim defects of capacity or representation which are rectifiable or susceptible to correction or the claimant should do the same at the hearing, such defects may be rectified or corrected at the hearing and, should it not be possible at that moment, a time limit not exceeding ten days to do so shall be granted. In the meantime, the hearing shall be adjourned.

2. Where the defect or fault is neither rectifiable nor may be corrected, or should they fail to be corrected within the time limit granted, the hearing shall be construed to have come to an end and a decision bringing the proceedings to an end shall be issued, except for the provisions set forth in the following paragraph of this article.

3. Should an uncorrected defect prevent the defendant from properly making an appearance, he shall be declared to be in default without any of the procedures that have been conducted being entered in the records.

Article 419. *Admission of a joinder of actions.*

Once the issues of capacity and representation have been raised and resolved as appropriate, the court shall orally take a decision on the appropriateness and admissibility of joinder should the claim have joined several actions and the defendant has contested such joinder in his defence of claim stating his grounds after first hearing the claimant at the same hearing. The hearing and the proceedings shall then follow their course with regard to the action or actions that may constitute the proceedings' matter at issue according to the court's decision.

Article 420. *Potential voluntary integration of legal action. Decision in cases of necessary joint litigation in dispute.*[235]

1. Where the defendant may have entered a plea alleging a lack of due joint litigation in the defence of claim, the claimant may file a written statement and its corresponding copies at the hearing bringing the claim against the subjects the defendant considers should have been his joint litigants. Should the court deem such joint litigation appropriate, it shall so declare and order the new defendants to be summoned so that they may defend the claim and the hearing shall be adjourned.

Upon bringing the claim against the joint litigants, the claimant may only add pleas to those contained in the initial claim which are essential to justify the pleas made against the new defendants without substantially altering the basis of the claim.

2. Should the claimant contest the lack of joint litigation raised by the defendant, the court shall hear the parties on this point and, where the difficulty or complexity of the issue may so suggest, it may issue a decision through a court order, which shall be issued within five days from the date the hearing is held. In any event, the hearing shall continue dealing with its other aims.

3. Should the court deem joint litigation appropriate, it shall grant the claimant the time limit it may consider appropriate to constitute it, which may not be less than ten days. The new defendants may file an answer to the claim within the time limit set forth in Article 404, and in the meantime the course of the proceedings shall be stayed for both the claimant and the defendant.

4. Once the time limit granted to the claimant to constitute joint litigation has elapsed without the claimant having provided copies of the claim and attached documents to the new defendants, the proceedings shall be brought to an end by means of a court order and the procedures shall be definitively shelved.

Article 421. *Decision in cases of lis pendens or res judicata.*

1. Should the court find that another trial is pending or the existence of a final and unassailable judgement on an identical matter at issue pursuant

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[235] Paragraph 4 worded in accordance with Act 13/2009 of 3 November.

to the provisions set forth in paragraphs 2 and 3, Article 222, it shall bring the hearing to an end and issue a court order for dismissal within five days.

Nonetheless, the proceedings shall not be dismissed should the effect of a prior final and unassailable judgement have to be binding for the court dealing with the subsequent trial, pursuant to paragraph 4, Article 222.

2. Should the court deem lis pendens or res judicata to be non-existent, it shall so declare, stating its grounds, at the hearing and decide that it shall continue to deal with its other aims.

3. Notwithstanding the provisions set forth in the preceding paragraphs, where the difficulty or complexity of the issues raised on lis pendens or res judicata should so suggest, the court may also take a decision on such issues by means of a court order within five days from the date of the hearing, which shall in any event continue to deal with its other aims. Should it be necessary to issue a decision on any matters of fact, the relevant procedures ordered by the court shall be conducted within the aforementioned time limit.

Article 422. *Decision in cases of the proceedings' inappropriateness due to reasons of amount.*[236]

1. Should a plea on the inappropriateness of the proceedings set forth in the defence to the claim be grounded on a dispute concerning the amount of the matter at issue or manner of calculating the claim's amount according to legal rules, the court shall hear the parties at the hearing and decide in such hearing on whatever may be appropriate, taking into consideration in such a case any agreement the parties may have reached regarding the value of the matter at issue.

2. Should no agreement be reached regarding the matter at issue, the court shall decide orally on whatever may be appropriate at the same hearing, stating its grounds and taking into consideration any documents, reports and any other useful elements which the parties may have submitted to calculate such value.

Should following the procedures of an oral trial be appropriate, the Judge shall bring the hearing to an end and proceed to set a date to hold such trial, except where the claim may have been brought after the expiry

[236] Section 2 worded in accordance with Act 13/2009, of 3 November.

deadline for the matter at issue as laid down by the law. In such a case, the Judge shall declare proceedings' dismissal.

Wherever setting a date for the trial may be done at the same hearing, it shall be done by the Judge, taking into account the needs of the schedule of dates set and the other circumstances set forth in Article 182.4.

In all other cases, it shall be set by the Court Clerk pursuant to the provisions set forth in Article 182.

Article 423. *Decision in cases of the proceedings' inappropriateness due to the matter at issue.*[237]

1. Should a plea on the inappropriateness of the proceedings be grounded on the proceedings corresponding to the matter at issue not being followed, the court shall issue a decision at the hearing on whatever it may deem appropriate after hearing the parties. Should it deem the plea groundless, the hearing shall proceed to deal with its other aims.

2. Should the complexity of the matter so suggest, the court may also issue a decision on whatever may be appropriate within five days of the hearing, which shall in any event proceed to deal with its other aims.

3. Should the appropriate proceedings be an oral trial, the court shall order the Court Clerk to summon the parties for the hearing, except where the claim may have been brought after the expiry deadline for reasons of the matter at issue as laid down by the law. In such a case, the proceedings' dismissal shall be declared.

The Court shall also order the proceedings' dismissal should the special requirements to give the claim leave to proceed laid down by the laws due to reasons of the matter at issue not have been met.

Article 424. *Procedures and decision in the event of a defective claim.*

1. Should the defendant allege in the defence to the claim a lack of clarity or accuracy in the claim to determine the parties or the pleas deduced thereof, or should the claimant allege at the hearing the same defects in the defence to the claim or in the counterclaim, or should the court appreciate one or other on an ex officio basis, the court shall allow the relevant clarifications and explanations to be made at the hearing.

[237] Paragraph 3 worded in accordance with Act 13/2009 of 3 November.

2. Should such clarifications and explanations not be put forward, the court shall solely decide on the case's dismissal if it is totally impossible to determine what the claimant's pleas consist of or, as appropriate, what the defendant's pleas in the counterclaim are, or against which legal persons the pleas are being brought.

Article 425. *Court's decision in the event of procedural circumstances analogous to the ones expressly set forth.*

Any decisions on circumstances alleged or revealed on an ex officio basis, which are not included under Article 416, shall be in keeping with the rules set forth in these provisions for analogous circumstances.

Article 426. *Additional and clarifying pleas. Additional pleas. Facts occurring or known subsequent to the claim and the defence of claim. Filing of documents on such matters.*

1. The litigants may make additional pleas at the hearing with regard to whatever may have been stated by the other party without substantially changing their pleas or the grounds thereof as set forth in their written statements.

2. The parties may also clarify any pleas they have filed and rectify secondary details thereof, as long as such pleas or their grounds are not changed.

3. Should a party wish to add an additional or complementary plea to the pleas set forth in their written statement, such addition shall be given leave to proceed if the other party is in agreement. Should the other party contest it, the court shall decide on the addition's admissibility, which shall only be granted should the court deem that it being raised at the hearing does not harm the other party's right to exercise its defence under equal conditions.

4. Should a relevant fact to ground the parties' pleas come about after the claim or the counterclaim or should the parties become aware of a prior fact of such nature, they may allege such fact at the hearing.

The provisions set forth in paragraph 4, Article 286 shall apply to any allegations concerning a new fact or new knowledge thereof.

5. The parties may submit documents and opinions at the hearing that can be justified on the basis of the additional pleas, rectifications, petitions, additions and new facts referred to in the preceding paragraphs of this article.

The provisions set forth in Articles 267 and 268 herein shall apply to the submission of such documents on the basis of their classes.

6. The court may also require the parties to make clarifications or provide necessary details on the facts and arguments contained in their written statements of claim or defence. Should they fail to make such clarifications or provide such details, the court shall warn them that it may deem them to be in agreement with the facts and arguments put forward by the other party.

Article 427. *Stance of the parties with regard to documents and opinions submitted.*

1. At the hearing, each party shall set forth its stance with regard to the documents submitted by the other party up to that moment, stating whether they admit or recognise them or whether, as appropriate, they propose the taking of evidence on their authenticity.

2. Should it be the case, the parties shall state whatever may be conducive to their rights with regard to the experts' opinions submitted up to that point, admitting them, contradicting them or proposing they be extended to cover any points they may deem necessary. They shall also set forth their stance on whatever may have been submitted under item 5, paragraph 1, Article 265.

3. Should the allegations or pleas referred to in the first three paragraphs of Article 426 give rise to all or any of the parties needing to file any expert's opinion in the proceedings, they may do so within the time limit set forth in paragraph 2, Article 338.

4. In the same case as set forth in the preceding paragraph, the parties attending the hearing may seek at such hearing the appointment by the court of an expert to issue an opinion instead of submitting the opinion of an expert they have freely chosen. Such application shall be decided upon in accordance with the provisions set forth in the Section 5, Chapter VI, Title I of Book II herein.

Article 428. *Establishing the facts at issue and possible immediate judgement.*

1. The hearing shall continue, so that the parties or their attorneys may establish along with the court the facts about which the litigants may be in agreement or disagreement.

2. In view of the matter at issue, the court may urge the parties or their representatives and attorneys to come to an agreement to bring the dispute to an end. Should it be the case, the agreement set forth in Article 415 herein shall apply.

3. Should the parties fail to bring the dispute to an end through an agreement pursuant to the preceding paragraph whilst being in agreement with regard to all the facts and the dispute is reduced to a legal issue or issues, the court shall issue a judgement within twenty days counting from the date following the end of the hearing.

Article 429. *Proposing and admitting evidence. Setting a hearing date.*[238]

1. Should there neither be agreement between the parties to bring the dispute to an end nor an agreement on the facts, the hearing shall continue in order to propose and admit evidence.

Evidence will be proposed orally, without prejudice to the obligation on the parties to provide details of it in a written act, which may be completed during the hearing. Failure to submit this writ will not give rise to non-admission of the evidence, but will be conditional on its submission within the following ten days.

Where the court deems that the evidence put forward by the parties could turn out to be insufficient to clarify the facts at issue, it shall inform the parties thereof, stating the fact or facts at issue which, in the court's opinion, could be affected by insufficient evidence. Upon making such statement, the court may also point out the evidence which it may deem appropriate, taking into consideration the probative elements whose existence is reflected in the records.

In the case referred to in the preceding paragraph, the parties may complete or amend their proposals of evidence in the light of the court's statement.

2. Once relevant and useful evidence has been admitted, the date of the hearing shall be set, which must be held within one month of the end of the hearing.

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[238] Paragraph 1 is amended by single article 48 of Law 42/2015, of 5 October.
Paragraphs 2, 3 and 7 of this article have been worded in accordance with Act 13/ 2009 of 3 November .

Wherever such date may be set at the same hearing it shall be set by the Judge, taking into account the needs of the schedule of dates set and the other circumstances set out in Article 182.4.

In all other cases, it shall be set by the Clerk of the Court in accordance with the provisions of Article 182.

3. Where all the evidence, or a large part of it, has been taken outside the premises of the Court dealing with the proceedings, the Court may, at the request of a party, agree that the Clerk of the Court set the date for the hearing within a period of two months.

4. Any evidence which is not taken at the hearing shall be taken prior to it.

5. The parties shall indicate which witnesses and experts they undertake to bring to the hearing and which witnesses and experts the court shall have to summon. The summons to attend shall be agreed upon at the hearing and shall be served sufficiently in advance.

The parties shall also indicate which statements and questioning they consider should be performed using judicial assistance. The court shall decide on whatever may be appropriate in this regard and, should it deem judicial assistance necessary, the court shall agree to send the necessary letters rogatory, granting the parties a time limit of three days to submit a list of questions, should this be necessary. In any event, the hearing shall not be suspended should such letters rogatory not be answered.

6. It shall not be necessary to summon any parties that may have appeared at the preliminary hearing personally or through their procurator.

7. Exceptionally, where it can be foreseen that the hearing cannot end in single session on the date set due to the evidence admitted, the summons shall indicate such fact, state its grounds and indicate whether the subsequent session or sessions shall take place on the immediately following day or days or on other dates, which shall be set by the Clerk of the Court. In any event, the time at which the hearing's sessions shall begin shall always be indicated.

8. Where the only evidence that has been admitted consists of documents and these have already been filed in the proceedings without being contested, or where experts' reports have been filed and neither the parties nor the court have requested the experts' presence at the hearing to ratify their reports, the court shall proceed to issue a judgment within twenty

days after the hearing is brought to an end without holding a hearing beforehand.

Article 430. *Application to set a new date for the trial.*

Should anybody who has to attend the trial be unable to do so due to causes of force majeure or other similar reasons, they may seek a new trial date to be set. Such application shall be conducted and resolved in accordance with the provisions set forth in Article 183.

CHAPTER III

ON THE TRIAL

Article 431. *Purpose of the trial.*

The purpose of the trial shall be to examine the evidence given by the parties' testimony, the evidence given by the witnesses, contradictory oral experts' reports, examination of evidence by the court and, as appropriate, to reproduce words, images and sounds. Likewise, once the evidence has been taken at the trial, conclusions shall be drawn from it.

Article 432. *Appearance and failure to appear by the parties.*

1. Notwithstanding the personal interventions in any questioning that may have been admitted, the parties shall appear at the trial represented by their court representative and with the assistance of their attorney.

2. Should none of the parties appear, a certificate shall be drawn recording such fact and the court shall without further ado declare the case ready for judgement. Should only one of the parties appear, the trial shall be held.

Article 433. *Conducting the trial.*

1. The trial shall commence by taking the evidence admitted in accordance with the provisions set forth in Article 299 and the following. Nonetheless, should a violation of fundamental rights be or have been raised in the taking of any of the evidence, a decision on such matter shall first be issued.

Likewise, should any facts have occurred or have been known after the preliminary hearing, the parties shall be heard and the proposal and admission of evidence set forth in Article 286 shall be conducted before the evidence is taken.

2. Once the evidence has been taken, the parties shall orally state their conclusions on the facts at issue, setting them out in an orderly, clear and concise fashion as to whether, in their mind, the relevant facts have been or should be admitted and, as appropriate, proven or uncertain.

To such a purpose, they shall give a brief summary of the evidence taken with regard to such facts, referring in detail, as appropriate, to the trial's records. Should they construe that some fact should be taken as certain by virtue of an assumption, they shall state such assumption and ground their criteria. They may likewise allege whatever may result from the burden of proof of any facts they may consider doubtful.

Concerning the outcome of the evidence and the application of the rules on assumptions and on the burden of proof, each party shall commence by referring to the facts put forward to support their pleas and shall continue with the facts raised by the other party.

3. Once their conclusions on the facts at issue have been set forth, each party may inform about the legal arguments grounding their pleas, which may not be changed at that moment.

4. Should the court deem it has not been sufficiently informed about the case through the conclusions and reports set forth in the preceding paragraphs, it may give the floor to the parties as many times as it may deem suitable to be informed about any issues it may indicate.

CHAPTER IV

ON THE JUDGEMENT

Article 434. *Judgement.*[239]

1. The judgement shall be issued within twenty days following the end of the trial.

2. Should any final proceedings be agreed upon in accordance with the provisions set forth in the following articles within the time limit to issue a judgement, such time limit to issue judgement shall be suspended.

3. The time limit to issue judgement may be suspended in proceedings dealing with the application of Articles 81 and 82 of the Treaty establishing

[239] Number 3 added by Act 15/2007 of 3 July.

the European Community or Articles 1 and 2 of the Defence of Free Competition Act where the court is aware of the existence of administrative proceedings being conducted before the European Commission, the National Free Competition Commission or the competent bodies of the autonomous regions and knowing the decision issued by the administrative body is essential. Such suspension shall be adopted stating its grounds after hearing the parties, and notice thereof shall be given to the administrative body. Such administrative body shall in turn transfer its decision to the court.

Only an appeal for reversal may be lodged against such order for suspension.

Article 435. *Final proceedings. Appropriateness.*

1. The court may solely agree to the taking of evidence as final proceedings at the request of a party in accordance with the following rules:

a) The taking of evidence shall not be conducted as final proceedings if it could have been conducted in time and in the appropriate manner by the parties, including any evidence which may have been put forward after the court statement referred to in paragraph 1, Article 429.

b) Where any of the evidence admitted has not been taken for reasons not imputable to the party that may have proposed it.

c) The taking of new or newly known evidence that is useful and relevant, as referred to in Article 286, shall be admitted and taken.

2. Exceptionally, the court may, on an ex officio basis or at the request of a party, agree upon the taking of new evidence concerning relevant facts that have been alleged in a timely fashion if the evidence taken beforehand has not been conducive as a result of no longer existing circumstances which were independent of the will and diligence of the parties, as long as there are solid reasons to believe that the new procedures shall provide certainty regarding such facts.

In such a case, those circumstances and reasons and shall be set forth in detail in the court order agreeing to such final proceedings being conducted.

Article 436. *Time limit for the final proceedings. Subsequent judgement.*[240]

1. The proceedings agreed in accordance with the preceding articles shall be carried out within a time limit of twenty days and on the date indicated

[240] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

to this end, if necessary, by the Court Clerk, in the manner established in the law for the evidence of their kind. Once performed, the parties shall have five days in which to submit a brief summary and assessment of the result.

2. The time limit for the passing of judgement shall start to count again upon expiry of the time limit granted to the parties to submit the brief referred to in the preceding paragraph.

TITLE III

ON THE ORAL TRIAL

Article 437. *Method for claims. Joinder of claims and parties to actions.*[241]

1. The oral hearing will begin with the claim, with the content and form appropriate to an ordinary hearing, with provisions for such hearing in relation to dismissal of allegations and lis pendens also being applicable.

2. Nevertheless, in oral hearings where a procurator or lawyer does not appear, the claimant may make a concise claim, including the data and identification details of the claimant and defendant and the address or addresses where they may be summoned, and the claim will be made clearly and precisely detailing the fundamental facts on which the application is made.

For this purpose, standard forms may be completed which are available at the relevant judicial body.

3. If the claim seeks eviction from an urban property on the grounds of non-payment of the rents or amounts due to the lessor or the legal or contractual expiry of the term, the claimant may announce in the claim that he undertakes to condone all or part of the debt of the lessee and the costs, indicating the exact amount, conditional upon the voluntary abandonment of the property within the time limit specified by the lessor, which shall not be less than fifteen days from the day on which notice of the claim was served. Likewise, the claim may include a request to admit the application for enforcement of the eviction on the date and at the time to be specified by the Court for the purposes set out in paragraph 3 of Article 549.

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[241] Amended by single article 49 of Law 42/2015, of 5 October.

4. The joinder of claims in actions shall not be admitted at oral hearings, with the following exceptions:

(A) The joinder of actions based on the same facts, provided that the oral hearing is the proper procedure.

(B) The joinder of the action for compensation of damages with another action which may be prejudicial to the former.

(C) The joinder of actions claiming rents or similar amounts due and not paid when dealing with hearings for the eviction from a property on the grounds of non-payment or legal or contractual expiry of the term, regardless of the amount claimed. Likewise, actions may be joined if brought against the joint and several guarantor or bondsman after a prior request for payment which was not complied with.

(D) In separation, divorce or nullity proceedings and in those which have the purpose of bringing civil effect to ecclesiastical resolutions or decisions, either of the spouses may, simultaneously, take action to divide the communal object with regard to the goods that they have under ordinary communal undivided property. If there are various goods covered by the ordinary communal undivided property regime and one of the spouses requests it, the court may consider them as a whole for the purposes of forming lots or awarding the**m.**

5. Actions may be joined that are brought by one individual against several others or by several individuals against one other, as long as they comply with the requirements provided for in Article 72 and paragraph 1 of Article 73.

Article 438. *Admission of the claim and response. Counterclaim.*[242]

1. After examining the claim the Clerk of the Court shall admit it, by order, or notify it to the Court for the latter to decide as appropriate in the cases provided for in Article 404. Once the claim is admitted, this will be sent to the defendant so that they respond to it in writing within a period of ten days in accordance with the provisions for an ordinary hearing. If the defendant does not appear within the time limit granted they will be declared to be in default in accordance with article 496.

In cases where it is possible to act without a lawyer or procurator, this will be shown in the admission order and the defendant will be notified that there are standard forms available at the court which can be used to respond to the claim.

[242] Amended by single article 50 of Law 42/2015, of 5 October.

2. Under no circumstances shall a counterclaim be admitted in oral hearings which, under the law, must end with a judgment without the effects of res judicata.

In other oral hearings a counterclaim will be admitted as long as it does not make the oral hearing inadmissible and there exists a connection between the counterclaims and the claims which are the subject of the main claim. Once the counterclaim is admitted it will be governed by the rules provided for ordinary hearings, except for the time limit for the response which will be ten days.

3. In the response to the claim the defendant may put in for compensation and the provisions of article 408 shall apply. If the amount of such compensation is higher than the amount determining the decision to hold an oral hearing, the Court shall consider the allegation not to have been made and shall inform the defendant accordingly, so that they may avail themselves of their right before the court and in accordance with the appropriate procedures.

4. The defendant, in their response to the claim, must, of necessity, pronounce on the relevance of the hearing. The claimant will also pronounce on it, within a period of three days of the response to claim being sent. If neither of the parties request it and the court does not consider it appropriate to hold it, judgment will be passed with no further proceedings.

At any event, it will be sufficient that one of the parties requests it for the Clerk of the Court to set a date and time for it to be held within the following five days. Nevertheless, at any later time, prior to the hearing being held, any of the parties may retract their request in consideration that the dispute affects a matter or matters that are purely judicial. In this case, the other party will be notified and if, after a period of three days, no allegations are made or objection declared, the files will be conclusive to pass judgment if the court deems them to be such.

Article 439. *Dismissal of the claim as inadmissible in special cases.*[243]

1. No claims intended to retain or recover possession shall be admitted if they are lodged more than one year after the act of disturbance or dispossession.

[243] Paragraph 4 amended by Article 4.5 of Act 37/2011 of 10 October

2. In the cases referred to in number 7 of paragraph 1 of Article 250, the claims shall not be admitted in the following cases:

(i). If they fail to specify the measures deemed necessary to guarantee the efficacy of the judgement to be passed.

(ii). If, barring a waiver by the claimant, which he shall specify in the claim, the latter fails to indicate the security to be put up by the defendant in accordance with the second subparagraph of paragraph 2 of Article 64, if the said defendant appears and replies to answer for the proceeds received inappropriately by him, the damages he may have caused, and the costs of the trial.

(iii). If the claim is not accompanied by a literal certification of the Property Registry explicitly evidencing the validity, without any contradiction whatsoever, of the annotation legitimating the claimant.

3. No claims for eviction from an urban property on the grounds of failure to pay the rents or amounts due by the lessee shall be admitted unless the lessor indicates the existing circumstances that may, or may not, in the case at hand, allow the impairment of the eviction.

4. In the cases set forth in items (x) and (xi), paragraph 1 of Article 250, when the action brought is based on the breach of a moveable property hire purchase agreement, no claims shall be given leave to proceed if they are not accompanied by proof of the requirement for payment to the debtor, with a certification expressing the failure to pay and to deliver the asset, in accordance with the terms set forth in paragraph 2, Article 16 of the Moveable Property Hire Purchase Act, as well as a certificate of the inscription of the assets in the Moveable Property Higher Purchase Registry in the case of assets required to be entered in the said Registry. Where actions are exercised grounded on a breach of financial or moveable property leasing agreements, claims shall be dismissed which to do not include proof of a requirement for payment served on the debtor, along with a certification of the failure to pay or deliver the assets, under the terms laid down by paragraph 3 of the first additional provision of the Moveable Property Hire Purchase Act.

5. Nor shall the claims of oral trial be admitted if they fail to comply with any requirements of admissibility that the law may be established for special cases.

Article 440. *Summons to the hearing.*[244]

1. Once the claim and, as appropriate the counterclaim or claim for compensation, have been responded to, or once the relevant time limits have expired, the Clerk of the Court, where a hearing is to be held in accordance with the provisions of article 438, will summons the parties for that purpose within the following five days. The hearing must take place within a maximum of one month.

The summons will set the date and time when the hearing will be held and the parties shall be informed in the summons of the possibility of recurring to negotiations in an effort to resolve the dispute, including the recourse to mediation, in which case the parties shall notify their decision in this regard and the reasons for it at the hearing.

The summons shall specify that the hearing shall not be suspended if the defendant fails to attend and the litigants shall be advised that they must appear with the means of evidence they intend to use, cautioning them that, should they not attend and their statement is submitted and admitted, the facts of the examination shall be considered admitted in accordance with Article 304. Furthermore, both the claimant and the defendant shall be informed of the provisions of Article 442 in case they fail to appear at the hearing.

The summons shall also advise the parties that, within a time limit of five days following receipt of the summons, they shall specify the persons to be summoned to the hearing by the Clerk of the Court, as the parties cannot present them themselves, to declare as parties, witnesses or experts. To this end, they shall provide the particulars and circumstances required to carry out the summons. Within the same time limit of five days, the parties may request written replies drawn up by legal persons or public entities by means of the procedures established in Article 381.

2. In the cases of number (vii) of paragraph 1 of Article 250, in the summons for the hearing the defendant shall be cautioned that, should he fail to appear, judgment shall be passed ordering the procedures sought by the claimant for the effectiveness of the right on record. The defendant shall also be cautioned, as appropriate, that the same judgment shall be passed if they do appear at the hearing but fail to post a security in the amount to be decided by the Court having heard them, within the amount sought by the claimant.

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[244] Amended by single article 51 of Law 42/2015, of 5 October.

3. In the case of claims in which a plea for eviction is exercised due to a failure to pay rent or any amounts owed, whether or not they include a plea for their payment, the Clerk of the Court shall, once the claim has been given leave to proceed and prior to the hearing which has been set, require the defendant to vacate the property within ten days, pay the claimant or, should a plea to render the eviction ineffective be tendered, pay the entire amount owed or place the amount claimed at the claimant's disposal at the court or before a notary public, along with any other amounts they may owe at the moment such payment to render the eviction ineffective is made; or otherwise to appear before the Clerk of the Court, set out the defence to the claim and succinctly set out the reasons why, to their mind, they do not owe the amount claimed, wholly or in part, or the circumstances concerning the appropriateness of rendering the eviction ineffective.

If the claimant has stated acceptance of the undertaking referred to in paragraph 3 of Article 437 in his claim, it shall be set out in the notice and the acceptance of such undertaking shall be equivalent to an acceptance of claim for the purposes of Article 21.

Furthermore, the notice will set out the date and time set for the eventual hearing to take place in the event that the defendant opposes it, so that it serves as a summons and an eviction order in the event that there is no opposition. In addition, it will be stated that in the event that the defendant applies for free legal aid, they must do so within three days of the notice being presented, and lack of opposition to the injunction will presuppose that consent is given to termination of the lease contract that binds them to the lessor.

The notice will be served in the manner provided for in article 161 of this Act, taking in account the provisions of paragraph 3 of article 155 and the last paragraph of article 164, warning the defendant that, if none of the actions mentioned are carried out, immediate eviction will proceed, without the need for subsequent notification, along with the other matters included in the following paragraph of this article.

If the defendant does not comply with the payment order or does not appear to object or acquiesce, the Clerk of the Court will pass an order closing the eviction hearing and eviction will take place on the date fixed.

If the defendant complies with the order to leave the property without objection and without payment the amount claimed, the Clerk of the Court will record this and will pass an order terminating the proceedings, without the eviction order having effect, unless the it is in the interests of the

claimant to retain is so that a certificate may be issued regarding the state in which the property is to be found and sent to the claimant so that they may request an enforcement notice for the amount claimed and a mere request will be sufficient for this.

In the two preceding cases, the order terminating the eviction hearing will impose costs on the defendant and will include rent due which accrues after serving the claim up until the effective repossession of the property, taking the amount of the last monthly payment claimed on lodging the claim as the basis for calculating future rents. If the defendant files an opposition the hearing will be held on the date set.

4. In all cases of eviction, the defendant shall also be warned in the payment order served on them that, if they fail to appear at the hearing, the Court shall order the eviction without further ado and summons the defendant to receive the notice of the judgment on the sixth day after the date set for the hearing. Likewise, the decision passed given the opposition of the defendant shall set the date and time when the eviction shall, if appropriate, be carried out, which shall take place before thirty days have elapsed from the date of the hearing, with a warning to the defendant that, if judgment is against them and no appeal has been lodged, the eviction shall take place on the date set without the need for any subsequent notification.

Article 441. *Special cases in procedures prior to the oral hearing.*[245]

1. When a claim is lodged in the case of number (iii) or paragraph 1 of Article 250, the Clerk of the Court shall summon the witnesses proposed by the claimant and, in accordance with their statements, the Court shall issue a court order rejecting or granting the possession sought, notwithstanding a better right, and carry out the procedures it deems appropriate to this effect. The court order shall be published by means of public notices, which shall be put up in a visible place at the Court premises, in the “Official Bulletin” of the province and in one of the newspapers most widely distributed in the said province, at the expense of the claimant, requesting the interested parties to appear and to file a claim via a response to the claim, within a time limit of forty days, if they consider they have a better right than the claimant.

If none of the parties appear, possession will be granted to the claimant; however, in the event that claimants appear, having sent their writs to the

[245] Amended by single article 52 of Law 42/2015, of 5 October.

claimant, the Clerk of the Court will summons the latter, together with all the appearing parties, to a hearing and proceedings will follow in the manner provided for in the following articles.

2. If it is the intention of the claim to obtain a court order in summary proceedings for the suspension of a new construction work, the Court shall, even before sending it for a response to the claim, remit an immediate suspension order to the owner or the person in charge of the works, who shall be allowed to post a security to continue the works and to perform such works as are absolutely necessary to preserve that already built. The Court may issue an order for a judicial, expert or joint examination prior to the hearing.

The bond may be given in the form established in the second sub-paragraph of paragraph 2 of article 64.

3. In the cases of number (vii) of paragraph 1 of Article 250, as soon as the claim has been admitted, the Court shall adopt the measures requested that, in view of the circumstances, are required to guarantee at all events the compliance with the judgment to be passed in due time.

4. In the case of item (x), paragraph 1, Article 250, once the claim has been given leave to proceed, the court shall order the assets to be exhibited to their owner, with the warning of incurring in contempt of court and their immediate attachment, which shall be ensured by means of impoundment, pursuant to this Act. If legal actions are filed based on the breach of a financial leasing agreement, a moveable property leasing agreement or a hire purchase agreement with reservation of ownership pursuant to item (xi), paragraph 1 of Article 250, the court shall order the impounding of the assets whose delivery is claimed once the claim has been given leave to proceed. No security shall be requested from the claimant to adopt these precautionary measures nor shall any objection to the latter by the defendant be admitted. Nor shall applications for the modification or replacement of the measures by security be admitted.

In addition to the provisions of the preceding paragraph, the Clerk of the Court shall summon the defendant to appear at the procedure within a time limit of five days, represented by a procurator, in order to announce his response to the claim on any of the grounds provided for in paragraph 3 of Article 444. If the defendant allows the time limit to expire without responding to the claim or bases the latter on a ground not contemplated in paragraph 3 of Article 444, a judgment in favour of the claims of the claimant shall be passed without further ado.

If the defendant responds to the claim in accordance with the provisions of the preceding subparagraph, the Clerk of the Court shall summon the parties to appear at the hearing and if the defendant fails to appear without indicating a justified reason or appears but does not persist in their objection or bases the latter on grounds not contemplated in paragraph 3 of Article 444, a judgment in favour of the claims of the claimant shall be passed without further ado. In addition, in these cases a fine of up to one fifth of the value of the claim shall be imposed on the defendant, with a minimum of €180.

No appeal of any nature can be lodged against the judgment passed in the events of absence of objection referred to in the two preceding subparagraphs.

Article 442. *Non-attendance of the parties at the hearing.*[246]

1. If the claimant fails to attend the hearing and the defendant does not allege any legitimate interest in continuing the proceedings in order to pass judgment on the merits of the case, the former shall be deemed to have abandoned the claim then and there and shall be ordered to pay the costs incurred and to compensate the defendant present at the hearing, provided the latter so requests and justifies the damages incurred.

2. If the defendant does not appear, the hearing will be held.

Article 443. *Conduct of the hearing.*[247]

1. Once the parties have appeared, the court shall declare the hearing open and verify if the dispute between them persists.

Should the parties state they have reached an agreement, or show they are ready to do so immediately, they may abandon the proceedings and seek the court's validation of the matters agreed upon. The agreement validated by the court shall have the effects granted by the law to court settlements and may be put into effect through the procedures laid down to execute judgments and court-approved agreements. Such agreement may be contested on the basis of the causes and in the manner laid down for court settlements.

[246] Amended by single article 53 of Law 42/2015, of 5 October.

[247] Amended by single article 54 of Law 42/2015, of 5 October.

The parties may also jointly request a stay of the proceedings in accordance with the provisions of paragraph 4 of article 19 in order to submit to mediation. In this case, the court shall previously verify that the requirements have been met regarding the legal capacity and power of disposition of the parties, or of their duly accredited representatives, attending the hearing.

Where the proceedings have been stayed in order to resort to mediation, either of the parties may request the stay to be lifted and a date to be set for the hearing to continue once the mediation procedure has come to an end without reaching agreement. If agreement was reached between the parties in the mediation, they must notify the court so that it may order the proceedings to be filed, without prejudice to prior request for court validation.

2. If the parties did not reach agreement or were not disposed to reach it immediately, the court will decide on the circumstances that may prevent valid prosecution and termination of the process with a judgment on the grounds in accordance with articles 416 et seq.

3. If the procedural issues referred to in the preceding paragraphs did not arise or if, having been raised, the Court decides to continue the hearing, the parties shall be asked to address the Court to clarify and set out the facts where there is contradiction. If there is no agreement on all of them, evidence will be put forward and that which is admitted will be taken immediately.

The proposal of the evidence of the parties may be completed in accordance with the provisions of paragraph 1 of Article 429.

Article 444. *Special rules concerning the content of the hearing.*

1. When, in an oral trial, the recovery is claimed of a leased rural or urban property on the grounds of non-payment of the rent or an assimilated amount, the defendant shall only be allowed to allege and to prove the payment or the circumstances relating to the appropriateness of the impairment.

2. In the cases of number 7.º of paragraph 1 of Article 250, the defendant may only object to the claim if, where appropriate, he posts the security determined by the Court in any of the forms established in the second subparagraph of paragraph 2 of Article 64 herein.

The objection of the defendant may only be based on one of the following grounds:

(i). Misrepresentation in the certification of the Registry or omission therefrom of inscribed rights or conditions invalidating the action brought.

(ii). The possession of the property by the defendant or the enjoyment of a right negotiated by contract or any other direct legal relation with the last holder or with previous holders or by virtue of prescription, provided that the latter is to the detriment of the registered holder.

(iii). That the property or the right has been registered in favour of the defendant and the latter evidences the said registry by submitting a certification of the Property Registry proving the validity of the registration.

(iv). That the registered property is not the one actually in the possession of the defendant.

3. In cases numbers 10.º and 11.º of paragraph 1 of Article 250, the objection of the defendant may only be based on one of the following grounds:

a) Lack of jurisdiction or competence of the court.

b) Payments certified by documents.

c) non-existence or invalidity of his consent, including the forgery of the signature.

d) Misrepresentation of the document in which the contract has been executed.

Article 445. *Evidence and presumptions at oral trials.*

In relation to evidence and presumptions, oral trials shall be governed by the provisions of chapters V and VI of title I of this Book.

Article 446. *Decisions on evidence and appeals.*[248]

Only an appeal for reversal may be lodged against the court decisions on whether to admit or reject evidence, which must be substantiated and decided immediately, and, if it is dismissed, the party may formally protest in order to uphold their rights in the second instance.

[248] Amended by single article 55 of Law 42/2015, of 5 October.

Article 447. *Judgment. Absence of res judicata in special cases.*[249]

1. Once evidence has been taken, the court will give each party a turn to speak to make oral findings. The hearing will then terminate and the court will pass judgment within the following ten days. An exception are oral hearings requesting eviction from an urban property, in which case judgment shall be passed within the next five days and the parties shall be summoned at the hearing to appear at the Court premises in order to receive the notice, if they are not represented by a procurator or cannot do this by electronic means, which appearance shall take place on the nearest possible day within the five days following that of the judgment.

Notwithstanding the foregoing, in judgments based on the acceptance of the claim as referred to in paragraphs 3 of Articles 437 and 440, as a precaution against the lessee failing to vacate the property voluntarily within the established time limit, as a subsidiary measure a date and time shall be established on which, as appropriate, the direct eviction of the defendant shall take place, which shall be carried out, without further ado, within a time limit not exceeding 15 days from expiry of such voluntary period. Likewise, in judgments based on the defendant's failure to appear, the eviction shall be carried out on the established date without further ado.

2. Neither the judgments putting an end to oral hearings concerning the summary protection of the possession nor those deciding on the claim for eviction from or recovery of a rural or urban property granted on lease on the grounds of non-payment of the rent or lease or legal or contractual expiry of the term and other pleas for protection qualified as summary under this Act shall produce effects of res judicata.

3. The judgments passed in oral hearings claiming the effectiveness of registered rights in rem as against those objecting to them or impairing their exercise without availing of a registered title shall also lack the effects of res judicata.

4. Likewise, no effects of res judicata shall be produced by court decision which, pursuant to the laws, in certain specific cases, cannot have such effects.

[249] Amended by single article 56 of Law 42/2015, of 5 October.

TITLE IV

ON APPEALS

CHAPTER ONE

ON APPEALS: GENERAL PROVISIONS

Article 448. *The right to appeal.*[250]

1. The parties may lodge the appeals established by the law against the decisions of the Courts and Court Clerks adversely affecting them.

2. The time limits to appeal shall start to count as of the day following that of the notice of the decision subject of the appeal or, as appropriate, the notice of clarification or dismissal of the latter.

Article 449. *Right to appeal in special cases*[251]*.*

1. In proceedings involving eviction, the defendant shall not be allowed to lodge any remedy of appeal, whether extraordinary on the grounds of infringement of procedure or of cassation, should he fail to state and to produce written evidence that he has paid the rent due and that which he is bound to pay in advance under the contract upon lodging such appeals.

2. The remedies of appeal, both extraordinary on the grounds of infringement of procedure and of cassation, referred to in the preceding paragraph, shall be declared in default, regardless of their stage, if, during their performance, the appellant defendant fails to pay on the due date or on the dates he is bound to pay in advance. The tenant may pay in advance or deposit several periods not yet due, which shall be included in the settlement once the judgment has been declared final. In any event, the payment of the said amount shall not be construed as a novation of the contract.

3. In proceedings pleading a conviction to indemnify the damages caused by moving motor vehicles, the party ordered to pay compensation shall not be allowed to lodge any remedies of appeal, whether extraordinary on the basis of infringement of procedure or of cassation, if he fails to prove that he has posted a deposit covering the amount of the conviction increased by the interest and surcharges payable at the institution stated for that

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[250] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

[251] Amended by Article 4.8 of Act 37/2011 of 10 October.

purpose upon lodging the appeal. The said deposit shall not prevent, where appropriate, the provisional enforcement of the decision passed.

4. In proceedings claiming an order to pay the amounts owed by a homeowner to the community of residents, the convicted party shall not be allowed to lodge any remedies of appeal, whether extraordinary on the basis of infringement of procedure or of cassation, if he fails to prove that he has paid or deposited the net amount established in the verdict of guilty upon lodging the appeal. The deposit of the amount shall not prevent, where appropriate, the provisional enforcement of the decision passed.

5. The deposit or posting of funds laid down in the preceding paragraphs may also be made through a joint and several guarantee of indefinite duration payable on first request issued by a credit institution or a reciprocal guarantee company or by any other means which, in the opinion of the court, guarantees the immediate availability, as appropriate, of the amount thus posted or deposited.

6. In the cases stated in the preceding paragraphs, the provisions set forth in Article 231 shall apply with regard to proving compliance with requirements through documents before the appeals are dismissed or declared inconclusive.

Article 450. *On the abandonment of the appeals.*

1. Any appellant can abandon the appeal before the corresponding decision is issued.

2. If, in case there are several appellants, only one or some of them abandon the appeal, the decision appealed against shall not be declared final by virtue of the abandonment, but the pleas of contest corresponding exclusively to the parties who abandoned the appeals shall be deemed abandoned.

CHAPTER II

ON THE APPEALS FOR REVERSAL AND REVIEW[252]

Article 451. *Decisions subject to appeal for reversal. Non-existence of suspensory effects.*[253]

1. An appeal for reversal against the orders of the Court Clerk to move the proceedings forward and orders may be lodged with the Court Clerk who

[252] Section worded in accordance with Act 13/2009 of 3 November.

[253] Article worded in accordance with Act 13/2009 of 3 November.

issued the decision appealed against, except in the cases where the law establishes a direct appeal for judicial review.

2. An appeal for reversal may be lodged against all non-final court decisions and orders with the same Court that passed the decision appealed against.

3. The lodging of the appeal for reversal shall have no suspensive effects on the decision appealed against.

Article 452. *Time limit, form and inadmission of the appeal for reversal.*[254]

1. The appeal for reversal shall be lodged within a time limit of five days, indicating the infringement committed in the decision in the opinion of the appellant.

2. If the requirements established in the preceding paragraph are not complied with, the appeal for reversal against non-final procedural and other court orders shall be rejected by means of an order not subject to appeal, and the appeal for reversal lodged against the orders of the Court Clerk to move the proceedings forward and non-final court orders shall be rejected by an order subject to a direct appeal for review.

Article 453. *On the hearing of the apellees and the decision.*[255]

1. The Court Clerk having given leave to proceed with the appeal for reversal, the other parties of the proceedings shall be granted a common time limit of five days to contest the said appeal if they deem it convenient to do so.

2. Upon expiry of the time limit to contest and regardless of whether or not briefs have been submitted, the Court, in the case of an appeal for reversal lodged against court decisions or orders, or the Court Clerk if the contest has been lodged against orders of the Court Clerk to move the proceedings forward or orders, shall resolve without further proceedings by court order or order, respectively, within a time limit of five days.

Article 454. *Unappealable nature of the order resolving on the appeal for reversal against court rulings.*[256]

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[254] Article worded in accordance with Act 13/2009 of 3 November.

[255] Article worded in accordance with Act 13/2009 of 3 November.

[256] Section worded in accordance with Act 13/2009 of 3 November.

Except in the cases where the appeal of complaint is in order, no appeal of any nature shall be possible against the order resolving on the appeal for reversal, notwithstanding the possibility to reproduce the issue object of the appeal for reversal, as appropriate, in the final decision.

Article 454 bis. *Appeal for review.*[257]

1. No appeals whatsoever may be lodged against a ruling on appeals for judicial review, without prejudice to the issue necessarily arising again at the first hearing held before the court after the decision is taken and, should this not be possible due to the state of the proceedings, it may be sought by means of a written statement before the definitive decision is issued so that it may be resolved in such decision.

A direct appeal for judicial review may be lodged against the decisions putting an end to the procedure or preventing its continuation. The said appeal shall have no suspensory effects although it shall not be possible under any circumstances to act contrary to the decision adopted.

A direct appeal for judicial review may also be lodged against the orders in the cases where this possibility is explicitly established.

2. The appeal for judicial review shall be lodged within a time limit of five days by means of a bill of appeal which shall indicate the infringement committed in the decision. The above requirements having been complied with, the Court Clerk shall admit the appeal by means of an order to move the proceedings forward, granting the other parties of the proceedings a common time limit of five days to contest the appeal if they consider it convenient to do so.

If the requirements for the admissibility of the appeal are not met, the Court shall dismiss the appeal by procedural court order.

Upon expiry of the time limit to contest and regardless or whether or not briefs have been submitted, the Court shall have five days in which to reach a decision and issue a court order without further ado.

No appeal of any nature may be lodged against the decisions concerning the admission or dismissal.

[257] Paragraph 1 amended by Article 4.9 of Act 37/2011 of 10 October.
Article added by Act 13/2009 of 3 November.

3. A remedy of appeal against the order deciding on the appeal for review may only be lodged if the decision puts an end to the procedure or prevents its continuation.

CHAPTER III

ON THE REMEDY OF APPEAL AND THE SECOND INSTANCE

Section 1. On the remedy of appeal and the second instance: General provisions

Article 455. *Decisions subject to appeal by a remedy of appeal. Competence and fast-track procedure.*[258]

1. Appeals may be lodged against the judgments issued in all kinds of trials, definitive court orders and any others which the Law may set forth, apart from the judgments issued in oral trials for amounts below 3,000 euros.

2. The remedies of appeal shall be heard by:

(i). The Courts of First Instance, when the decisions subject to appeal have been issued by the Magistrates' Courts of their judicial district.

(ii). The Provincial Courts, when the decisions subject to appeal have been issued by the Courts of First Instance of their judicial district.

3. Preference shall be given to the remedies of appeal legally established against orders rejecting claims based on the failure to meet the requirements laid down by the law for special cases.

Article 456. *Scope and effects of the remedy of appeal.*

1. The reversal of a court order or judgement and the issuance of another in favour of the appellant may be sought through the remedy of appeal in keeping with the matters of fact and legal grounds set forth before the Court of First Instance by means of a new examination of the procedures conducted before such court in accordance with the evidence taken before the court of appeal in the cases set forth herein.

2. Appeals against judgements dismissing the claim and against court orders putting an end to proceedings shall lack suspensory effects and under no

[258] Paragraph 1 amended by Article 4.10 of Act 37/2011 of 10 October

circumstances may action contrary to whatever may have been decided upon be taken.

3. Any judgements upholding the claim against which the remedy of appeal is lodged shall have the efficacy set forth in Title II, Book III herein, on the basis of the nature and contents of their rulings.

Section 2. On the conduction of the appeal

Article 457. *Preparation of the appeal.*[259]

Without content.

Article 458. *Lodging the appeal.*[260]

1. The appeal shall be lodged before the court which has issued the decision being contested within twenty days counting from the date following that on which notice thereof was served.

2. When lodging the appeal, the appellant shall set forth the pleas upon which the challenge is based, the decision against which the appeal is being lodged and the decisions being contested.

3. Should the decision contested be subject to appeal and the appeal is lodged within the time limit, the Court Clerk shall have three days in which to deem that the appeal has been lodged. Otherwise the Court Clerk shall inform the court thereof, so that it may issue a decision on whether the appeal should be given leave to proceed.

Should the court deem that the requirements to give the appeal leave to proceed have been met, it shall issue a procedural court order deeming the appeal to have been lodged. Otherwise, it shall issue a court order dismissing it as inadmissible. Only an appeal of complaint may be lodged against such court order.

No appeal may be lodged against the procedural court order deeming the appeal to have been lodged. Nonetheless, the appellee may allege the appeal's inadmissibility in the procedural step to contest the appeal referred to in Article 461 herein.

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[259] Left without content by Article 4.11 of Act 37/2011 of 10 October

[260] Amended by Article 4.12 of Act 37/2011 of 10 October.

Article 459. *Appeal for breach of procedural rules or safeguards.*

The breach of rules or procedural safeguards in the first instance may be alleged in the remedy of appeal. Where this should be the case, the written statement to lodge the appeal shall state the rules that have been infringed and set forth, as appropriate, the lack of proper defence suffered. Likewise, the appellant shall prove that he reported the breach in a timely fashion, should he have had a procedural opportunity to do so.

Article 460. *Documents that may be attached to the written statement to lodge the appeal. Application for the taking of evidence.*

1. Solely the documents included under the cases set forth in Article 270 and which have not been filed in the first instance may be attached to the written statement to lodge the appeal.

2. The taking of the kinds of evidence set forth below may additionally be sought in the written statement to lodge the appeal:

a) Any evidence that may have been unduly rejected in the first instance, as long as a reversal of the decision dismissing such evidence has been attempted or the appropriate protest filed at the hearing.

b) Any evidence proposed and admitted in the first instance which could not be taken for reasons not imputable to the applicant, not even as final proceedings.

c) Any evidence referring to relevant facts for the decision on the case that may have occurred after the time limit to issue a judgement in the first instance commenced, or after such time limit, as long as in the latter case the party can prove he became aware of such evidence subsequently.

3. Any defendant declared to have been in default for any reason not attributable to him, and who has subsequently been a party to proceedings after the moment set to propose the taking of evidence in the first instance, may request any taking of evidence he may be entitled to under the law in the second instance.

Article 461. *Notification of the written statement to lodge the appeal to the appellee. Contesting the appeal and challenging the judgement.*[261]

1. The Court Clerk shall serve notice of the written statement to lodge the appeal to the other parties, summoning them to file before the court which

[261] Paragraphs 1 and 4 have been worded in accordance with Act 13/2009 of 3 November
5 was added by Act 15/2007 of 3 July .

issued the decision subject to appeal a written statement contesting the appeal or, as appropriate, challenging the decision subject to appeal with regard to whatever may be unfavourable to them.

2. The written statements contesting the appeal and, as appropriate, those challenging the judgement filed by those who would have not lodged an appeal initially shall be filed in accordance with the provisions laid down for written statements to lodge an appeal.

3. Documents may be attached thereto and the appellee or appellees may seek the taking of evidence they deem necessary pursuant to the provisions set forth in the preceding paragraph. They may likewise set forth the allegations they consider appropriate concerning the admissibility of any documents filed or of any evidence proposed by the appellant.

4. The Court Clerk shall transfer to the main appellant the written statements contesting the appeal referred to in paragraphs 1 and 2 of this article, so that the appellant may state whatever he may deem suitable on the admissibility of the challenge and, as appropriate, on the documents and the evidence proposed by the appellee.

5. The Court Clerk shall transfer to the National Free Competition Commission written statements lodging an appeal in any proceedings in which Articles 81 and 82 of the Treaty Establishing the Community European or Articles 1 and 2 of the Defence of Free Competition Act should apply.

Article 462. *Competence of the Court of First Instance during the appeal.*

While the appeal is being conducted, the jurisdiction of the court that has issued the decision against which the appeal has been lodged shall limit itself to procedures concerning the provisional enforcement of the decision subject to appeal.

Article 463. *Sending the proceedings.*[262]

1. Once the appeals have been lodged and, as appropriate, the written statements contesting or challenging them have been filed, the Court Clerk shall order the proceedings to be sent to the court holding jurisdiction to

[262] Paragraph 1 amended by Article 4.13 of Act 37/2011 of 10 October.
Article worded in accordance with Act 13/2009 of 3 November.

decide on the appeal, summoning the parties within a time limit of ten days.

Should the appellant fail to appear within the aforementioned time limit, the Court Clerk shall declare the appeal abandoned and the decision subject to appeal shall become final.

2. Should provisional enforcement have been sought, a certification of whatever may be necessary for such enforcement shall remain in the Court of First Instance.

Where such enforcement is sought after the records are sent to the competent court to decide on the appeal, the applicant shall first have to obtain such certification of whatever may be necessary for the enforcement.

Article 464. *Admission of evidence and setting a date for the hearing.*[263]

1. Once the records have been received by the Court that has to deal with the appeal and should any new documents or proposals for evidence have been filed, it shall decide on the appropriateness of their admission within ten days. Should evidence have to be taken, the Court Clerk shall set a date for a hearing, which shall be held within the following month in keeping with the provisions laid down for oral trials.

2. Should no evidence have been proposed or if all such proposals have not been given leave to proceed, the holding of a hearing may also be agreed upon through a procedural court order, as long as it has been sought by one of the parties or the Court deems it necessary. Should the holding of a hearing have been agreed upon, the Court Clerk shall set a date and time for it.

Article 465. *Decision on the appeal.*[264]

1. The Court shall decide on the appeal through a court order where it has been lodged against a court order, and otherwise by means of a judgement.

2. The decision shall be issued within ten days from the date the hearing comes to an end. Should a hearing not have been held, the court order or the judgement shall be issued within a month counting from the date

[263] Article worded in accordance with Act 13/2009 of 3 November.

[264] Article worded in accordance with Act 13/2009 of 3 November

following that on which the records were received at the competent court for the appeal.

3. Should the breach of procedure alleged have been committed when judgement was issued in the first instance, the Court of appeal shall, after having set aside the judgement subject to appeal, decide on the matter or matters at issue of the proceedings.

4. Where the provisions set forth in the preceding paragraph of this article do not apply and the breach of procedure has given rise to the total nullity of the procedures or of part of them, the Court shall declare their nullity by means of a procedural court order and reverse their situation to the stage at which they were to be found when the breach was committed.

The nullity of the procedures shall not be declared should it be possible to rectify the procedural fault or defect in the second instance, for which the Court shall grant a time limit not exceeding ten days, except where the fault is revealed at the hearing and it may be rectified immediately.

Once the rectification has come about and, as appropriate, the parties have been heard and the admissible evidence has been taken, the Court of appeal shall issue a decision on the matter or matters at issue.

5. The court order or judgement issued on appeal shall solely deal with the points and matters broached in the appeal and, as appropriate, in the written statements contesting the appeal or challenging the decision referred to in Article 461. The decision may not be damaging to the appellant, except where such damage arises from upholding the challenge to the decision in question set forth by the initial appellee.

6. The time limit to issue judgement may be suspended in proceedings dealing with the application of Articles 81 and 82 of the Treaty Establishing the European Community or Articles 1 and 2 of the Defence of Free Competition Act where the Court is aware of the existence of administrative proceedings being conducted before the European Commission, the National Free Competition Commission or the competent bodies of the autonomous regions and knowing the decision issued by the administrative body is essential. Such suspension shall be adopted stating its grounds after hearing the parties, and notice thereof shall be given to the administrative body. Such administrative body shall in turn transfer its decision to the court.

Only an appeal for reversal may be lodged against such order for suspension.

Article 466. *Appeals against judgements in the second instance.*

1. Parties holding legal capacity may choose to lodge an extraordinary appeal for breach of procedure or an appeal in cassation against any judgements issued by Provincial Courts in the second instance in any kind of civil procedure.

2. Should the two kinds of appeal be prepared by the same party against the same decision, the appeal in cassation shall not be given leave to proceed.

3. Where different litigants of the same proceedings should each choose to lodge a different kind of extraordinary appeal, the provisions set forth in Article 488 herein shall apply.

Article 467. *Appeal in cassation against judgements issued by the Provincial Courts after upholding an extraordinary appeal for breach of procedure.*

Notwithstanding the provisions set forth in the preceding article, a new extraordinary appeal for breach of procedure may not be lodged against judgements issued by the Provincial Courts as a result of upholding such an extraordinary appeal if they are not grounded on matters that are different to those dealt with in the first appeal.

CHAPTER IV

ON EXTRAORDINARY APPEALS FOR INFRINGEMENT OF PROCEDURE

Article 468. *Competent body and decisions subject to appeal.*

The Civil and Criminal Chamber of the High Courts of Justice shall deal with, as Civil Chamber, any appeals for a breach of procedure against judgements and court orders issued by the Provincial Courts which bring the second instance to an end.

Article 469. *Grounds. Prior reporting in the instance.*

1. extraordinary appeals for breach of procedure may solely be based on the following grounds:

(i). A breach of the rules on objective or functional jurisdiction and competence.

(ii). A breach of the procedural rules governing the judgement.

(iii). A breach of the legal rules governing the procedures and safeguards of the proceedings, where such breach gives rise to their nullity in accordance with the law or could have brought about a lack of proper defence.

(iv). A violation in the civil procedure of the fundamental rights recognised by Article 24 of the Constitution.

2. extraordinary appeals for breach of procedure shall only be given leave to proceed where the infringement or the violation of Article 24 of the Constitution has been reported, wherever possible, in the appropriate instance and, if it was reported in the first instance, when it has also been reported in the second instance. Furthermore, should a violation of fundamental rights have given rise to a fault or defect that can be rectified, such rectification should have been sought in the appropriate instance.

Article 470. *Lodging the appeal.265*

1. Extraordinary appeals for an infringement of procedure shall be lodged before the court which has issued the decision being contested within twenty days counting from the date following that on which notice thereof was served.

2. Once the statement lodging the appeal has been filed and the time limits for all the parties to lodge an appeal have elapsed, the Court Clerk shall deem the appeal to have been lodged within the time limit of three days, provided the decision is subject to appeal, one of the reasons set forth in Article 469 is alleged and, as appropriate, the procedure laid down in paragraph 2 of said article has been followed. Otherwise the Court Clerk shall inform the court thereof, so that it may issue a decision on whether the appeal should be given leave to proceed.

Should the court deem that the requirements to give the appeal leave to proceed have been met, it shall issue a procedural court order deeming the appeal to have been lodged. Otherwise, it shall issue a court order dismissing it as inadmissible. Only an appeal of complaint may be lodged against such court order.

[265] Amended by Article 4.14 of Act 37/2011 of 10 October.

No appeal may be lodged against the order deeming the appeal to have been lodged. Nonetheless, the appellee may allege the appeal's inadmissibility in the procedural step to contest the appeal.

Article 471. *Contents of the written statement to lodge the appeal.266*

The breach or infringement committed shall be set forth in a reasoned fashion in the written statement to lodge the appeal and it shall state, as appropriate, the way in which it has influenced the proceedings. The taking of evidence deemed essential to prove the infringement or breach and the holding of a hearing may also be sought in the written statement to lodge the appeal.

Article 472. *Sending the records.*[267]

Once the written statement to lodge the appeal has been filed, all the original records shall be sent to the Chamber referred to in Article 468 and the parties shall be summoned to appear before it within thirty days. Nonetheless, where a litigant or litigants other than the appellants for a breach of procedure have prepared an appeal in cassation against the same judgement, the court holding competence to deal with the appeal in cassation shall be sent a certification of the judgement and of any details of interest to the appellant in cassation, along with an explanatory note indicating that an extraordinary appeal for breach of procedure has been prepared for the purposes of the provisions set forth in Article 488 herein.

Should the appellant fail to appear within the aforementioned time limit, the Court Clerk shall declare the appeal abandoned and the decision subject to appeal shall become final.

Article 473. *Leave to proceed*[268]*.*

1. Once the records have been received at the Court, they shall be passed on to the Senior Reporting Judge so that he may be duly informed and may submit to the Chamber's deliberation whatever may have to be decided concerning whether or not the extraordinary appeal for infringement of procedure should be given leave to proceed.

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[266] Amended by Article 4.15 of Act 37/2011 of 10 October

[267] Article worded in accordance with Act 22/2003 of 9 July.

[268] Amended by Article 4.16 of Act 37/2011 of 10 October

2. The extraordinary appeal for infringement of procedure shall not be given leave to proceed in the following cases:

(i). Should it be deemed at this stage that the requirements laid down in Articles 467, 468 and 469 have not been met.

(ii). Should the appeal be manifestly groundless.

Before issuing a decision, the Chamber shall inform the parties who have entered an appearance of the possible cause for not giving the appeal leave to proceed, so that they may file the pleas they may deem suitable within ten days.

Should the Chamber deem that any of the causes for rejection exists, it shall issue a court order stating the rejection and declare the decision appealed against as final. Should the cause for rejection only affect some of the breaches alleged, it shall also issue a court order giving the other infringements stated in the appeal leave to proceed.

3. No appeals may be lodged against a court order resolving to give an extraordinary appeal for infringement of procedure leave to proceed.

Article 474. *Challenge by the appellees.*

Once the extraordinary appeal for breach of procedure has been given total or partial leave to proceed, the written statement to lodge the appeal shall be transferred to the appellee or appellees and to any other persons who may have entered an appearance, so that they may file their challenge thereto within twenty days. During such time limit, the records shall be made available at the Court Clerk’s office.

Any causes deemed to exist for the appeal was not given leave to proceed and which have not been rejected by the court may be alleged in the challenge, which may also seek the taking of evidence considered essential and the holding of a hearing.

Article 475. *Hearing and evidence.*

1. Once the time limit referred to in the preceding article has elapsed and whether or not any challenges have been filed, the Chamber shall have thirty days in which to issue a court order setting a time and date to hold a hearing or, as appropriate, to vote and issue a ruling on the extraordinary appeal for breach of procedure.

2. Should the taking of any evidence have been sought and admitted or should the Chamber deem it suitable on an ex officio basis or at the request of a party to ensure justice is made with regard to the extraordinary appeal, a decision shall be taken to hold a hearing, which shall commence with a report from the appellant to then proceed with the appellee's report. Should there be several appellants, the order in which the appeals were lodged shall be followed and should there be several appellees, the order in which they entered an appearance shall be followed.

3. The taking of evidence shall be governed by the provisions laid down by the law for oral trials.

Article 476. *Judgement. Effects.*

1. The Chamber shall issue a judgement within twenty days from the end of the hearing, or from the date set for the vote and the ruling.

2. Should the appeal have been grounded on a breach of the rules on objective or functional jurisdiction or competence, this issue shall be examined and dealt with first.

Should the appeal have been grounded on a lack of jurisdiction or of objective competence and it is upheld, the Chamber shall set aside the contested decision and the parties' entitlement to lodge their pleas before whoever it may correspond shall remain unharmed.

Should the appeal have been lodged against a judgement confirming or declaring a lack of jurisdiction or competence and the Chamber upholds it, the Chamber shall, after having set aside the judgement, order the court in question to initiate or continue dealing with the matter, except where the lack of jurisdiction was erroneously upheld once the defence to the claim was filed and the evidence taken, in which case it shall order the court in question to issue a ruling on the grounds of the matter at issue.

In all other cases, should the appeal be upheld with regard to all or some of the infringements or violations alleged, the Chamber shall set aside the contested decision and order that the procedures be reversed to the situation and moment at which the infringement or violation took place.

3. Should the Chamber not deem any of the grounds alleged appropriate, it shall dismiss the appeal and the records shall be returned to the court from whence they came.

4. No appeals may be lodged against a judgement on an extraordinary appeal for breach of procedure, except as laid down on appeals in the interest of the law before the Civil Chamber of the Supreme Court.

CHAPTER V

ON APPEALS IN CASSATION

Article 477. *Grounds for the appeal in cassation and decisions subject to appeal in cassation.*[269]

1. Appeals in cassation may solely be grounded on a breach of the rules that apply to decide on matters at issue in the proceedings.

2. Appeals in cassation may be lodged against judgments issued in the second instance by the Provincial Courts in the following cases:

(i). Where they are issued to provide fundamental rights with the effective protection of the civil courts, apart from the fundamental rights recognised by Article 24 of the Constitution.

(ii). Whenever the amount of the proceedings exceeds 600.000 euros.

(iii). Where the amount of the proceedings does not exceed 600,000 euros or the proceedings have been conducted due to their subject matter, provided that in both cases the decision on the appeal has reversal interest.

3. It shall be deemed that an appeal has interest to set aside when the judgement subject to appeal contradicts the Supreme Court's jurisprudence or decides on points and issues about which contradictory jurisprudence from the Provincial Courts exists or where it applies rules that have been in force for less than five years, as long as, in the latter case, no jurisprudence from the Supreme Court should exist concerning previous rules of identical or similar content.

In the case of appeals in cassation which a High Court of Justice must deal with, it shall be construed that interest to set aside also exists where the judgement subject to appeal contradicts jurisprudence or where such jurisprudence from the High Court of Justice does not exist on the rules of the specific law of the autonomous region in question.

[269] Paragraph 2 amended by Article 4.17 of Act 37/2011 of 10 October.

Article 478. *Jurisdiction. Simultaneity of appeals.*[270]

1. The First Chamber of the Supreme Court shall hold responsibility for dealing with appeals in cassation on civil matters.

Notwithstanding the above, the Civil and Criminal Chamber of the High Courts of Justice shall hold responsibility for dealing with appeals in cassation lodged against decisions of the civil courts located in the autonomous region, as long as the appeal is solely grounded on a breach of the rules of civil, jurisdictional or special law specific to the autonomous region, or jointly with other grounds, and where the relevant Statute of Autonomy sets forth such attribution.

2. Where the same party should lodge appeals in cassation against the same judgment before the Supreme Court and a High Court of Justice, the former shall be deemed not to have been lodged through a procedural court order, as soon as such circumstance is known.

Article 479. *Lodging the appeal.*[271]

1. The appeal in cassation shall be lodged before the court which has issued the decision being contested within twenty days counted from the date following that on which notice thereof was served.

2. Should the decision contested be subject to appeal and the appeal is lodged within the time limit, the Court Clerk shall have three days in which to deem that the appeal has been lodged. Otherwise the Court Clerk shall inform the court thereof, so that it may issue a decision on whether the appeal should be given leave to proceed.

Should the court deem that the requirements to give the appeal leave to proceed have been met, it shall issue a procedural court order deeming the appeal to have been lodged. Otherwise, it shall issue a court order dismissing it as inadmissible. Only an appeal of complaint may be lodged against such court order.

No appeal may be lodged against the order deeming the appeal to have been lodged. Nonetheless, the appellee may contest the fact it has been given leave to proceed upon appearing before the court of cassation.

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[270] Amended by Article 4.18 of Act 37/2011 of 10 October

[271] Amended by Article 4.19 of Act 37/2011 of 10 October

Article 480. *Decision on the preparation of the appeal.*[272]

Without content

Article 481. *Contents of the written statement to lodge the appeal.*[273]

1. The written statement to lodge the appeal shall state the grounds for the appeal against the judgment among the grounds set forth in Article 477.2. The legal grounds shall likewise be set forth with the necessary detail and the holding of a hearing may be sought.

2. A certification of the judgment contested shall be attached to the written statement lodging the appeal and, where appropriate, the texts of the judgments put forward as the grounds for the interest to be set aside.

3. In addition to grounding the appeal in cassation, the written statement shall, as appropriate, state in a reasoned fashion the time during which the rule has been in force and the lack of jurisprudence concerning the rule which is deemed to have been infringed.

4. Without content

Article 482. *Sending the records. Refusal to issue certifications.*[274]

1. Once the written statement to lodge the appeal has been filed, the Court Clerk shall send all the original records to the court holding competence to deal with the appeal in cassation within five days and summon the parties to appear within thirty days.

Should the appellant fail to appear within the aforementioned time limit, the Court Clerk shall declare the appeal abandoned and the decision subject to appeal shall become final.

2. Should the appellant have been unable to obtain the certification of judgement referred to in Article 481, the records shall nonetheless be sent as set forth in the preceding paragraph. The refusal or resistance to issue such certification shall be put right through disciplinary proceedings and,

[272] Left without content by Article 4.20 of Act 37/2011 of 10 October

[273] Heading and paragraph 1 amended and paragraph 4 left without content by Article 4.21 of Act 37/2011 of 10 October.

[274] Article worded in accordance with Act 13/2009 of 3 November on the reform of procedural legislation for the implementation of the new Court Office

where necessary, the Chamber of cassation shall demand it from the Court Clerk who should issue it.

Article 483. *Decision on giving the appeal leave to proceed.*[275]

1. Once the records have been received at the court, they shall be passed on to the Senior Judge so that they may be duly informed and may submit to the Chamber's deliberation whatever may have to be decided concerning whether or not the appeal for judicial review should be given leave to proceed.

2. The appeal for judicial review shall not be given leave to proceed in the following circumstances:

(i) If the appeal is contrary to procedure because the judgment cannot be appealed or due any other procedural error which cannot be rectified.

(ii) Should the writ lodging the appeal not meet the requirements set out in this Act for the different cases.

(iii) Should the matter at issue not reach the required amount, or should there be no interest to set aside due to the lack of contradiction with jurisprudence, a lack of contradictory jurisprudence or should the rule which is alleged to have been infringed have been in force for more than five years, or should there be, in the Chamber's opinion, jurisprudence from the Supreme Court on such a rule or on a previous rule with identical or similar contents.

The appeal shall also not be given leave to proceed in the cases in the second paragraph of Article 477.3, where the corresponding Supreme Court of Justice deems that a precedent has been set on the rule at issue or on another previous rule with identical or similar contents.

(iv) If the appeal manifestly lacks grounds or if other substantially similar appeals have already be resolved in depth.

3. Before issuing a decision, the Chamber shall inform the parties who have entered an appearance of the possible cause for not giving the appeal for judicial review leave to proceed by means of a procedural court order, so that they may file such allegations as they deem fit within a time limit of ten days.

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[275] Paragraph 2 is amended by final provision 4.12 of Organic Law 7/2015, of 21 July.
Item (i), paragraph 2 amended by Article 4.22 of Act 37/2011 of 10 October

4. Should the Chamber deem that any of the causes for not giving the appeal in cassation leave to proceed exists, it shall issue a court order rejecting the appeal leave to proceed and declare the decision subject to appeal as final. Should the cause for non-admission only affect some of the infringements alleged, it shall also issue a court order giving the other infringements stated in the appeal leave to proceed.

5. No appeal whatsoever may be lodged against the court order deciding on whether or not to give the appeal for judicial review leave to proceed.

Article 484. *Decision on competence upon granting leave to proceed.*

1. Before issuing a decision on the appeal's admissibility, the Chamber shall examine its competence to deal with the appeal in cassation during the formal step on giving it leave to proceed referred to in the preceding paragraph. Should it deem it does not hold competence, the Chamber shall, after hearing the parties, agree to send the records to the Chamber it considers is competent and summon the parties to appear before it within a time limit of ten days.

2. In the case referred to in the preceding paragraph, once the records have been received and the parties have entered an appearance before the Chamber deemed to hold competence, the appeal shall continue to be conducted from the formal step dealing with its leave to proceed.

3. The Chambers of the High Courts of Justice may not decline their competence to deal with any appeals in cassation which have been sent to them by the First Chamber of the Supreme Court.

Article 485. *Admission and transfer to the other parties.*[276]

Once the appeal in cassation is admitted, the Court Clerk shall transfer the document of opposition with its attached documents to the party or parties appealed against, so that they can formalise their opposition in writing within the time limit of twenty days and state whether they consider the hearing to be necessary.

In the document of opposition it is possible to allege the reasons for the inadmissibility of the appeal which are considered to exist and have not been rejected by the court.

[276] Article worded in accordance with Act 13/2009, of 3 November

Article 486. *Voting and ruling. Possible hearing.*[277]

1. Once the time limit referred to in the preceding article has elapsed, regardless of whether the documents of opposition have been submitted or not, if all the parties have requested the holding of a hearing, the Court Clerk shall state the day and time for it to be held. The same shall occur when the court has decided, through a procedural court order, to hold the hearing for the better application of justice. Otherwise, the Chamber shall state the day and time for voting and ruling on the appeal for cassation.

2. The hearing shall begin with the report of the appellant and then move on to the appellee. If there are several appellants, the order shall be the order in which the appeals were lodged, and if there are several appellees, the order shall be that of the appearances.

Article 487. *Judgement. Effects.*

1. The Chamber shall issue judgement on the appeal in cassation within a time limit of the twenty days following the end of the hearing, or the day stated for the vote and ruling.

2. If the appeals in cassation are those stipulated in numbers (i) and (ii) of paragraph 2 of article 477, the decision which puts an end to the appeal in cassation shall confirm or annul all or part of the decision appealed.

3. When the appeal in cassation is one of those stipulated in number 3 of paragraph 2 of article 477, if the decision considers the appeal to have grounds, the Chamber shall annul the decision challenged and decide on the case, declaring what corresponds in accordance with the terms in which the opposition to jurisprudence occurred or the contradiction or divergence of jurisprudence.

The rulings of the judgement which are issued in cassation shall in no case affect the legal situations created by the judgements, other than those challenged, which might have been invoked.

Article 488. *Performance and decision concerning appeals in cassation and extraordinary appeals in cases of breach of procedure, when litigants in the same case choose different extraordinary appeals.*

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[277] Article worded in accordance with Act 13/2009, of 3 November .

1. When there are different litigants involved in the same proceedings and each one chooses a different extraordinary appeal, and there is a breach of procedure, this shall be substantiated by the competent court and the court of cassation shall have preference; however, the processing shall commence and shall continue until its admission is decided, afterwards remaining suspended.

2. If a decision is issued which quashes the appeal totally due to breach of procedure, the court competent for cassation shall be immediately notified, its suspension shall be immediately lifted and the appeal shall be conducted in keeping with the provisions in this chapter.

3. If the extraordinary appeal is upheld due to breach of procedure, the appeal in cassation submitted shall not take effect, notwithstanding the provisions in Article 467 herein.

Article 489. *Performance and decision on the appeals in cassation which are under special local jurisdictions and extraordinary jurisdictions due to breach of procedure, when litigants in the same case choose different extraordinary appeals.*

When there are different litigants in the same proceedings and each one chooses different extraordinary appeals, one for breach of procedural rules and the other for a violation of the local jurisdiction's rules of civil law or the special civil law of an autonomous region, both appeals shall be substantiated and decided as a single accumulated appeal, and the Chamber shall decide in one judgement, taking into account that it shall only be able to deal with the appeal in cassation if the extraordinary appeal for breach of procedure is not upheld.

CHAPTER VI

ON THE APPEAL IN THE INTEREST OF THE LAW

Article 490. *Decisions subject to appeal in the interest of the law.*

1. An appeal in the interest of the law may be lodged for the coherence of jurisprudence, as regards judgements which resolve extraordinary appeals for a breach of procedural law when the Civil and Criminal Chambers of the High Courts of Justice hold opposing criteria as regards the interpretation of procedural rules.

2. The appeal in the interest of the law shall not apply against judgements which have been appealed against before the Constitutional Court for protection.

Article 491. *Standing for appealing in the interest of the law.*

In any case the Public Prosecution Service and the Ombudsman may appeal in the interest of the law. Furthermore, legal persons under public law may lodge this appeal due to the activities they carry out and the functions attributed to them, and in relation to the procedural questions involved in the appeal, and they accredit legitimate interest in the coherence of jurisprudence in such questions.

Article 492. *Lodging and performance.*[278]

1. Appeals in the interest of the law shall be lodged within the time limit of one year from the time that the most recent judgement was given, directly before the Civil Chamber of the High Court.

2. The following documents shall be attached to the document used to lodge the appeal in the interest of the law:

(i). A certified copy or testimony of the decisions which show the alleged discrepancy.

(ii). Certification issued by the Constitutional Court, which accredits that the time limit for appealing for protection has elapsed, and no appeal has been lodged against any of the alleged decisions.

3. The Court Clerk shall transfer the draft or drafts for lodging the appeal together with the attached documents to those who have appeared as parties to the proceedings whose judgements are the subject of the appeal so that, within the time limit of twenty days, they may formulate allegations stating the legal criteria they consider to be most grounded.

Article 493. *Judgement.*

The judgement issued in appeals in the interest of the law shall, in any case, respect the particular legal situations arising from the alleged judgements and, when it is upheld, the ruling shall establish the jurisprudence. In this case, it shall be published in the «Official State Gazette» and, as from its publication there, it shall complement legislation,

[278] Paragraph 3 worded in accordance with Act 13/2009 of 3 November.

and shall bind all the Judges and courts at the civil jurisdictional levels other than the High Court in this matter.

CHAPTER VII

ON THE APPEAL OF COMPLAINT

Article 494. *Decisions subject to appeal of complaint.*[279]

Against the court orders in which the court which has issued the decision refuses the processing of an extraordinary recourse to appeal due to breach of procedure or cassation, an appeal of complaint may be lodged before the body which is responsible for resolving the unprocessed appeal. Appeals of complaint shall be conducted and resolved with priority.

The appeal of complaint shall not apply in eviction proceedings related to urban and rustic property when the judgement which would rightly be issued, as appropriate, did not have the consideration of res judicata.

Article 495. *Substantiation and decision*[280]*.*

1. The appeal of complaint shall be lodged before the court holding jurisdiction to rule on the appeal which has not been conducted within ten days of notice being served of the decision dismissing the appeal for remedy, the extraordinary appeal for an infringement of procedure or the appeal in cassation. A copy of the decision against which the appeal is lodged shall be attached to the appeal.

2. Once the appeal and said copy have been filed in time, the court shall decide within a time limit of five days. Should the appeal's dismissal be deemed appropriate, an order shall be issued to notify the corresponding court so that it may be reflected in the records. Should it be deemed that it has been improperly dismissed, the court shall continue to conduct the proceedings.

3. No appeals may be lodged against the court which rules on the appeal of complaint.

[279] Paragraph added in accordance with Act 19/2009, of 23 November .

[280] Amended by Article 4.23 of Act 37/2011 of 10 October.

TITLE V

ON DEFAULT AND RESCISSION OF FINAL JUDGEMENTS AND NEW HEARINGS FOR THE DEFENDANT IN DEFAULT

Article 496. *Declaration of default and effects.*[281]

1. The Court Clerk shall declare the defendant who fails to appear on the date or within the time limit stated in the summons or the order to attend in default, except in the cases stipulated herein in which the declaration of default corresponds to the court.

2. The declaration of default shall not be considered to be acceptance of the claim nor admission of the facts of the claim, except in the cases in which the law sets forth otherwise.

Article 497. *Regime for notifications.*[282]

1. The defendant shall be notified by mail of the decision declaring default if his address is known and, if it is not known, through public notices. Once this notification is given, no other notification shall be made, except for notification of the decision which terminates the proceedings.

2. The defendant shall be notified personally of the judgment or decision which terminates the proceedings, in the manner provided for in Article 161 of this Act. However, if the location of the defendant is unknown, notification shall be made through a public notice published in the Official Gazette of the autonomous region or in the Official State Gazette.

The same shall apply to decisions issued in appeals, in extraordinary appeals for breach of procedure or in judicial reviews.

When the matter is a judgment for eviction due to failure to pay rent or amounts due, or due to the legal or contractual expiry of the time limit, and the defendant properly summoned has not appeared on the date or within the time limit stated in the summons, notification shall be made through public notices, and a copy of the decision shall be posted on the bulletin board of the Court Office.

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[281] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

[282] Paragraph 3 amended by Article 2.5 of Law 4/2013 of 4 June.

Paragraphs 2, 3 and 4 are worded in accordance with Act 13/2009, of 3 November, except the last sub-paragraph of paragraph 2 which is worded in accordance with Act 19/2009, of 23 November .

3. It will not be necessary to publish notices in the Official Gazette of the Autonomous Region or in the Official State Gazette for proceedings where the judgment does not have res judicata effect and in eviction proceedings where the there is a joinder for the claim for rents and amounts due. In such cases, the posting of a public notice on the Bulletin Board of the Judicial Office shall suffice.

4. Such publication may be substituted, in the regulatory terms provided for, by using telematic, computer or electronic means, in accordance with the provisions of Article 236 of the Judiciary Act.

Article 498. *Notification of the existence of proceedings to the defendant in default summoned or ordered to attend through public notices.*

The defendant in default who lacks a known address or is in an unknown location who has been summoned or ordered to attend through public notices, shall be notified that the proceedings are pending, ex officio or at the request of any of the parties of the proceedings, as soon as the place where notification can be made is known.

Article 499. *Subsequent appearance of the defendant.*

Regardless of the state of the proceedings at which the defendant in default appears, this shall be understood as performance, and the defendant may not withdraw in any case.

Article 500. *Lodging of ordinary appeals by the defendant in default.*[283]

The defendant in default who has been personally notified of the decision may only use a recourse to appeal against this, and an extraordinary appeal due to breach of procedure or an appeal in cassation, when these apply, if they are lodged within the legally established time limit.

The same appeals may be used by the defendant in default who has not been personally notified of the decision. However, in this case, the time limit for lodging these shall count from the day following the date of publication of the public notice, with notification of the judgement in the “Official State Gazette”, Official Gazette of the autonomous region or the Official Gazette of the Province or, as appropriate, through the telematic, computing or electronic means referred to in paragraph 2 of Article 497 herein, or in the manner set forth in paragraph 3 of the same article.

283 Paragraph 2 worded in accordance with Act 13/2009, of 3 November.

Article 501. *Rescission of a final judgement at the request of the party in default.*

Cases where this applies. The defendants who have remained constantly in default may request the rescission of the final judgement by the court which issued this judgement, in the following cases:

(i). Uninterrupted force majeure, which prevented the party in default from appearing at any time even though he knew of the case, as he had been properly summoned or ordered to attend.

(ii). Ignorance of the claim and the case when the summons or order to attend is carried out through a summons pursuant to Article 161, but this had not reached the defendant in default due to a reason not attributable to him.

(iii). Ignorance of the summons and the case when the defendant in default has been summoned or ordered to attend through public notices and was absent from the place in which the proceedings take place and from any other place in the State or autonomous region, in whose Gazettes these were published.

Article 502. *Time limits for the expiry of the action of rescission.*

1. The rescission of a final decision at the request of the defendant in default shall only apply if this is requested within the following time limits:

(i). Twenty days counting from notification of the final judgement, if this notification is served in hand.

(ii). Four months counting from the publication of the public notice informing of the final judgement, if this was not served in hand.

2. The time limits referred to in the preceding paragraph may be extended, in accordance with the second paragraph of Article 134, if the force majeure which prevented the defendant in default from appearing subsists; however, in no case may the action of rescission be exercised after eighteen months have elapsed from the time notice of the judgement was served.

Article 503. *Exclusion of the rescission of judgements without the effects of res judicata.*

The rescission of final judgements which, by a legal provision, lack the effects of res judicata, shall not apply.

Article 504. *Possible stay of execution. Procedure for rescission.*

1. The claims for the rescission of final judgements issued in default shall not stay their enforcement, except for what is stipulated in Article 566 herein.

2. The intention of the defendant to rescind a final judgement shall be substantiated through the steps established for ordinary proceedings, which may be commenced by those who have been parties in the proceedings.

Article 505. *Decision on rescission.*

1. Once the proceedings in which the relevant evidence on the reasons that justify the rescission are over, the court shall decide on the recission through a judgement which shall not be subject to any appeal.

2. At the request of the party, if, in accordance with the provisions in Article 566, it had not already ordered a stay of execution, the court responsible for the enforcement must then agree to the stay of execution of the judgement rescinded.

Article 506. *Costs.*

1. When it is declared that the rescission requested by the litigant in default does not apply, all the court costs shall be imposed on this litigant.

2. If a judgement is issued upholding the rescission, costs shall not be imposed on any of the litigants, unless the court observes recklessness in any of these.

Article 507. *Performance of the procedure after the upholding judgement.*

1. When the request of the defendant in default is upheld, the certification of the judgement which considers the rescission to be upheld shall be sent to the court which dealt with the case in the first instance and, before this court, procedure shall be in accord with the following rules:

a)The records shall be handed over to the defendant so that he may put forward and seek what is advisable for his rights, in the manner stipulated for the statement of defence.

b) What is put forward and requested shall be granted to the counter-party for another ten days, together with copies of the written statements and documents.

c) Subsequently, the steps of the relevant declaratory proceedings shall be followed, until the issue of the appropriate judgement, and the appeals stipulated herein may be lodged against this.

2. It shall not be necessary to forward the certification referred to in the preceding paragraph to the Court of First Instance if this court upheld the rescission appropriately.

Article 508. *Inactivity of the defendant and another judgement.*

If the defendant does not formulate pleas and requests in the steps referred to in rule (a) of the preceding article, it shall be construed that he waives being heard and another judgement shall be issued in the same terms as the one rescinded.

There shall be no appeal against this judgement.

TITLE VI

ON THE REVIEW OF FINAL JUDGEMENTS

Article 509. *Competent body and decisions subject to appeal.*

The review of final judgements shall be requested from the Civil Chamber of the High Court or from the Civil and Criminal Chambers of the High Courts of Justice, in accordance with the provisions in the Organic Act on the Judiciary Branch.

Article 510. *Grounds.*[284]

1. The review of a final judgment shall apply in the following cases:

(i) After it is issued, if decisive documents are recovered or obtained, and these were not available due to force majeure or due to the party the judgment was found in favour of.

(ii) Due to documents which, at the time the judgment was issued, one of the parties did not know that they had been declared to be false in criminal proceedings, or whose falsehood was subsequently declared penally.

[284] Amended by final provision 4.13 of Law 7/2015 of 21 July.

(iii) Due to evidence from witnesses or experts, and such witnesses or experts had been convicted of perjury in the declarations which served as grounds for the judgment.

(iv) If the case was won unjustly due to bribery, violence or fraudulently.

2. Furthermore, an appeal for judicial review may be lodged against a final judicial decision where the European Court of Human Rights has declared that such decision was passed in violation of any of the rights recognised in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, as long as such violation, due to its nature and seriousness, has effects that persist and cannot be ceased in any other way than by judicial review, without the latter prejudicing rights acquired in good faith by third parties.

Article 511. *Active Entitlement.*[285]

Review may be requested by the party aggrieved by the final decision being challenged.

In the case of paragraph 2 of the preceding article, review may only be requested by the party who was the claimant at the European Court of Human Rights.

Article 512. *Time limit for lodging.*[286]

1. In no case may the review be sought after five years have elapsed from the date of publication of the judgment that it is intended to challenge. All applications for review after this time limit has elapsed shall be rejected.

The provisions of the preceding paragraph will not be applicable where the review is grounded on a Judgment from the European Court of Human Rights. In this case, the application must be made within a period of one year from when the judgment of that Court becomes final.

2. Within the time limit stated in the preceding paragraph, it shall be possible to seek a review on condition that three months have not elapsed from the date on which the decisive documents, bribery, violence or fraud were discovered, or on which the falsehood was acknowledged or declared.

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[285] Amended by final provision 4.14 of Law 7/2015 of 21 July.

[286] Paragraph 1 is amended by final provision 4.15 of Organic Law 7/2015, of 21 July.

Article 513. *Deposit.287*

1. In order to be able to lodge a claim for review, it shall be essential to attach a receipt for having deposited € 300 in the establishment assigned for this purpose. This amount shall be returned if the court upholds the claim for review.

2. Failure to deposit or insufficiency of the said deposit not rectified within the time limit which the Court Clerk states for this purpose, which, in no case, shall be greater than five days, shall determine that the court flatly rejects the claim.

Article 514. *Conduct.*[288]

1. Once the claim for review is submitted and admitted, the Clerk of the Court shall request that all the proceedings of the case whose judgment is challenged be forwarded to the court, and shall summon all the litigants involved in the case, or their assignees, so that, within the time limit of twenty days they shall respond to the claim, sustaining what is advisable for their rights.

2. Once there is a response to the claim for review, or when the time limit expires without this being made, the Clerk of the Court will call the parties to a hearing which will be conducted in accordance with the provisions of articles 440 et seq.

3. In any case, the Public Prosecution Service must inform on the review before the judgment is issued on whether or not the claim shall be upheld.

4. If pre-hearing matters arise during the processing of the review, the general rules established in Article 40 of this Act shall apply, and the absolute expiry time limit referred to in paragraph 1 of Article 512 shall not apply.

Article 515. *Possible stay of execution.*

The claims for review shall not suspend the enforcement of the final judgements which give rise to these, except for what is stipulated in Article 566 herein.

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[287] Paragraph worded in accordance with Act 13/2009, of 3 November.

[288] Paragraphs 1 and 2 are amended by single article 57 of Law 42/2015, of 5 October.

Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

Article 516. *Decision.*

1. If the court deems that the review sought should be upheld, it shall declare this to be so, and shall rescind the decision challenged. It shall then order that a certificate of the ruling be issued, and shall return the records to the court they have come from so that the parties might exercise their rights, as appropriate, in the relevant proceedings.

In these proceedings, the declarations made in the judgement of review must be taken as the basis and the declarations cannot be discussed.

2. If the court dismisses the review sought, the claimant shall be ordered to pay costs and he shall lose the deposit made.

3. There shall be no appeals against the judgement issued by the court of review.

BOOK III

ON COMPULSORY ENFORCEMENT AND INJUNCTIONS

TITLE ONE

ON ENFORCEMENT TITLES

CHAPTER ONE

ON JUDGEMENTS AND OTHER ENFORCEMENT TITLES

Article 517. *Enforcement action. Enforcement orders.*[289]

1. Enforcement action must be grounded on an order involving enforcement.

2. Only the following orders shall involve enforcement:

(i) Final judgment.

(ii) Arbitration awards or resolutions and mediation agreements, the latter of which shall be made public by means of a public deed in accordance with the Mediation Act on Civil and Commercial Matters.

(iii) Court rulings which approve or validate court settlements and agreements achieved in the proceedings, accompanied, if necessary in order to record its specific content, by the corresponding records of the proceedings.

(iv) Public deeds, which must be the first notarial copy, or if it is a second copy it must be issued by court order and with a summons to the person who may be aggrieved, or the grantor, or issued with the agreement of all parties.

(v) Commercial agreements signed by the parties and by a registered broker who supervises them, and on condition that there is a certificate attached in which the broker certifies that the agreement is in accordance with the entries in their register and the dates of them.

(vi) Bearer or registered securities, legitimately issued, which represent past-due bonds and coupons, also past-due, of such securities, on condition that the coupons are in consonance with the securities and these are in consonance with the books of securities.

[289] Paragraph (viii) is amended by final provision 1 of Law 35/2015, of 22 September, in force from 01/01/2016.

Protesting the falsehood of the security formulated in the confrontation shall not prevent the enforcement being carried out, if the confrontation is positive, notwithstanding the subsequent opposition to the enforcement formulated by the debtor alleging falsehood in the security.

(vii) Certificates which have not expired and have been issued by the entities in charge of the accounting registers of the securities represented through book entries referred to in the Stock Market Act, on condition that there is a copy of the public deed of the representation of the securities attached or, as appropriate, of the issue, when this instrument is necessary, in accordance with the legislation in force.

Once the enforcement is commenced and dealt with, the certificates referred to in the preceding paragraph shall not expire.

(viii) The court order which establishes the maximum amount which may be claimed as compensation, passed in the cases provided for by the law in criminal proceedings initiated due to events covered by Compulsory Civil Liability Insurance arising from the use and driving of motor vehicles.

(ix) Other procedural rulings and documents that involve enforcement according to the provisions of this, or any other, act.

Article 518. *Expiry of enforcement action grounded on a court judgment, arbitration award or mediation agreement.*[290]

An enforcement action grounded on a judgment, a decision of the court or of the Court Clerk which approves a court settlement or agreement reached in the proceedings, or in an arbitration award or mediation agreement shall expire if the relevant enforcement claim is not lodged within a time limit of the five years once the judgment or decision becomes final.

Article 519. *Enforcement action for consumers and users grounded on a conviction without individual determination of beneficiaries.*[291]

Where the convictions referred to in the first rule of Article 221 do not state the individual consumers or users benefiting thereof, the court holding jurisdiction for enforcement shall at the request of one or several interested parties issue a court order in which it shall decide whether it recognises the applicants as beneficiaries of the conviction in accordance with the

[290] Amended by final provision 3.16 of Royal Decree-Law 5/2012 of 6 July.

[291] Amended by final provision 3 of Royal Decree-Law 16/2011 of 24 June

data, characteristics and requirements set forth in the judgment. With the certification of this court order, the parties thus recognised may seek enforcement. The Public Prosecution Service may seek enforcement of the judgment to the benefit of the consumers and users affected.

Article 520. *Enforcement action based on non-judicial and non arbitration entitlements.*

1. When it is a question of the enforcement titles stipulated in numbers (iv), (v), (vi) and (vii) of paragraph 2 of Article 517, enforcement may only be applied as regards a certain amount which exceeds 50,000 pesetas:

(i). In cash.

(ii). In convertible foreign currency on condition that the obligation to pay in this currency is authorised or is legally permitted.

(iii). In kind which can be calculated in cash.

2. The limit of the amount stated in the preceding paragraph may be obtained through the addition of several enforcement titles from among those stipulated in this paragraph.

Article 521. *Decisions which are merely declaratory and establishing judgements.*

1. Enforcement of the decisions which are merely declaratory or establishing shall not be carried out.

2. Through their certification and, possibly, a due mandamus, final establishing judgements may be registered and modifications may be made in Public Registries, with no need for enforcement to be carried out.

3. When an establishing judgement also contains a conviction rulings, these shall be carried out in the manner stipulated herein.

Article 522. *Obedience and compliance with establishing judgements. Application for the necessary court proceedings.*

1. All the persons and authorities, especially those in charge of the Public Registries, must abide by and comply with what is stipulated in the establishing judgements and adapt to the judicial state or situation which arises from these, unless there are obstacles arising from the Registry in accordance with its specific legislation.

2. Those who have been parties to the proceedings or accredit a direct and legitimate interest may request the court for the precise proceedings for the efficacy of the establishing judgements and in order to overcome possible resistance to what is laid down by these.

CHAPTER II

ON FOREIGN ENFORCEMENT TITLES

Article 523. *Enforceability in Spain. Law applicable to the procedure.*

1. For the definitive judgements and other enforcement titles that entail enforcement in Spain, the provisions in the International Treaties and the legal provisions on international judicial co-operation shall apply.

2. In any case, the enforcement of foreign judgements and enforcement titles shall be carried out in Spain in accordance with the provisions herein, unless otherwise provided in the International Treaties in force in Spain.

TITLE II

ON THE PROVISIONAL ENFORCEMENT OF COURT RULINGS

CHAPTER ONE

ON PROVISIONAL ENFORCEMENT : GENERAL PROVISIONS

Article 524. *Provisional enforcement: claim and content.*[292]

1. Provisional enforcement shall be sought through a claim or a simple application, as set forth in Article 549 herein.

2. The provisional enforcement of convictions, which are not final, shall be attended to and carried out in the same way as ordinary enforcement, by the competent court in the first instance.

3. In provisional enforcement of convictions, the parties shall have the same procedural rights and powers as in ordinary enforcement.

4. While they are not final, or are final but the time limits stated herein for the exercise of the action of rescission of judgement issued in default have not elapsed, only the preventive annotation of the judgements which

[292] Paragraphs 1 and 5 of this Article are worded in accordance with Act 13/2009, of 3 November .

provide or permit the registration or cancellation of entries in Public Registries shall apply.

5. The provisional enforcement of judgements in which fundamental rights are involved shall have priority.

Article 525. *Judgments not provisionally enforceable.*[293]

1. The following shall never be subject to provisional enforcement:

(A) Judgments passed in proceedings relating to paternity, maternity, kinship, annulment of marriage, separation and divorce, civil capacity and marital status, opposition to administrative orders on the protection of minors, or on measures relating to the restitution or return of minors in cases of international abduction and the right to honour, except for pronouncements governing family relations and obligations which relate to the main object of the proceedings.

(B) Judgments which sentence a party to issue a declaration of will.

(C) Judgments which declare the annulment or expiry of industrial property rights.

2. Neither shall the provisional enforcement of non-final foreign judgments apply unless it is provided for otherwise in the International treaties in force in Spain.

3. The provisional enforcement of rulings involving indemnity in judgments which declare the violation of the rights to honour, to personal and family privacy and personal image.

CHAPTER II

ON THE PROVISIONAL ENFORCEMENT OF SENTENCES ISSUED IN THE FIRST INSTANCE

Section 1. of provisional enforcement and opposition to this

Article 526. *Provisional enforcement of convictions in the first instance.*

Legitimisation. Except in the cases referred to in the preceding article, the party who has received a ruling in his favour in a conviction issued in the first instance may, with no need for security, request and obtain its

[293] Amended by single article 58 of Law 42/2015, of 5 October.

provisional enforcement in accordance with the provisions in the following articles.

Article 527. *Application for provisional enforcement, performance thereof and appeals.*[294]

1. Provisional enforcement may be sought at any time as from the date notice is served of the decision in which the appeal is deemed to have been lodged or, as appropriate, from the moment the apellee's statement of adherence to the appeal is transferred to the appellant, provided it is before a ruling is issued on the appeal.

2. When provisional enforcement is applied for after the records of the proceedings have been forwarded to the Court with the competence to decide on the appeal, the applicant shall previously obtain a testimony from the latter indicating the requirements for the execution and shall attach the said testimony to the application.

If the provisional execution has been sought prior to remittance of the records referred to in the preceding paragraph, the Court Clerk shall issue the testimony before remitting the said records.

3. Once the provisional execution has been requested, the Court shall dispatch the said execution, except in the case of a judgement included in Article 525 or a judgement not containing any decision of conviction in favour of the applicant.

4. A remedy of appeal may be lodged against the court order rejecting the provisional execution and shall be resolved as a matter of priority. No appeal of any nature may be lodged against the court order for the dispatch of the provisional execution, notwithstanding the objection that may be lodged by the enforcement debtor in accordance with the provisions of the following article.

Article 528. *Objection to the provisional execution and specific enforcement actions.*[295]

1. The enforcement debtor may only object to the provisional enforcement once the latter has been dispatched.

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[294] Paragraph 1 amended by Article 4.25 of Act 37/2011 of 10 October.

Paragraphs 1 and 2 of this article have been worded in accordance with Act 13/2009 of 3 November .

[295] Paragraph 2, the third sub-paragraph of paragraph 3 and paragraph 4 of this article are worded in accordance with Act 13/2009 of 3 November.

2. The objection to the provisional enforcement may only be based, notwithstanding the provisions of paragraph 4 of this article, on the following grounds:

(i). At all events, if the provisional enforcement has been dispatched infringing the preceding article.

(ii). In the case of a non-monetary conviction, when it is impossible or extremely difficult, in view of the enforcement actions, to restore the situation prior to the provisional enforcement or to compensate the enforcement debtor financially by compensating the damages incurred by the latter, if the said judgement were to be reversed.

3. In the event of a monetary conviction, the enforcement debtor may not object to the provisional enforcement, but only to the specific enforcement actions of the distraint proceedings if, in his opinion, the said actions shall lead to a situation impossible to restore or to compensate financially by means of the compensation of damages.

When lodging this objection to specific enforcement measures, the enforcement debtor shall indicate other enforcement measures or proceedings that are possible and shall not provoke situations similar to those that, in his opinion, would be caused by the proceeding or measure to which he objects, and shall offer security sufficient to make up for the delay in the enforcement if the alternative measures are not accepted by the Court and the monetary conviction is subsequently upheld.

If the enforcement debtor fails to indicate alternative measures and does not post security, the objection to the enforcement shall under no circumstances be appropriate and the Court Clerk shall immediately issue an order to this effect. A direct appeal for judicial review may be lodged against the said order but shall have no suspensory effects.

4. In addition to the grounds mentioned in the preceding paragraphs, the objection may be based on the payment of or compliance with the instructions of the judgement, which shall be based on documentary evidence, and on the existence of covenants or settlements agreed upon and documented at the proceedings to avoid the provisional enforcement. These grounds for objection shall be dealt with in accordance with the provisions regarding the ordinary or final enforcement.

Article 529. *Carrying out of the objection to the provisional enforcement or to specific enforcement actions.*

1. The statement of objection to the provisional enforcement shall be lodged with the Court of the enforcement within a time limit of five days

following that of the notice of the decision ordering the dispatch of the enforcement or the specific proceedings to which the objection is lodged.

2. The statement of objection to the enforcement and the accompanying documents shall be transferred to the enforcement creditor and to any parties to the provisional enforcement to allow them to state and to evidence, within a time limit of five days, whatever they consider appropriate.

3. In the case of provisional enforcement of a non-monetary conviction and having alleged the second ground of paragraph 2 of Article 528 for objection to the provisional enforcement, the party that applied for the latter, in addition to challenging the allegations of the counter-party, may offer a security sufficient to guarantee that, in the event of reversal of the judgement, the previous situation shall be restored or, should this prove impossible, the damages caused shall be compensated.

The security may be posted in cash, by means of a joint and several guarantee of indefinite duration and payable upon first demand, issued by a credit entity or a reciprocal guarantee company or by any other means that, in the opinion of the Court, guarantees the immediate availability, as appropriate, of the amount concerned.

Article 530. *Decision on the objection to the provisional enforcement and to specific enforcement measures. Unappealability.*

1. When the objection is allowed on the basis of the first ground of paragraph 2 of Article 528, the objection to the provisional enforcement shall be decided by court order declaring that it is not appropriate to proceed with the said provisional enforcement, lifting the attachments and distraints, and the guarantee measures that have been adopted.

2. If the objection has been lodged in the case of a provisional enforcement of a non-monetary conviction and, in the opinion of the Court, in the event of a subsequent reversal of the conviction, it would be impossible or extremely difficult to restore the situation prior to the provisional enforcement or to guarantee the compensation by means of the security that the applicant declares to be willing to post, it shall issue a court order staying the enforcement but the attachments and the guarantee measures adopted shall subsist and those that are appropriate shall be adopted, in accordance with Article 700.

3. If, in the case of a monetary conviction, the objection has been lodged in relation to specific enforcement actions, the said objection shall be

allowed if the Court considers the alternative proceedings or measures indicated by the provisional enforcement debtor to be viable and to have a similar effectiveness. The same shall apply if the debtor has offered a security considered sufficient to make up for the delay in the enforcement and the Court considers that, in the event of a reversal of the conviction, it would be absolutely impossible in the case at hand to restore the situation prior to the enforcement or to compensate the provisional enforcement debtor financially by means of a subsequent compensation of damages.

The upholding of this objection shall merely determine that the performance of the specific enforcement action to which the said objection refers is denied, and the distraint proceedings shall continue in accordance with the provisions herein.

4. No appeal of any nature may be lodged against the court order resolving on the objection to the provisional enforcement or to specific enforcement measures.

Article 531. *Stay of the provisional enforcement in the event of monetary convictions.*[296]

The Court Clerk shall issue an order to stay the provisional execution of rulings to pay liquid cash when the enforcement debtor has deposited the amount he has been ordered to pay in the Court, to be delivered to the enforcement creditor, notwithstanding the provisions of the section below, as well as the corresponding interest and the costs for which the enforcement was carried out. After the payments have been settled and the costs assessed, the Clerk Court in charge of the provisional enforcement shall decide on the continuance or shelving of the enforcement. A direct appeal for judicial review against the order issued for this purpose may be lodged with the Court that has authorised the enforcement.

Section 2. On the reversal or upholding of the provisionally enforced judgement

Article 532. *Upholding of the provisionally enforced decision.*

If a judgement is passed upholding the provisionally enforced rulings, the enforcement shall proceed if not already terminated, barring explicit abandonment by the enforcement creditor.

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[296] Article worded in accordance with Act 13/2009, of 3 November.

If no appeal may be lodged or is lodged against the ruling upholding the judgement, the enforcement shall proceed as final, except in the case of abandonment.

Article 533. *Reversal of convictions to pay an amount of money.*[297]

1. If the provisionally enforced ruling concerns a conviction to pay an amount of money and is reversed in full, the Court Clerk shall stay the provisional enforcement and the enforcement creditor shall return the amount he received, as appropriate, reimburse to the enforcement debtor any costs of the provisional enforcement paid by the latter, and compensate him for any damages the said enforcement may have caused him.

2. In the event of partial reversal of the judgement, only the difference between the amount received by the enforcement creditor and the amount resulting from the partial upholding shall be reimbursed, together with the increase resulting from the annual application to the said difference, as of the time of its reception, of the legal money interest rate.

3. If the judgement of reversal is not final, the collection of the amounts and increases referred to in the preceding paragraphs of this article may be sought through an attachment proceeding filed with the Court that carried out the provisional enforcement. Settlement of the damages shall be carried out in accordance with Article 712 and subsequent articles herein.

The party bound to return, reimburse and compensate may object to specific distraint actions in accordance with the terms of paragraph 3 of Article 528.

Article 534. *Reversal in cases of non-monetary convictions.*

1. If the reversed provisionally enforced decision was a conviction to deliver a specific asset, the said asset shall be returned to the enforcement debtor under the same title as he had it before, increased by the rents, yields or products or the monetary value obtained by the use of the asset.

If the return is impossible, either in fact or under the law, the enforcement debtor may request compensation of the damages, which shall be settled by the procedure set forth in Article 712 and subsequent articles.

[297] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

2. If a decision is reversed involving an order to carry out a certain act and the said act has already been performed, a petition may be filed to undo the act and to compensate the damages caused.

3. The return of the object, the undoing of the inappropriate act or the request for damages referred to in the preceding paragraphs may be carried out, if the judgement of reversal is not final, by means of enforcement before the Court competent for the provisional enforcement.

4. In the cases set forth in the preceding paragraphs, the party bound to return, undo or compensate may object, within the enforcement procedure, in keeping with the provisions of Article 528 herein.

CHAPTER III

ON DE PROVISIONAL ENFORCEMENT OF CONVICTIONS ISSUED IN SECOND INSTANCE

Article 535. *Provisional enforcement of judgments issued in the second instance.*[298]

1. The provisional enforcement of non-final judgements passed in second instance, as well as the objection to the said enforcement, shall be governed by the provisions of the preceding chapter.

2. In the cases referred to in the preceding paragraph, provisional enforcement may be sought at any time as from the date notice is served of the decision deeming that the extraordinary appeal for infringement of procedure or the appeal in cassation has been lodged, provided it is before a ruling is issued on such appeals.

The application shall be filed with the Court that heard the proceedings in the first instance, attaching thereto a certification of the judgment whose provisional enforcement is requested, as well as an affidavit of all the particulars considered necessary, which certification and affidavit shall be obtained from the Court that passed the judgment of appeal or, as appropriate, the body competent to hear the appeal that was lodged against the said judgment.

3. The objection to the provisional enforcement and to specific enforcement measures in second instance shall be governed by the provisions of Articles 528 to 531 herein.

[298] Paragraph 2 amended by Article 4.26 of Act 37/2011 of 10 October.

Article 536. *Ratification in second instance of the provisionally enforced decision.*

If the provisionally enforced judgement in second instance is ratified in all its rulings, the second subparagraph of Article 532 shall apply.

Article 537. *Reversal of the provisionally enforced decision in second instance.*

If the judgement passed in second instance and provisionally enforced is reversed, Articles 533 and 534 shall apply.

TITLE III

ON THE ENFORCEMENT: GENERAL PROVISIONS

CHAPTER ONE

ON THE PARTIES TO THE ENFORCEMENT

Article 538. *Parties and individuals subject to the compulsory enforcement.*

1. Parties to the enforcement proceedings are the individual or individuals requesting and obtaining the dispatch of the enforcement and the individual or individuals against whom the said enforcement is being dispatched.

2. notwithstanding the provisions of Articles 540 to 544, at the request of the party appearing as creditor in the enforcement title, an enforcement may only be dispatched against the following parties:

(i). The party appearing as debtor in the same title.

(ii). The individual who, while not appearing as debtor in the enforcement title, is personally liable for the debt pursuant to a legal provision or by virtue of a guarantee certified by public document.

(iii). The individual who, while not appearing as debtor in the enforcement title, is the owner of the assets specifically subject to the payment of the debt in relation to which the proceedings are being carried out, provided that the said charge derives from the law or is certified by means of an authentic document. With regard to these persons, the enforcement shall be carried out in relation to the assets specifically charged.

3. The means of defence granted by the law to the enforcement debtor may also be used by the individuals against whom the enforcement was not dispatched but whose assets have been included in the said enforcement by decision of the Court, as the latter considers that, although the said assets do not belong to the enforcement debtor, they are nevertheless encumbered by the compliance with the obligation subject of the proceedings.

4. If the enforcement creditor induces the Court to extend the enforcement to individuals or assets not authorised under the title or the law, he shall be liable for the damages.

Article 539. *Representation and defence. Costs and expenses of the enforcement.*[299]

1. The enforcement creditor and the enforcement debtor shall be instructed by counsel and represented by a court representative, unless it concerns the enforcement of decisions issued in proceedings where the involvement of the said professionals is not mandatory.

The involvement of counsel and court representative shall be required for enforcement actions arising from uncontested small claims procedures whenever the amount for which the enforcement is being ordered exceeds 2,000 euros.

The involvement of counsel and court representative shall be required for enforcement actions arising from mediation agreements or arbitration awards whenever the amount for which the enforcement is being ordered exceeds 2,000 euros.

2. In the actions of the enforcement proceedings for which this law expressly requires a ruling on costs, the parties shall pay the expenses and costs corresponding to them in accordance with Article 241 herein, notwithstanding any reimbursements that may be in order after the decision of the Court or the Court Clerk, as appropriate, in relation to the costs.

The costs of the enforcement proceedings not included in the preceding subparagraph shall be for the account of the enforcement debtor without any express taxation being required, but, until their settlement, the enforcement creditor shall pay the expenses and costs that are being incurred, except those corresponding to proceedings carried out at the

[299] A subparagraph added to paragraph 1 by final provision 3.17 Law 5/2012 of 5 6 July.

request of the enforcement debtor or other parties, which shall be paid by whomever has sought the proceeding concerned.

Article 540. *Enforcement creditor and enforcement debtor in cases of succession.*[300]

1. The enforcement may be dispatched or continued in favour of the individual demonstrating that they are the successor of the party appearing as enforcement creditor in the enforcement title and against the individual who proves to be the successor of the party appearing as enforcement debtor in that title.

2. In order to demonstrate succession for the purposes of the preceding paragraph, the written documents in which such succession is recorded shall be submitted to the Court. If the court considers them to be sufficient for such purposes as they meet the requirements demanded for their validity, the enforcement will be dispatched without further ado in favour of or against the successor by reason of the documents submitted.

In the event that the enforcement has already been dispatched, the succession will be notified to the enforcement creditor or enforcement debtor, as appropriate, and enforcement will continue in favour or against whoever is the successor.

3. If succession is not recorded in written documents or the court does not consider them to be sufficient, it will order the Clerk of the Court to send the request submitted by the enforcement creditor or debtor who is to be succeeded, who appears as enforcement creditor or debtor in the title and who is intended to be the successor, granting a hearing within a time limit of 15 days. Once the allegations have been submitted, or the time limit expires without them having been made, the court will pass a decision on the succession for the sole purposes of the dispatch or continuance of the enforcement.

Article 541. *Enforcement in the case of spouses' joint property.*

1. No enforcement shall be dispatched in relation to the community of joint property.

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[300] Amended by single article 59 of Law 42/2015, of 5 October.

Paragraph 3 worded in accordance with Act 13/2009 of 3 November.

2. When the enforcement is being carried out as a result of debts incurred by one of the spouses but to be guaranteed by the community property, although the enforcement claim may be brought exclusively against the debtor spouse, the attachment of assets shall be notified also to the other spouse, transferring to the latter the enforcement claim and the court order resolving the enforcement in order to allow the latter to object to the enforcement within the ordinary time limit. The objection to the enforcement may be based on the same grounds as those corresponding to the enforcement debtor and, in addition, on the ground that the spouses' joint property should not answer for the debt for which the enforcement has been dispatched. If the objection is based on the latter ground, it shall be up to the creditor to prove the liability of the spouses' joint property. If no such liability is demonstrated, the spouse of the enforcement debtor may apply for the dissolution of the community property in accordance with the following paragraph.

3. If the enforcement is being carried out as a result of personal debts of one of the spouses and common assets are the object of the enforcement due to the lack or insufficiency of the exclusive assets, the attachment of the former shall be notified to the non-debtor spouse. In this case, if the latter opts for requesting the dissolution of the community property, the Court, having heard the spouses, shall resolve whatever is appropriate on the division of the estate and, as appropriate, shall decide that the said dissolution be carried out in keeping with the provisions of the law, in the meantime suspending the enforcement to the extent it concerns the joint assets.

4. In the cases referred to in the preceding paragraphs, the spouse who has been notified of the attachment may lodge the appeals and use the means of contest available to the enforcement debtor in defence of the interests of the joint property.

Article 542. *Enforcement against the joint and several debtor.*

1. The judgements, awards and other judicial enforcement titles obtained only against one or more joint and several debtors shall not have the effect of an enforcement title against the joint and several debtors who were not a party in the proceedings.

2. In the case of extrajudicial enforcement titles, the enforcement may only be dispatched against the joint and several debtor included in the said titles or in another document evidencing the joint and several nature of the debt and entailing enforcement in accordance with the law.

3. When several joint and several debtors are indicated in the enforcement title, the enforcement may be sought for the total amount of the debt, plus interest and costs, against one or some of the said debtors or against all of them.

Article 543. *Temporary associations or entities.*

1. When the enforcement title specifies as debtors joint ventures or groups of different companies or entities, the enforcement may be dispatched against their shareholders, members or associates only if, by agreement of the latter or pursuant to a legal provision, they are joint and severally liable for the acts of the joint venture or group.

2. If the law expressly establishes the subsidiary nature of the liability of the members or companies in the joint ventures or groups referred to in the preceding paragraph, for the enforcement to be dispatched against the former it shall be necessary to demonstrate the insolvency of the latter.

Article 544. *Entities lacking legal personality.*

In the case of enforcement titles against entities lacking legal personality and trading as separate entities, the enforcement may be dispatched against the shareholders, members or managers who have intervened in the legal transactions in the name of the entity, provided that, in the opinion of the Court, the condition of shareholder, member or manager and the intervention in the name of the entity in relation to third parties has been sufficiently demonstrated.

The provisions of the preceding paragraph shall not apply to the communities of owners of real property under the condominium system.

CHAPTER II

OTHE COMPETENT COURT

Article 545. *Competent Court. Manner of compulsory enforcement decisions.*[301]

1. If the enforcement title consists of court rulings, decisions issued by Court Clerks considered enforcement titles herein, or settlements and

[301] Paragraph 2 amended by final provision 3.18 of Law 5/2012 of 6 July.
Paragraphs 1, 2 and 4 are worded in accordance with Act 13/2009 of 3 November.

agreements sanctioned or approved by the courts, the competent Court to issue the court order containing the general order for enforcement and its dispatch shall be the Court that heard the matter in first instance or sanctioned or approved the settlement or agreement.

2. Where title for enforcement resides in an arbitration award or mediation agreement, the Court of First Instance of the place where the award has been issued or where the mediation award has been executed shall hold jurisdiction to reject or authorise the enforcement action and its performance.

3. For the enforcement based on titles other than those referred to in the preceding paragraphs, the competent Court shall be the Court of First Instance of the place corresponding in accordance with the provisions of Articles 50 and 51 herein. The application for enforcement may also be lodged, at the discretion of the enforcement creditor, with the Court of First Instance of the place of compliance with the obligation, according to the title, or with the Court of any place where the assets of the enforcement debtor liable to be attached are situated, but the rules concerning explicit or tacit submission contained in section 2 of chapter II of title II of Book I shall not apply under any circumstances.

If there are several enforcement debtors, the competent Court shall be the one that, pursuant to the preceding subparagraph, is competent in respect of any enforcement debtor, at the discretion of the enforcement creditor.

The provisions set forth in the preceding subparagraph notwithstanding, when the enforcement affects only specifically mortgaged or pledged assets, the competence shall be determined in keeping with the provisions of Article 684 herein.

4. In all the events set forth in the preceding paragraphs, the Court Clerk shall be responsible for determining the assets of the enforcement debtor to be included in the dispatch of the enforcement and the adoption of any measures required to ensure the effectiveness of the dispatch, and shall order any means for verifying the assets that are necessary in accordance with Articles 589 and 590 herein and the specific enforcement measures that are appropriate.

5. In enforcement proceedings, Court decisions shall be given in the form of a court order when they:

(i). Contain the general enforcement order authorising and dispatching the said enforcement.

(ii). Decide on the objection to the final enforcement based on procedural reasons or reasons relating to the merits of the case.

(iii). Decide on third-party claims to ownership.

(iv). Refer to any other decisions specified herein.

6. The form of an order shall be given to the decisions of the Court Clerk determining the assets of the enforcement debtor to be included in the dispatch of the enforcement and any other decisions specified herein.

7. The Court shall resolve by means of a procedural court order in all cases expressly indicating so, whereas in all other cases the appropriate decisions shall be issued by the Court Clerk in the form of orders to move the proceedings forward, except when it is appropriate to decide by court order.

Article 546. *Ex officio examination of territorial jurisdiction.*

1. Before dispatching the enforcement, the Court shall examine ex officio its territorial jurisdiction and if, in view of the enforcement title and other documents accompanying the claim, it considers that it does not have the territorial jurisdiction, it shall issue a court order abstaining from dispatching the enforcement and indicating to the claimant the Court with which he should lodge the claim. This decision may be appealed against in accordance with paragraph 2 of Article 552.

2. Once the enforcement has been dispatched the Court cannot review its territorial jurisdiction ex officio.

Article 547. *Declinatory plea in the compulsory enforcement.*

The enforcement debtor may challenge the jurisdiction of the court by submitting a declinatory plea within a time limit of five days following the day on which he receives the first notice of the enforcement proceedings.

The declinatory plea shall be processed and resolved in accordance with Article 65 herein.

CHAPTER III

ON THE DISPATCH OF THE ENFORCEMENT

Article 548. *Time limit to enforce procedural rulings, arbitration awards or mediation agreements.*[302]

No enforcement actions of procedural rulings, arbitration awards or mediation agreements shall be ordered before twenty days have elapsed since the date on which notice is served on the enforcement creditor of the conviction, the covenant's approval or the agreement's execution.

Article 549. *Enforcement claim. Content.*[303]

1. An enforcement shall be dispatched only at the request of a party, in the form of a claim, in which the following shall be specified:

(i) The title on which the enforcement creditor bases their claim.

(ii) The enforcement protection sought, in connection with the enforcement title submitted, specifying, as appropriate, the amount claimed in accordance with Article 575 of this Act.

(iii) The assets of the enforcement debtor subject to attachment known to them and, as appropriate, if they consider them to be sufficient for the purposes of the enforcement.

(iv) As appropriate, the measures of location and investigation requested pursuant to Article 590 of this Act.

(v) The person or persons, specifying their identification details, against whom the dispatch of the enforcement is sought, due to such person or persons appearing in the title as debtors or being subject to the enforcement in accordance with Articles 538 to 544 of this Act.

2. If the enforcement title is a decision of the Clerk of the Court or a judgment or decision issued by the Court competent to examine the enforcement, the enforcement claim may be limited to a request for dispatch of the enforcement, identifying the judgment or decision whose enforcement is sought.

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[302] Amended by final provision 3.19 of Royal Decree-Law 5/2012 of 6 July.. Amended by Article 4.27 of Act 37/2011 of 10 October.

[303] Paragraph 3 amended by Article 2.6 of Law 4/2013 of 4 June.

3. In a judgment for eviction due to non-payment of rents or amounts due, or due to the legal or contractual expiry of the term, or in orders which end the eviction if there is no opposition to the payment order, the request for enforcement of the eviction order will be sufficient for the direct execution of such orders without the need for further procedures to proceed with the eviction on the date and time shown in the judgment itself of on the date that may have been set to serve the payment notice on the defendant.

4. The legal time limit referred to in the preceding article shall not apply to the enforcement of decisions on eviction for non-payment of rents or amounts due or legal or contractual expiry of the term, which shall be governed by the provisions applicable in such cases.

Article 550. *Documents to be attached to the enforcement claim.*[304]

1. The following shall be attached to the enforcement claim:

(i). The enforcement title, except where the enforcement action is grounded on a judgment, order, agreement or settlement that is recorded in the proceedings.

If the title is an award, the arbitration agreement and the documents proving the notice of the latter has been served on the parties shall also be attached.

Where the title is a mediation agreement made public through a deed, a copy of the minutes of the initial and final sessions of the proceedings shall additionally be attached.

(ii). The power of attorney granted in favour of a court representative, provided that the representation is not conferred «apud acta» or is not already recorded in the proceedings, when an application is lodged for the enforcement of judgements, settlements or agreements sanctioned by the Court.

(iii). The documents evidencing the prices or rates applied for the monetary calculation of non-monetary debts, unless they are official data or data of public knowledge.

(iv). All other documents required by law for the dispatch of the enforcement.

2. The enforcement claim may also be accompanied by any documents the enforcement creditor considers useful or convenient for the most

[304] A paragraph added to item (i), paragraph 1 by final provision 3.20 ofLaw 5/2012 of 6 July.

appropriate execution of the enforcement and containing details of interest for their dispatch.

Article 551. *General order of enforcement and dispatch of the enforcement.*[305]

1. Once the enforcement claim has been lodged and provided that the procedural rules and requirements are met, that the enforcement claim does not contain any formal irregularity and the acts of enforcement sought are in keeping with the nature and the contents of the title, the Court shall issue a court order containing the general order of enforcement and dispatching the latter.

Beforehand, the Clerk of the Court will carry out the relevant consultation at the Public Bankruptcy Registry for the purposes provided for in paragraph 4 of article 5 a) of the Bankruptcy Act.

2. The court order shall indicate:

(i) The person or persons in whose favour the enforcement is being dispatched and the person or persons against whom such enforcement is being dispatched.

(ii) Whether the enforcement is being dispatched in a joint or a joint and several manner.

(iii) The amount, as appropriate, for which the enforcement is being dispatched, for all items.

(iv) The clarifications that are required in relation to the parties or the contents of the enforcement, in keeping with the provisions in the enforcement title, as well as concerning those personally liable for the debt or the owners of assets specifically subject to its payment or those who must be included in the enforcement, in accordance with the provisions of Article 538 of this act.

3. Once the court order has been issued by the Judge or Senior Judge, the Clerk of the Court in charge of the enforcement, on the same day or on the working day following the day on which the writ of enforcement was issued, shall issue an order containing:

(i) The specific enforcement measures that are appropriate, including, if possible, the attachment of assets.

[305] Amended by single article 60 of Law 42/2015, of 5 October.

(ii) The measures aimed at locating and verifying the appropriate assets of the enforcement debtor, in accordance with the provisions of Articles 589 and 590 of this act.

(iii) The content of the payment order to be served on the debtor, in the cases where the law provides for this requirement, and if this is made by civil servants from the Judicial Assistance Body or by the procurator of the enforcement creditor, if this is requested.

The Clerk of the Court will make the existence of the order dispatching the enforcement known to the Public Bankruptcy Registry with express specification of the tax identification number of the individual or corporate debtor against whom the enforcement is dispatched. The Public Bankruptcy Registry will notify the court that is hearing the enforcement of the practice of any entry against the tax identification number notified for the purposes provided for in bankruptcy legislation. The Clerk of the Court will notify the Public Bankruptcy Registry of the termination of the enforcement proceedings as soon as this occurs.

4. No appeal of any nature may be lodged against the court order authorising and dispatching the enforcement, without prejudice to any objection that may be filed by the enforcement debtor.

5. A direct appeal for judicial review without suspensive effects against the order issued by the Clerk of the Court may be lodged with the Court that issued the general enforcement order.

Article 552. *Rejection of the dispatch of the enforcement. Appeals.*[306]

1. If the Court considers that the rules and requirements established by law to dispatch the enforcement have not been complied with, it shall issue a court order rejecting the dispatch of the enforcement.

The court will review ex officio if any of the clauses included in an enforcement title from those cited in article 557.1 could be classified as abusive. If any clause appears that could be classified as such the parties will be given fifteen days for a hearing. Once they have been heard, the appropriate ruling will be made within five working days in accordance with the provisions of article 561.1.(iii).

[306] Amended by single article 61 of Law 42/2015, of 5 October.

Please note transitional provision 2 of the afore-mentioned Law with respect to the last paragraph of section 1 for small claims proceedings and enforcement of arbitration awards.

2. A direct appeal may be lodged against the court order rejecting the dispatch of the enforcement and such appeal may be lodged only by the creditor. The creditor may also, at their discretion, attempt an appeal for reversal prior to the remedy of appeal.

3. Once the court order rejecting the dispatch of the enforcement has become final, the creditor may only assert his rights in the relevant ordinary proceedings, provided the latter are not prevented by the res judicata of the final judgment or decision on which the enforcement claim was based.

Article 553. *Notice.*[307]

The court order authorising and dispatching the enforcement, as well as the order issued by the Clerk Court, as appropriate, together with a copy of the enforcement claim, shall be notified simultaneously to the enforcement debtor or, as appropriate, to the court representative representing him, without summons or order to attend, in order to allow him to be present at the enforcement, informing the latter, in such case, of the subsequent proceedings.

Article 554. *Immediate measures following the court order of dispatch of the enforcement.*[308]

1. In the cases where no request for payment is made, the measures referred to in number 2 of paragraph 3 of Article 551 shall be put into effect immediately, without previously hearing the enforcement debtor or waiting for the notice of the decree issued to this effect.

2. Even if a request for payment has to be made, the procedure shall be carried out in the way set forth in the preceding paragraph if requested by the enforcement creditor, justifying, in the opinion of the Court Clerk responsible for the enforcement, that any delay in locating and investigating the assets could thwart the successful conclusion of the enforcement.

Article 555. *Joinder of enforcements.*[309]

1. At the request of any of the parties or ex office, the Court Clerk shall resolve the joinder of the enforcement proceedings between the same enforcement creditor and the same enforcement debtor.

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[307] This article is worded in accordance with Act 13/2009, of 3 November.

[308] Article worded in accordance with Act 13/2009 of 3 November.

[309] Paragraphs 1 and 2 of this article have been worded in accordance with Act 13/2009 of 3 November («Official State Gazette» number 266 of 4 November).

2. The enforcement proceedings carried out against the same enforcement debtor may be joined, at the request of any of the enforcement creditors, if the Court Clerk competent in the oldest proceedings considers it more convenient for the satisfaction of all the enforcement creditors.

3. The application for a joinder shall be substantiated in the form set forth in Article 74 and subsequent articles.

4. When the enforcement concerns exclusively specifically mortgaged assets, the joinder with other enforcement proceedings may only be decided if the latter are being carried out to execute other mortgage guarantees on the same assets.

CHAPTER IV

ON THE OBJECTION TO THE ENFORCEMENT AND THE CONTESTING OF ENFORCEMENT ACTS CONTRARY TO LAW OR THE ENFORCEMENT TITLE

Article 556. *Contesting the enforcement of procedural rulings, arbitration awards or mediation agreements.*[310]

1. If the enforcement title is a court or arbitration conviction or a mediation agreement, the enforcement debtor shall have ten days in which to lodge an objection in writing, counted from the date notice is served of the court order ordering enforcement, alleging payment or fulfilment of the instructions contained in the judgment, which shall be proven by means of documents.

The expiry of the enforcement action and the agreements and settlements reached in order to avoid enforcement may also be alleged, provided that such agreements and settlements are recorded in public instruments.

2. The objection lodged in the cases of the preceding paragraph shall not suspend the enforcement.

3. The provisions of the preceding paragraphs notwithstanding, when the enforcement has been dispatched by virtue of the court order referred to in number 8 of paragraph 2 of Article 517, once the Court Clerk has admitted the objection to the enforcement, he shall, in the same decision, order the stay of the latter. This objection may be based on any of the grounds set forth in the following article and on those specified below:

[310] Heading and paragraph 1(1) amended by final provision 3.21 of Law 5/2012 of 6 July.
Paragraph 1 amended by Article 4.28 of Act 37/2011 of 10 October.
Article worded in accordance with Act 13/2009 of 3 November.

(A) Exclusive fault of the victim.

(B) Force majeure unrelated to the driving or operation of the vehicle.

(C) Concurrence of faults.

Article 557. *Objection to the enforcement based on non-judicial or arbitration titles.*[311]

1. When enforcement is dispatched based on the titles provided for in numbers (iv), (v), (vi) and (vii) and on other enforceable documents referred to in number (ix) of paragraph 2 of Article 517, the enforcement debtor may only object to the latter, in the time and form provided for in the preceding article, if the objection is based on any of the following grounds:

(A) Payment which can be proven with documentary evidence.

(B) Compensation of a liquid credit resulting from an enforceable document.

(C) Excess amount sought or excess in the cash calculation of the debts in kind.

(D) Prescription and expiry.

(E) Debt relief, arrangement with creditors or covenant or promise not to request, with documentary evidence.

(F) Settlement, provided it is recorded in a public document.

(G) That the title contains abusive clauses.

2. If the objection specified in the preceding paragraph is lodged, the Clerk of the Court shall, by order to move the proceedings forward, stay the course of the enforcement.

Article 558. *Objection on the ground of excess amount sought. Special cases.*[312]

1. The objection based exclusively on an excess amount sought or an excess shall not suspend the course of the enforcement, unless the enforcement debtor puts at the disposal of the Court for its immediate

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[311] Point (G) is added to paragraph 1 by article 7.2 of Law 1/2013, of 14 May.

Please note the transitional regime for enforcement proceedings regulated by Transitional Provision 4 of that Law.

Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

[312] Article worded in agreement with Act 13/2009, of 3 November.

delivery by the Court Clerk to the enforcement creditor the amount he considers due. Apart from this case, the enforcement shall continue its course, but the product of the sale of attached assets, to the extent it exceeds the amount acknowledged as due by the enforcement debtor, shall not be delivered to the enforcement creditor as long as the objection has not been resolved.

2. In the cases referred to in Articles 572 and 574, concerning account balances and variable interest, the Court Clerk in charge of the enforcement may, at the request of the enforcement creditor, appoint an expert by means of an order to move the proceedings forward, who, subject to a prior provision of funds, shall issue an opinion on the amount of the debt. This opinion shall be transferred to both parties to allow them, within a common time limit of five days, to submit their pleas in respect of the opinion issued. If both parties are in agreement with the opinion or fail to submit any pleas within the time limit granted to this effect, the Court Clerk shall issue an order of conformity with the said opinion. A direct appeal for judicial review without suspensory effects may be lodged with the Court against this order.

In case of controversy or if only one of the parties submitted pleas, the Court Clerk shall indicate a day and time for the holding of a hearing at the Court that issued the general enforcement order.

Article 559. *Substantiating objections on the grounds of procedural defects and decisions on them.*[313]

1. The enforcement debtor may also object to the enforcement by alleging the following defects:

(i) The enforcement debtor lacks the condition or the representation in which the claim is lodged against him.

(ii) Lack of capacity or representation of the enforcement creditor or failing to prove the condition or representation in which the claim is lodged.

(iii) Absolute nullity of the enforcement order due to the judgment or arbitration award not containing any statement of sentence, or because documentation submitted was non-compliant, the award or mediation agreement does not meet the legal requirements for enforcement, or due to a breach of the provisions of Article 520 when ordering enforcement.

[313] Point (iii) of paragraph 1 amended by single article 62 of Law 42/2015, of 5 October.

Item (iii), paragraph 1 amended by final provision 3.22 of Law 5/2012 of 6 July.

Number iv added by Act 60/2003 of 23 December.

(iv) If the enforcement title is an arbitration award not officially recorded with a Notary Public, the lack of authenticity of such title.

2. If the objection of the enforcement debtor is based on procedural defects, either exclusively or jointly with other reasons or grounds, the enforcement creditor may submit pleas in respect of the latter within a time limit of five days. If, in the opinion of the Court, the defect can be rectified, it shall, by procedural court order, grant the enforcement creditor a term of ten days to rectify it.

If the defect or fault cannot be rectified, or is not rectified within the said time limit, a court order shall be issued voiding the dispatched enforcement and ordering the enforcement creditor to pay the costs. If the Court fails to discern the existence of the procedural defects forming the sole ground of the objection, it shall issue a court order dismissing the objection and ordering the enforcement to go ahead and the enforcement debtor to pay the costs of the objection.

Article 560. *Substantiating the objection based on reasons of substance.*[314]

Once a decision has been issued on the objection to the enforcement for procedural reasons or if no such reasons have been alleged, the enforcement creditor may challenge the objection based on reasons of substance within a time limit of five days from the day on which the decision on the former grounds was notified to them or from the transfer of the writ of objection.

The parties, in their respective writs of objection and challenge to the latter, may apply for a hearing to be held, which the Court shall resolve by procedural court order if the dispute concerning the objection cannot be resolved on the basis of the documents submitted, and the Clerk of the Court shall indicate the day and time for the hearing within a time limit of ten days following the day of conclusion of the challenge procedure.

If a hearing is not requested, or if the Court considers that it is not appropriate to hold a hearing, the objection shall be resolved without further ado in accordance with the following article.

Where it is agreed to hold a hearing, if the enforcement debtor does not appear at it the court will take the objection to have been abandoned and will pass the decisions provided for in article 442. If the enforcement creditor fails

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[314] The last paragraph is amended by single article 63 of Law 42/2015, of 5 October.
Paragraph 2 worded in accordance with Act 13/2009, of 3 November.

to appear, the Court shall resolve on the objection to the enforcement without hearing them. If both parties appear, the hearing shall be carried out in accordance with the proceedings established for the oral hearing, proceeding to issue the appropriate decision in accordance with the following article.

Article 561. *Court order deciding on the objection based on reasons of substance.*[315]

1. Having heard the parties on the objection to the enforcement not based on procedural defects and, as appropriate, having held a hearing, the Court shall, by means of a court order, for the sole purposes of the enforcement, adopt one of the following decisions:

(A) Declare it appropriate for the enforcement to proceed for the amount that has been dispatched, when the objection is dismissed completely. If the objection was based on an excess amount sought and the latter is rejected in part, the enforcement shall be declared appropriate only for the relevant amount.

The court order rejecting the objection completely shall order the enforcement debtor to pay the costs of the objection, in accordance with the provisions of Article 394 concerning the order to pay costs in first instance.

(B) Declare that the enforcement is not appropriate, when one of the grounds for objection set out in Articles 556 and 557 is upheld or the excess amount sought that was admitted in accordance with Article 558 is deemed well-founded in full.

(C) Where one or several clauses are deemed to be abusive, the order passed will set out the effects of such classification and decree either the inappropriateness of the enforcement or its dispatch without applying the clauses which are considered to be abusive.

2. If the objection to the enforcement is upheld, the latter shall be declared void and the Court shall order the lifting of the attachments and the measures of guarantee of the charge that were adopted, restoring the enforcement creditor to the situation existing prior to the dispatch of the enforcement, in accordance with Articles 533 and 534. The enforcement creditor will also be ordered to pay the costs of the objection.

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[315] Point (C) is added to paragraph 1 by article 7.3 of Law 1/2013, of 14 May.
Please note the transitional regime for enforcement proceedings regulated by Transitional Provision 4 of that Law.

3. A remedy of appeal may be lodged against the court order deciding on the objection, which shall not suspend the course of the enforcement if the decision appealed against is one of dismissal of the objection.

If the decision appealed against upheld the objection, the enforcement creditor may request the attachments and the guarantee measures adopted to be maintained and to adopt those that are appropriate in accordance with Article 697 of this Act, and the Court shall resolve to do so by means of a procedural court order, provided that the enforcement creditor posts a security in an adequate amount, which shall be determined in the same decision, to guarantee any compensation that may correspond to the enforcement debtor in case the upholding of the objection is confirmed.

Article 562. *Contest of legal infringements in the course of the enforcement.*[316]

1. Regardless of the objection to the enforcement by the enforcement debtor in accordance with the preceding articles, any persons referred to in Article 538 may denounce the infringement of rules regulating the specific acts of the enforcement proceedings:

(i). By means of the appeal for reversal established herein if the infringement is recorded or has been committed in a decision of the Court of the enforcement or of the Court Clerk.

(ii). By means of a remedy of appeal in the cases where this is expressly established herein.

(iii). By means of a brief lodged with the Court in the absence of an express decision against which an appeal may be filed. The brief shall clearly express the decision or proceeding sought in order to remedy the alleged infringement.

2. If it is alleged that the infringement implies the nullity of proceedings or the Court so upholds, the provisions of Article 225 and subsequent articles shall apply. If the said nullity has been alleged before the Court Clerk or the latter considers that there are grounds to declare the said nullity, he shall inform the Court that authorised the enforcement in order for the latter to adopt a decision on the matter.

[316] Numbers (i) and (iii) of paragraph 1 and paragraph 2 are worded in accordance with Act 13/2009 of 3 November.

Article 563. *Acts of enforcement contradictory to the judicial enforcement title.*[317]

1. Should the court holding jurisdiction for the enforcement adopt a decision contrary to the enforcement title once the enforcement action has been ordered by virtue of court judgments or decisions, the party suffering damages may lodge an appeal for reversal and, should the latter be dismissed, a remedy of appeal.

Should the decision contrary to the enforcement title be issued by the Court Clerk, an appeal for judicial review may be lodged before the court and, should it be dismissed, a remedy of appeal may be lodged.

2. In the cases of the preceding paragraph, the apellant may request the suspension of the specific contested enforcement activity, which shall be granted if, in the opinion of the Court, the said party posts a security sufficient to cover the damages that the delay may cause to the other party.

The security may be posted in any of the forms specified in the second subparagraph of paragraph 3 of Article 529.

Article 564. *Legal defence of the enforcement debtor based on facts and acts not included in the grounds for objection to the enforcement.*

If, after the possibilities of a plea in the trial or subsequent to the submission of an extrajudicial enforcement title have been exhausted, facts or acts occur other than those admitted by this law as grounds of objection to the enforcement but legally relevant in relation to the rights of the enforcement creditor as against the enforcement debtor or the rights of the enforcement debtor as against the enforcement creditor, the legal validity of the said facts or acts may be enforced in the corresponding proceedings.

CHAPTER V

ON THE STAY AND TERMINATION OF THE ENFORCEMENT

Article 565. *Scope and general rule regarding the stay of the enforcement.*

1. A stay of the enforcement shall be ordered only in the cases where the law so orders expressly or all the parties to the enforcement so agree.

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[317] Paragraph 1 amended by Article 4.29 of Act 37/2011 of 10 October

Article worded in accordance with Act 13/2009, of 3 November.

2. After the stay has been ordered, measures of guarantee of the agreed attachments may nevertheless be adopted or maintained and those already agreed shall at all events be carried out.

Article 566. *Stay, dismissal and resumption of the enforcement in cases of reversal and review of a final judgement.*[318]

1. If, after the enforcement has been dispatched, a claim for review or reversal of a final judgement passed in default is lodged, the Court competent for the enforcement may, at the request of a party and if deemed advisable in view of the circumstances of the case, order the stay of the proceedings for enforcement of the judgement. To decide the stay, the Court shall demand that the party requesting it post a security equal to the value of the subject of litigation and the damages that may derive from the non-enforcement of the judgement. Before deciding on the stay of the enforcement of the judgement under review, the Court shall hear the opinion of the Public Prosecution Service.

The security referred to in the preceding subparagraph may be posted in any of the forms set forth in the second subparagraph of paragraph 3 of Article 529.

2. The stay of the enforcement shall be lifted and its continuance ordered if the Court Clerk responsible for the enforcement is informed of the dismissal of the review or the claim for reversal of a judgement passed in default.

3. The Court Clerk shall stay the enforcement if the review is allowed or if, after the judgement passed in default has been reversed, a judgement acquitting the defendant is passed

4. If, the judgement passed in default having been reversed, a judgement is passed with the same contents as the reversed judgement or if, although having a different content, it contains rulings of conviction, its enforcement shall be carried out and the previous enforcement acts shall be considered valid and effective to the extent that they are suitable to achieve the effectiveness of the rulings of the said judgement.

Article 567. *Lodging or ordinary appeals and suspension.*[319]

The lodging of ordinary appeals shall not by itself suspend the course of the enforcement actions. However, the enforcement debtor who evidences

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[318] Paragraphs 2 and 3 of this article are worded in accordance with Act 13/2009 of 3 November.

[319] Article worded in accordance with Act 13/2009 of 3 November.

that the decision he is appealing is causing him damages difficult to repair may apply to the Court that dispatched the enforcement for the suspension of the proceeding appealed against, posting, in the forms allowed by this law, a security sufficient to cover the damages that may be caused by the delay.

Article 568. *Stay in cases of bankruptcy or pre-bankruptcy.*[320]

1. No court order will be passed authorising and dispatching enforcement where the Court has evidence that the defendant is bankrupt or has made the notification referred to in article 5 a) of the Bankruptcy Act with respect to the goods set out in that article. In the latter case, where enforcement affects a guarantee in rem, the enforcement will be taken as commenced for the purposes of article 57.3 of the Bankruptcy Act in the event that bankruptcy eventually occurs in spite of the enforcement not being dispatched.

2. The Clerk of the Court shall order the stay of the enforcement action at the stage it has reached where a declaration of bankruptcy is reflected in the proceedings. The commencement of the enforcement and the continuance of the procedure already commenced concerning exclusively mortgaged and pledged assets shall be governed by the provisions of the Bankruptcy Act.

3. If there are several defendants and only one or some of them are in the situation referred to in the two preceding paragraphs, the enforcement shall not be suspended in respect of the others.

Article 569. *Suspension on the grounds of criminal first-ruling procedure.*[321]

1. The filing of a complaint or the lodging of an action putting forward allegedly criminal matters relating to the enforcement title or the dispatch of the compulsory enforcement shall not, as such, imply an order of suspension of the said enforcement.

If, however, a criminal case is pending in which allegedly criminal matters are being investigated that, if true, would determine the falsehood or nullity of the

[320] The heading and paragraph 1 amended by final provision 1 of Law 17/2014, of 30 September.

Paragraph 2 amended by final provision 3.7 of Act 22/2003 of 9 July.

Article worded in accordance with Act 13/2009 of 3 November.

[321] The second subparagraph of paragraph 1 and paragraph 3 are worded in accordance with the Act 13/2009 of 3 November.

title or the invalidity or illegality of the dispatch of the enforcement, the Court that authorised the said dispatch, after having heard the parties and the Public Prosecution Service, shall order the suspension of the enforcement.

2. If the criminal case referred to in the preceding paragraph terminates with a decision declaring the non-existence of the fact or that the said fact is not of a criminal nature, the enforcement creditor may request the compensation of damages, in the terms of paragraph seven of Article 40.

3. The provisions of paragraph one of this article notwithstanding, the enforcement may move forward if the enforcement creditor posts a security in any of the forms laid down in the subparagraph two of paragraph 3 of Article 529 that, in the opinion of the Court that dispatched the enforcement, is sufficient to cover whatever he may receive and the damages that are caused to the enforcement debtor as a result of the enforcement.

Article 570. *End of the enforcement.*[322]

The compulsory enforcement may only terminate with the complete satisfaction of the enforcement creditor, which shall be decided by an order of the Court Clerk, against which a direct appeal for judicial review may be lodged.

TITLE IV

ON THE MONETARY ENFORCEMENT

CHAPTER ONE

ON THE MONETARY ENFORCEMENT: GENERAL PROVISIONS

Article 571. *Scope of this title.*

The provisions of this Title shall apply when the compulsory enforcement is appropriate by virtue of an enforcement title directly or indirectly resulting in the obligation to deliver an amount of liquid money.

Article 572. *Liquid amount. Enforcement for balance of transactions.*

1. For the purposes of the dispatch of the enforcement a liquid amount shall be considered any specified amount of money expressed in the title

[322] Article worded in accordance with Act 13/2009 of 3 November .

with comprehensible letters, figures or numbers. In case of differences between various expressions of the amount, the amount specified in letters shall prevail. However, for the purposes of dispatching the enforcement, it shall not be necessary for the amount requested by the enforcement creditor in respect of the interest that may accrue during the enforcement and the costs originated by the latter to be a liquid amount.

2. An enforcement may also be dispatched for the amount of the balance resulting from transactions deriving from contracts executed by public deed or in a policy authenticated by a certified trade broker, provided that it has been agreed in the title that the amount due in case of enforcement shall be that resulting from the settlement carried out by the creditor in the manner agreed upon by the parties in the enforcement title itself.

In such case, the enforcement shall be dispatched only if the creditor demonstrates that he has previously notified the enforcement debtor and the guarantor, if appropriate, of the amount due resulting from the settlement.

Article 573. *Documents to be attached to the enforcement claim for balance of account.*

1. In the cases referred to in the second paragraph of the preceding article, the following documents shall be attached to the enforcement claim, in addition to the enforcement title and the documents referred to in Article 550:

(i). The document or documents expressing the balance resulting from the settlement carried out by the creditor, as well as the statement of the credit and debit items and those corresponding to the application of interest determining the exact balance for which the dispatch of the enforcement is requested.

(ii). The authentic document evidencing that the settlement was carried out in the form agreed upon by the parties in the enforcement title.

(iii). The document evidencing that the amount due has been notified to the debtor and the guarantor, if appropriate.

2. If considered convenient by the enforcement creditor, the claim may also be accompanied by the supporting evidence of the various credit and debit items.

3. If the creditor is in doubt as to the reality or the demandability of a specific item or its actual amount, he may request the dispatch of the

enforcement for the unquestioned amount and reserve the claim of the rest for the corresponding declaratory action, which may be simultaneous to the enforcement.

Article 574. *Enforcement in cases of variable interest.*

1. In the enforcement claim the enforcement creditor shall set forth the calculation operations resulting in the balance of the specified amount for which the dispatch of the enforcement is sought in the following cases:

(i). When the amount claimed by him derives from a loan or credit in which a variable interest rate was agreed.

(ii). When the amount claimed derives from a loan or credit in which it is necessary to adjust the pars of exchange of different currencies and their respective interest rates.

2. In all the preceding cases the provisions of numbers two and three of the first paragraph of the preceding article and the second and third paragraphs of the said article shall apply.

Article 575. *Determination of the amount and dispatch of the enforcement.*[323]

1. The enforcement shall be dispatched for the amount claimed in the enforcement claim for principal and ordinary and late-payment interest due, increased by the amount anticipated to cover the interest that may accrue, as appropriate, during the enforcement and the costs of the latter. The amount estimated for these two items, which shall be fixed provisionally, may not exceed 30% of the amount claimed in the enforcement claim, without prejudice to subsequent settlement.

In exceptional cases, if the enforcement creditor justifies that, taking into account the foreseeable duration of the enforcement and the applicable interest rate, the interest that may accrue during the enforcement, in addition to the costs of the latter, shall exceed the limit set in the preceding subparagraph, the amount established provisionally for such items may exceed the indicated limit.

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[323] Paragraph 1a added by Article 7.4 of Law 1/2013 of 14 May.
Please note the transitional regime for enforcement proceedings regulated by Transitional Provision 4 of that Law.

1 a. At any event, in the case of enforcement on a habitual residence the costs that may be awarded against the enforcement debtor may not exceed 5% of the amount claimed in the enforcement order.

2. Without prejudice to the excess amount sought that may be alleged by the enforcement debtor, the Court may not reject the dispatch of the enforcement because it considers the amount due to be different from the one set by the enforcement creditor in the enforcement claim.

3. However, no enforcement shall be dispatched if, as appropriate, the enforcement claim fails to set out the calculations referred to in the preceding articles or the latter is not accompanied by the documents required by these precepts.

Article 576. *Procedural delay interest.*[324]

1. The moment when any judgement or decision ordering the payment of a liquid amount of money has been issued in first instance shall determine the accrual of annual interest in favour of the creditor equal to the legal interest on money increased by two percentage points or the appropriate rate established by agreement between the parties or by a special provision of the law.

2. In the cases of partial reversal, the Court shall decide on the procedural delay interests in accordance with its prudent discretion, setting out the relevant grounds.

3. The provisions set forth in the preceding paragraphs shall apply to court rulings of any jurisdictional level, arbitration awards and mediation agreements containing an order to pay a net amount, apart from the special cases legally laid down for Pubic Treasury Departments.

Article 577. *Debt in foreign currency.*

1. If the title establishes the amount of money in a foreign currency, the enforcement shall be dispatched to obtain and to deliver it. The costs and expenses, as well as the procedural delay interests, shall be paid in the national currency.

2. For the purposes of calculating the assets that need to be attached, the amount in foreign currency shall be counted at the official exchange rate on the day of dispatch of the enforcement.

[324] Paragraph 3 amended by final provision 2.20 of Royal Decree-Law 5/2012 of 5 March.

In the case of a foreign currency without official listing, the calculation shall be made applying the exchange rate deemed appropriate by the Court in view of the pleas and documents submitted by the enforcement creditor with the claim, notwithstanding the subsequent settlement of the conviction, which shall be carried out in accordance with the provisions or Articles 714 to 716 herein.

Article 578. *Maturity of new instalments or of the entire debt.*

1. If, subsequent to the dispatch of the enforcement for debt of a liquid amount, any instalment of the same obligation subject of the procedure or the entire obligation matures, the enforcement shall be deemed extended by the amount corresponding to the new maturities of principal and interests if the claimant so requests and without need to date back the procedure.

2. The extension of the enforcement may be requested in the enforcement claim. In this case, when notifying the court order dispatching the enforcement to the enforcement debtor, the latter shall be advised that the enforcement shall be deemed automatically extended if, on the dates of maturity, the corresponding amounts have not been placed at the disposal of the Court.

If the enforcement creditor seeks the automatic extension of the enforcement, he shall submit a final settlement of the debt, including the maturity dates of principal and interests during the enforcement. If this settlement is in accordance with the enforcement title and the amount of the maturities included in the latter has not been deposited, the payment to the enforcement creditor shall be carried out in keeping with the amount resulting from the submitted settlement.

3. The extension of the enforcement shall be sufficient ground for the extension of the attachment and may be recorded in the preemptive annotation of the latter in accordance with the provisions of paragraph 4 of Article 613 herein.

In the case of the preceding paragraph, the extension of the enforcement shall not involve the automatic adoption of these measures, which shall only be agreed, if appropriate, at the request of the enforcement creditor after each maturity that has not been complied with.

Article 579. *Monetary enforcement in cases of especially mortgaged or pledged assets.*[325]

1. Where enforcement actions are solely aimed at mortgaged or pledged assets to guarantee a monetary debt, the provisions of Chapter V of this Title shall apply. If the proceeds from auctioned mortgaged or pledged assets are insufficient to cover the debt, the enforcement creditor may seek the enforcement of the remaining amount against whomever it may be appropriate, and the enforcement action shall proceed in accordance with the normal rules that apply to any enforcement action.

2. Without prejudice to the provisions of the preceding paragraph, in the case of repossession of the mortgaged habitual residence, if the approved auction is insufficient to achieve complete satisfaction of the enforcement creditor's rights, the enforcement, which will not be stayed, will be in accordance with the following particulars:

a) The enforcement debtor will be discharged if their liability is covered, within a period of five years from the date of the order approving the auction or repossession, by 65% of the total amount which is pending at the time, solely increased by the legal interest rate at the time of payment. They will be discharged under the same terms if, being unable to pay 65% within the period of five years, they are able to pay 80% within ten years. If the foregoing circumstances do not exist, the creditor may claim the total amount due to them in accordance with the applicable contractual clauses and regulations.

b) In the case that the auction or repossession is approved in favour of the enforcement creditor or whoever they may have assigned their right to, and these, or any company in their group, within a period of 10 years from the approval, proceed to sell the property, the remaining debt payable by the enforcement debtor at the time of the sale will be reduced by 50% of the profit obtained on such sale. In order to calculate this amount all costs duly proven by the enforcement creditor will deducted.

If, within the afore-mentioned periods, a monetary enforcement occurs which exceeds the amount by which the debtor may be discharged according the foregoing rules, the remainder will be placed at their

[325] Amended by Article 7.5 of Law 1/2013 of 14 May.
Please note the transitional regime for enforcement proceedings regulated by Transitional Provision 4 of that Law.

Amended by Article 4.30 of Act 37/2011 of 10 October.

disposal. The Clerk of the Court in charge of the enforcement will record these circumstances in the repossession order and will order the relevant registration to be made at the Land Registry in relation to the provisions in letter b) above.

CHAPTER II

OTHE REQUEST FOR PAYMENT

Article 580. *Cases where requirement for payment is unnecessary.*[326]

If the enforcement title consists of decisions issued by the Court Clerk, court rulings or arbitration awards, decisions approving settlements or covenants reached within the proceedings or mediation agreements, which involve the obligation to deliver specific amounts of money, it shall not be necessary to require the enforcement debtor to pay in order to proceed to the attachments of his assets.

Article 581. *Cases in which a request for payment is appropriate.*[327]

1. If the enforcement for the delivery of specific amounts of money is not based on procedural rulings or arbitration awards, after the enforcement has been dispatched the enforcement debtor shall be requested to pay the amount claimed as principal and interests accrued, as appropriate, to the date of the claim, and if he fails to pay immediately, the Court shall proceed to attach his assets to an extent sufficient to cover the amount for which the enforcement was dispatched and the costs of the latter.

2. The request established in the preceding paragraph shall not be made if the enforcement claim is accompanied by a notary deed certifying that the enforcement debtor has been requested to pay at least ten days in advance.

Article 582. *Place of the request for payment.*

The request for payment shall me made at the address indicated in the enforcement title. However, at the request of the enforcement creditor, the request may also be made at any place where, even accidentally, the enforcement debtor may be found.

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[326] Amended by final provision 3.24 of Law 5/2012 of 6 July.

[327] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

If the enforcement debtor is not present at the address recorded in the enforcement title, the attachment may be carried out at the request of the enforcement creditor, notwithstanding a new attempt of making the request in keeping with the provisions herein for the acts of communication by means of the delivery of the decision or a summons and, as appropriate, for the communication of the notice.

Article 583. *Payment by the enforcement debtor. Costs.*[328]

1. If the enforcement debtor pays the request immediately or prior to the dispatch of the enforcement, the Court Clerk shall put the relevant amount of money at the disposal of the enforcement creditor and shall deliver a proof of payment to the enforcement debtor.

2. Even if the debtor pays at the time of the request, all costs incurred shall be for his account, unless he demonstrates that, for reasons not attributable to him, he was unable to make the payment before the enforcement creditor demanded the enforcement.

3. Once the interests and costs have been paid, if accrued, the Court Clerk shall issue an order declaring the termination of the enforcement.

CHAPTER III

ON THE ATTACHMENT OF ASSETS

Section 1. On the attachment of assets

Article 584. *Target scope and sufficiency of the attachment.*

Assets whose foreseeable value exceeds the amount for which enforcement has been ordered, except when the estate of the enforcement debtor only contains assets with a value greater than these items and the addition of these assets is necessary for the purposes of the enforcement.

Article 585. *Avoidance of attachment through a deposit.*

Once enforcement is ordered, the attachment of assets shall take place as stipulated herein, unless the enforcement debtor deposits the amount he is ordered to pay, in which case the attachment shall be suspended.

[328] Paragraph 1 has been worded in accordance with Act 13/2009 of 3 November and paragraph 3 has been added by the same law.

The enforcement debtor who has not made the deposit before the attachment can do so at any subsequent time, before opposition to the enforcement is decided upon. In this case, once the deposit is made, the attachments shall be lifted.

Article 586. *Assignment of the amount deposited.*

If the enforcement debtor formulates opposition, the amount deposited in accordance with the preceding article shall be deposited in the establishment designated for this and the attachment shall continue to be suspended.

If the enforcement debtor does not formulate opposition, the amount deposited to avoid the attachment shall be handed over to the enforcement creditor notwithstanding the subsequent settlement of interest and costs.

Article 587. *Time of the attachment.*[329]

1. The attachment shall be understood to have been carried out from the time this is ordered by the Court Clerk or the description of an asset is described in the certificate of the formal document of the attachment, even though measures for the guarantee or publicity of the attachment have not been adopted. The Court Clerk shall immediately adopt these guarantee and publicity measures, by issuing the precise orders ex officio and these shall be handed over to the court representative of the enforcement creditor who requests this.

2. The provisions in the preceding paragraph shall be understood notwithstanding any rules of protection of the third party in good faith which must be applied.

Article 588. *Nullity of the undetermined attachment.*[330]

1. The attachment of assets and rights whose effective existence is not on record shall be null.

2. Notwithstanding the provisions in the preceding paragraph, bank deposits and positive balances of accounts opened in credit institutions may be attached on condition that, due to an executive entitlement, the amount decided by the Court Clerk is the maximum limit.

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[329] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

[330] Paragraph 2 worded in accordance with Act 13/2009, of 3 November.

The enforcement debtor shall freely dispose of whatever exceeds this limit.

Article 589. *Statement of assets of the enforcement debtor.*[331]

1. Unless the enforcement creditor states assets whose attachment he considers sufficient for the purposes of the enforcement, the Court Clerk shall request, through an order, to move the enforcement debtor forward, ex officio, so that he provides a list of assets and rights sufficient to cover the amount of the enforcement, with a statement, as appropriate, of charges and encumbrances, as well as whether property is occupied, by whom and with what entitlement.

2. The request made to the enforcement debtor for a statement of his assets shall be made with a caution regarding the sanctions which may be imposed, at least for serious disobedience, in the event that a list of his assets is not submitted, he includes assets which are not his, he excludes his own assets subject to attachment, or fails to disclose charges and encumbrances on these assets.

3. Through an order, the Court Clerk may also impose periodical coercive fines on the enforcement debtor who does not duly respond to the request referred to in the preceding paragraph.

In order to set the amount of the fines, the amount for which the enforcement was ordered, the resistance to the submittal of the list of assets, and the economic capacity of the party requested shall be taken into account. The financial judicial order may be modified or declared void due to the subsequent conduct of the party requested and the allegations which he might make in order to justify himself.

A direct appeal for judicial review may be lodged against these decisions of the Court Clerk, with no suspension effects, before the court which deals with the enforcement.

Article 590. *Judicial investigation of the estate of the enforcement debtor.*[332]

At the request of the enforcement creditor who canot designate sufficient assets of the enforcement debtor for the purposes of the enforcement, the

[331] Paragraphs 1 and 3 of this article are worded in accordance with Act 13/2009, of 3 November .

[332] Article worded in accordance with Act 13/2009, of 3 November («Official State Gazette» Nº. 266, of 4 November).

Court Clerk shall issue an order to move proceedings forward and shall contact the financial institutions, bodies, public registries and persons stated by the enforcement creditor so that they shall provide the list of any assets and rights of the enforcement debtor which they know of. After formulating these statements, the enforcement creditor must succinctly state the reasons why he considers that the institution, body, registry or person involved has the information on the estate of the enforcement debtor. When the enforcement creditor requests this, at his own expense, his court representative may intervene in the processing of the official written statements which may have been issued for this purpose and receive these once completed, notwithstanding the provisions in paragraph 1 of the following article.

The Court Clerk shall not claim data from bodies and registries when the enforcement creditor can obtain these himself, or through his court representative, duly empowered to do so by the grantor of his power of attorney.

Article 591. *The duty to cooperate.*[333]

1. All persons and public and private institutions are obliged to cooperate in the enforcement proceedings and to submit any documents and data they have in their power and whose submittal has been decided by the Court Clerk in charge of the enforcement or to the court representative of the enforcement creditor, when requested by the person represented and at his cost, with no limitations other than those which impose respect for fundamental rights or the limits which, for certain cases, are expressly imposed by the laws. When these persons or institutions plead legal reasons or the respect for fundamental rights to avoid complying with the submittal and do not cooperate as requested, the Court Clerk shall inform the court so that it might decide whatever is appropriate.

2. Once the parties concerned have been heard, the court, apart from the case in question, shall agree to the imposition of periodical coercive fines on the persons and institutions which do not provide the cooperation which the court has requested in accordance with the preceding paragraph. In application of these judicial orders, the court shall take the criteria stipulated in paragraph of article 589 into account.

[333] This article has been worded in accordance with Act 13/2009, of 3 November.

3. The sanctions imposed pursuant to this article are subject to the regime of appeals stipulated in Title V of Book VII of the Organic Act on Judiciary Branch.

Article 592. *Order in attachments. Attachment of companies.*[334]

1. If the creditor and the debtor have not agreed otherwise, within or apart from the enforcement, the Court Clerk responsible for the enforcement shall attach the assets of the enforcement debtor, attempting to take into account the greater ease of transfer and the lower cost of this for the enforcement debtor.

2. Due to the circumstances of the enforcement, if it is impossible or very difficult to apply the criteria set out in the preceding paragraph, the assets shall be attached in the following order:

(i). Cash or current accounts of any kind.

(ii). Credits and rights realisable in the act or in the short term, and entitlements, securities or other financial instruments admitted for negotiation on an official secondary securities market.

(iii). Jewels and works of art.

(iv). Income in cash, regardless of its source and the reason for its accrual.

(v). Interest, income and revenue of any kind.

(vi). Moveable property or livestock, shares, titles or securities not admitted to official listing, and company shares.

(vii). Real estate.

(viii). Wages, salaries, pensions and income from self-employed professionals and commercial activity.

(ix). Credits, rights and securities realisable in the medium and long term.

3. The attachment of companies may also be ordered when, in the light of the circumstances, the attachments of the components of its wealth is preferable.

[334] Paragraph 1worded in accordance with Act 13/2009 of 3 November .

Section 2. On the attachment of the assets of third parties and the third party ownership

Article 593. *Ownership of the enforcement debtor. Prohibition of the lifting of the attachment ex officio.*[335]

1. In order to judge the ownership of the enforcement debtor of the assets proposed to be attached, the Court Clerk, with no need for investigations or other operations, shall base his judgement on external indications and signs from which ownership can be deduced.

2. Due to direct perception or through statements of the enforcement debtor or other persons, when the Court Clerk has rational reasons to construe that the assets which he proposes to attach may belong to a third party, he shall issue an order to move the proceedings forward and inform of the imminence of the attachment . Within five days, if the third party fails to appear or does not provide reasons, the Court Clerk shall issue an order to attach the assets unless the parties, within the same time limit granted to the third party, have stated their agreement that the attachment not be carried out. If the third party opposes the attachment with reasons providing, as appropriate, the documents which justify his right, the Court Clerk shall previously transfer these to the parties for a common period of five days, and then forward the records to the court so that it might decide what is appropriate.

3. In the case of assets whose ownership is subject to registration, in all cases, their attachment shall be ordered unless the third party accredits that he is the registered owner through the relevant certification of the Registrar, and the rights of possible non-registered owners shall be safeguarded, which might be exercised against the relevant party and as corresponds.

Notwithstanding the provisions in the preceding paragraph, when the asset whose attachment is involved is the family house of the third party and this party submits the private document which justifies its acquisition to the court, the Court Clerk shall inform the parties and, if these state their agreement that the attachment not be carried out within a time limit of five days, the Court Clerk shall refrain from deciding the attachment.

Article 594. *Subsequent transfer of assets attached not belonging to the enforcement debtor.*

1. The attachment on the assets which do not belong to the enforcement debtor, however, shall be effective. If the real owner does not enforce his

[335] Article worded in accordance with Act 13/2009 of 3 November.

rights through the third party ownership, he shall not be able to challenge the transfer of the assets attached, if the successful bidder has acquired these in a way which cannot be claimed, in accordance with what is set out in substantive legislation.

2. The provisions in the preceding paragraph shall be understood, notwithstanding the actions for compensation or unjust enrichment or the nullity of the transfer.

Article 595. *Third party ownership. Legitimisation.*

1. The third party ownership may be lodged, in the form of a claim, by a party not a party to the enforcement, who states that he is the owner of an asset attached as belonging to the enforcement debtor and which was not acquired from the latter after the attachment was applied.

2. Third party ownership may also be lodged for the lifting of the attachment by those who are the owners of rights which, by an express legal provision, may oppose the attachment or the compulsory execution of one or several assets attached as belonging to the enforcement debtor.

3. A principle of evidence in writing with the grounds for the pretension of the third party owner must be attached to the claim for third party ownership.

Article 596. *Time for lodging and possible full rejection of the third party ownership.*

1. Third party ownership may be lodged from the time that the asset or assets referred to are attached, even when the attachment is preventive.

2. Through a court order, the court shall fully reject the claim for third party ownership without substantiation when the principle of evidence required in paragraph 3 of the preceding article is not attached, as well as the claim which is lodged after the time when, in accordance with the provisions in civil legislation, the transfer of the asset to the creditor or to the third party who acquired it in a public auction takes place.

Article 597. *Prohibition of second and subsequent third party ownership.*

In no case shall second or subsequent third party ownership of assets, founded on entitlements or rights held by the party lodging the claim at the time the first is formulated be permitted.

Article 598. *Effects of the admission of third party ownership.*[336]

1. The admission of the claim for third party ownership shall only suspend the enforcement as regards the asset involved, and the Court Clerk must adopt the measures required to comply with the suspension ordered.

2. Once the claim is admitted by the Court Clerk, and the court has heard the parties, if this is considered to be necessary, the court may condition the stay of execution as regards the asset referred to in the claim for third party ownership on the third party owner posting security for the damages which might occur to the enforcement creditor. This security may be posted in any of the manners stipulated in the second sub-paragraph of paragraph 3 of Article 529.

3. The admission of third party ownership shall be sufficient reason for the Court Clerk to order the further attachment at the request of a party.

Article 599. *Jurisdiction and substantiation.*[337]

Third party ownership, which shall have to be lodged before the Court Clerk responsible for the enforcement, shall be decided by the court that issued the general order and its execution and this shall be substantiated by the steps stipulated for oral trials.

Article 600. *Legal capacity to act as the defendant.*[338]

Voluntary joint litigation. Intervention of the enforcement debtor not claimed against. The claim for third party ownership shall be lodged against the enforcement creditor and against the enforcement debtor when the asset referred to has been designated by him.

Even though the claim for third party ownership is not against the enforcement debtor, he may intervene in the procedure with the same procedural rights as the parties of the third party ownership, and for this purpose he shall be notified of the admission to processing of the claim so that he may intervene according to his rights.

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[336] Article worded in accordance with Act 13/2009, of 3 November.

[337] Amended by Article 4.31 of Act 37/2011 of 10 October.

[338] Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

Article 601. *Purpose of third party ownership.*

1. As regards third party ownership, the only plea by the third party owner admitted shall be the lifting of the attachment.

2. In the case of third party ownership, the enforcement creditor and, possibly, the enforcement debtor may only plea the maintenance of the attachment or submittal to the enforcement of the asset which is the subject of third party ownership.

Article 602. *Effects of failure to respond.*

If the defendants do not respond to the claim for third party ownership, it shall be construed that they admit the facts alleged in the claim.

Article 603. *Decision on third party ownership.*

Third party ownership shall be decided by a court order, which shall be issued on the ownership of the asset and the source of its attachment for the sole purposes of the enforcement in progress, and there shall be no effects of res judicata in relation to the ownership of the asset.

The court order which decides the third party ownership shall state the costs in accordance with the provisions in Articles 394 et seq. herein. The defendants who do not respond shall not have costs imposed unless the court with due reasons observes bad faith in the procedural action, taking into account, as appropriate, their intervention in the proceedings referred to in paragraphs 2 and 3 of Article 593.

Article 604. *Upholding decision and lifting of the attachment.*

The court order which upholds the third party ownership shall order the lifting of the attachment and the reconsideration of the deposit, as well as the cancellation of the preventive annotation and of any other measure of surety for the attachment of the asset referred to in the third party ownership.

Section 3. On assets which cannot be attached

Article 605. *Assets which are absolutely non-attachable.*

The following shall be absolutely non-attachable:

(i). The assets which have been declared untransferable.

(ii). Accessory rights which are not transferable regardless of the principal.

(iii). Assets which, in themselves, lack content as estate.

(iv). Assets expressly declared to be non-attachable by a legal provision.

Article 606. *Non-attachable assets of the enforcement debtor.*

The following are also non-attachable:

(i). The furniture and household goods of the house, as well as the clothes of the enforcement debtor and his family, insofar as these cannot be considered to be superfluous. In general, the assets such as food, fuel and others which, in the opinion of the court, are essential for the enforcement debtor and the persons dependent on him to attend with reasonable dignity to their subsistence.

(ii). Books or instruments required for the exercise of his profession, art or trade in which the enforcement debtor works when their value is not in proportion with the amount of the debt claimed.

(iii). Sacred objects and those dedicated to the practice of legally registered religions.

(iv). The amounts expressly declared to be non-attachable by law.

(iv). Assets and amounts declared to be non-attachable by Treaties ratified by Spain.

Article 607. *Attachment of wages and pensions.*[339]

1. The salary, wage pension, remuneration or equivalent which does not exceed the amount stated for the minimum wage are not attachable.

2. The salaries, wages, day wages, remuneration or pensions which are above the minimum wage shall be attached in accordance with the following scale:

(i). For the first additional amount up to what entails double the minimum wage, 30%.

(ii). For the additional amount up to the amount equivalent to a third minimum wage, 50%.

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[339] Paragraphs 3 and 4 are worded in accordance with Act 13/2009, of 3 November, and paragraph 7 has been added by the same Act.

(iii). For the additional amount up to the amount equivalent to a fourth minimum wage, 60%.

(iv). For the additional amount up to the amount equivalent to a fifth minimum wage, 75%.

(v). For any amount which exceeds the above amount, 90%.

3. If the enforcement debtor is a beneficiary of more than one income, these shall be accrued in order to deduct the part which is not attachable in a single deduction. Furthermore, the salaries, wages, pensions, remuneration or equivalent amounts shall accrue when there is no pre-nuptial agreement on assets and income of any kind, a fact that must be accredited to the Court Clerk.

4. As regards the family responsibilities of the enforcement debtor, the Court Clerk may apply a discount of between 10% and 15% in the percentages set out in numbers (i), (ii), (iii) and (iv) of paragraph 2 of this article.

5. If the salaries, wages, pensions or remuneration are encumbered with permanent or transitory discounts of a public nature, due to tax or Social Security legislation, the liquid amount which the enforcement debtor shall receive, once these are deducted, shall be the amount which serves as the rate for regulating the attachment.

6. The preceding paragraphs of this article shall apply to the earnings from self-employed professional and commercial work.

7. The amounts attached in accordance with the provisions herein shall be handed over directly to the enforcement creditor, into the account which he previously designates, if this is decided by Court Clerk in charge of the enforcement.

In this case, the person or institution which carries out the withholding and its subsequent handover, and the enforcement creditor, must inform the Court Clerk of the amounts forwarded and received respectively every quarter, while the allegations which the enforcement debtor might formulate are safeguarded, either because he considers that the debt is paid in full and, consequently, the attachment should be annulled, or because the withholding or handovers are not being carried out in accordance with the decision of the Court Clerk.

A direct appeal for judicial review may be made before the court against the decision of the Court Clerk for this direct handover.

Article 608. *Enforcement of a maintenance payment order.*[340]

The provisions in the preceding article shall not apply in the case of enforcement of a judgment which orders maintenance payments, in all the cases in which the obligation to meet these payments arises directly from the law, including the rulings in decisions issued in annulment, separation or divorce proceedings concerning maintenance due to the spouse or the children or decrees or public deeds which formalise the agreement which establishes such payments. In these cases, as well as in cases involving relevant precautionary measures, the court shall establish the amount which may be attached.

Article 609. *Effects of attachment of non-attachable assets.*[341]

The attachment attached to non-attachable assets shall be null in law.

The enforcement debtor may denounce this nullity before the court through ordinary appeals or by simply appearing before the Court Clerk if he has not been present at the enforcement nor wishes to be present, and the court shall decide on the nullity denounced.

Article 610. *Re-attachment. Effects.*[342]

1. Assets or rights attached may be re-attached and the re-attachment shall grant the party re-attaching the right to receive the product of what is obtained from the realisation of the assets re-attached, once the rights of the enforcement creditors, at whose request previous attachments had been ordered are satisfied or, with no need for this previous satisfaction, in the case of the second paragraph of the following paragraph.

2. If, for any reason, the first attachment is lifted, the enforcement creditor of the proceedings in which the first re-attachment was attached shall take up the position of the first enforcement creditor and may request the compulsory realisation of the assets attached.

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[340] Amended by final provision 3.4 of Law 15/2015 of 2 July.

[341] Paragraph 2 worded in accordance with Act 13/2009, of 3 November.

[342] Paragraph 3 has been worded in accordance with Act 13/2009 of 3 November.

However, the party re-attaching may request the compulsory realisation of the assets re-attached, with no need for the lifting of the attachment or attachments, with no need for the previous attachment or attachments to be lifted when the rights of the previous parties attaching are not affected by this realisation.

3. The enforcement creditors of the proceedings in which the re-attachment is ordered may request the Court Clerk to adopt guarantee measures concerning this attachment on condition that they do not hinder a previous enforcement and they are not incompatible with those adopted in favour of the party which first achieved the attachment.

Article 611. *Attachment on the remainder.*[343]

Notwithstanding the provisions in Article 588, an attachment on the remainder of the compulsory realisation of assets carried out in another enforcement already arranged may be requested.

The amount obtained in this way shall be deposited in the deposit and apportionment account for allocation in the proceedings where the attachment of the remainder was ordered.

When the assets realised are real estate, the amount remaining after the payment of the enforcement creditor, as well as the creditors whose right is registered or annotated subsequent to that of the enforcement creditor and who have preference over the creditor in whose favour the attachment of the remainder was agreed to, shall be deposited.

Article 612. *Improvement, reduction and modification of the attachment.*[344]

1. Besides the provisions in Articles 598 and 604 for the cases of admission and upholding, respectively, of third party ownership, the enforcement creditor may request the improvement or the modification of the attachment or of the guarantee measures adopted when a change of circumstances leads doubt concerning the sufficiency of the assets attached in relation to the exaction of the liability of the enforcement debtor. The enforcement debtor may also request the reduction or modification of the attachment and its guarantees when the attachment or its guarantees may be varied

[343] Paragraph 2 worded in accordance with Act 13/2009, of 3 November.

[344] Paragraph 2 is worded in accordance with Act 13/2009, of 3 November and paragraph 3 has been added by the same Act.

with no risk to the objectives of the enforcement, in accordance with the criteria established in Article 584 herein.

Through a procedural court order, the court shall decide on these requests, according to its criteria, with no further appeals.

2. The Court Clerk shall decide on these requests through an order. A direct appeal for judicial review may be lodged against the said order but shall have no suspensory effects.

3. The improvement of the attachment may also be agreed on in the cases stipulated in paragraph four of the following article.

Section 4. ª On the priority of the party attaching and third party intervention with paramount rights

Article 613. *Effects of the attachment. Preventive annotations and third party owners.*

1. The attachment grants the enforcement creditor the right to receive the product of what is obtained from the realisation of the assets attached in order to pay the debt which is recorded in the entitlement, the appropriate interest and the cost of the enforcement.

2. When the enforcement creditor is not completely reimbursed as regards the capital and interest of his credit and all the costs of the enforcement have been paid, the amounts realised cannot be applied to any other matter which has not been declared preferential by a decision issue in the third party intervention with paramount rights.

3. Notwithstanding the provisions in the preceding paragraphs, when the assets are of classes which enable preventive annotation of their attachment, the liability of third party owners who have acquired these assets in another enforcement shall have the limit of the amounts which are consigned in the annotation on the date on which the third party owners had registered their acquisition in order to pay the principal, interest and costs.

4. The enforcement creditor may request that an order be given to record the amount stipulated as interest accrued during the enforcement and the costs of this be recorded in the preventive annotation of attachment, accrediting that both have exceeded the amounts which are recorded in the previous annotation for these items.

Article 614. *Third party intervention with paramount rights. Finality. Prohibition of a second third party intervention.*

1. Whoever declares that he has a right to his credit being paid with priority over the enforcement creditor may lodge a claim for third party intervention with paramount rights, which shall have a principle of evidence of credit which declares his preferential status attached.

2. The claim for third party intervention with paramount rights shall not be admitted if the principle of evidence referred to in the preceding paragraph is not attached. In no case, shall a second third party intervention with paramount rights be permitted when this is grounded on entitlements or rights which the party who lodges the claim owns at the time of formulating this claim.

Article 615. *Time for third party intervention with paramount rights.*

1. The third party intervention with paramount rights shall apply from the time that the asset referred to in the preference has been attached if this is special or from the time that enforcement is arranged if it is general.

2. A claim for third party intervention with paramount rights shall not be admitted after the enforcement creditor has been handed over the amount obtained through compulsory enforcement or, in the case of adjudication of the assets attached to the enforcement creditor, after the enforcement creditor acquires the ownership of these assets in accordance with the provisions in civil legislation.

Article 616. *Effects of the third party intervention with paramount rights.*

1. Once the third party intervention with paramount rights is lodged, the compulsory enforcement shall continue until the assets attached are realised, and what is collected is deposited in the deposit and apportionment account in order to reimburse the enforcement creditor as regards the costs of enforcement and to pay the creditors in the order of preference which is determined on deciding the third party intervention with paramount rights.

2. If the third party with the best paramount rights has an enforcement entitlement which records his credit, he may intervene in the enforcement from the time that the claim for third party intervention with paramount rights is admitted. If he has no enforcement entitlement, the third party shall not be able to intervene until the claim is upheld, as appropriate.

Article 617. *Procedure, third party eligibility and joint litigation.*[345]

1. Proceedings to determine paramount rights shall always be directed at the enforcement creditor and shall be substantiated through the procedures of an oral hearing.

2. The enforcement debtor may intervene in the proceedings to determine paramount rights with full procedural rights and shall be claimed against when the credit whose preference the third party alleges is not recorded in any enforcement title.

3. Even when not claimed against, the enforcement debtor shall be notified of the admission of the claim to processing so that they may carry out such intervention as they have a right to.

Article 618. *Effects of failure to respond.*

If the defendants fail to respond to the claim for third party intervention with paramount rights, it shall be understood that they admit the facts alleged in the claim.

Article 619. *Acceptance of claim and abandonment of the enforcement creditor. Participation of the third party with paramount rights in the costs of enforcement.*[346]

1. When the credit of the third party with paramount rights is recorded in an enforcement entitlement, if the enforcement creditor accepts the third party intervention with paramount rights, an order shall be issued to continue the enforcement in order to first satisfy the third party with paramount rights, with no more steps being taken, however, the Court Clerk shall not hand over any amounts until he has paid the enforcement creditor three fifths of the costs and expenses incurred for proceedings carried out at his request up to the time of the notification of the claim for third party intervention with paramount rights.

If the credit of the third party with paramount rights is not recorded in an enforcement entitlement, the enforcement debtor who is involved in the third party intervention with paramount rights must state his agreement or

[345] Paragraph 1 is amended by single article 64 of Law 42/2015, of 5 October.

Paragraph 1 amended by Article 4.32 of Act 37/2011 of 10 October.

Paragraph 3 added by Act 13/2009, of 3 November.

[346] Article worded in accordance with Act 13/2009 of 3 November.

disagreement with the acceptance of claim by the enforcement creditor within the five days following the date on which the draft of the acceptance of claim was transferred. If the enforcement debtor is in agreement with the acceptance of claim or allows the time limit to elapse without stating his disagreement, procedure shall be in accordance with the provisions in the preceding paragraph. When the enforcement debtor opposes the acceptance of claim, an order shall be issued which maintains the acceptance of claim by the enforcement creditor and ordering that the third party intervention with paramount rights be followed with the enforcement debtor.

2. Once the claim for third party intervention with paramount rights is notified, if the enforcement creditor abandons the enforcement and, on condition that the credit of the third party is recorded in an enforcement entitlement, the Court Clerk shall issue an order to go ahead with the enforcement in order to first satisfy the third party with paramount rights. If this is not so, he shall issue an order for the abandonment of the enforcement proceedings, and shall consider this to be terminated unless the enforcement debtor agrees that proceedings continue in order to satisfy the credit of the third party with paramount rights.

Article 620. *Effects of the judgement. The costs of the third party intervention with paramount rights and the participation of the third party with paramount rights in the costs of enforcement.*

1. The judgement which is issued in the third party intervention with paramount rights shall decide on the existence of the privilege and the order in which credits must be met in the enforcement dealt with by the judgement, but notwithstanding other actions which might correspond to each party, especially those concerning enrichment.

In addition, if the judgement dismisses the third party intervention with paramount rights, it shall condemn the third party to pay all the costs of this. When it is upheld, costs shall be imposed on the enforcement creditor who responded to the claim and, if the enforcement debtor had intervened, opposing the third party intervention with paramount rights, costs shall be imposed on the enforcement debtor half-and-half with the enforcement creditor, except when, due to the enforcement creditor accepting the claim, the third party intervention with paramount rights had been substantiated only with the enforcement debtor, in which case, the full costs shall be imposed on the enforcement debtor.

2. Whenever the judgement upholds the third party intervention with paramount rights, the third party shall not be handed over any amounts from the enforcement until the enforcement creditor has been paid three fifths of the costs arising with regard to the enforcement until the time that this decision is made.

Section 5. On the guarantee of the attachment of moveable property and rights

Article 621. *Security of the attachment of cash, current accounts and salaries.*[347]

1. Should cash or convertible foreign currencies be attached, they shall be deposited into the deposit and apportionment account.

2. Where favourable balances in accounts of any kind opened at credit, savings or financial institutions are attached, the Court Clerk responsible for the enforcement shall send the institution a withholding order for the specific amounts attached or for the maximum limit referred to in paragraph 2, Article 588. Such order may be processed by the court representative of the party seeking enforcement. The institution thus required shall duly comply the moment the order is served, issuing a receipt certifying the order's reception and stating the amounts the party subject to enforcement has at such institution at that moment. Such receipt shall be handed over immediately to the court representative of the party seeking enforcement who has undertaken to process the order. Should this not be the case, it shall be sent directly to the enforcement body by the quickest possible means.

3. Should the attachment deal with salaries, pensions or any other periodic benefits, the provisions set forth in item 7, Article 607 shall apply. Otherwise, the paying person, institution or branch shall be ordered to withhold them at the Court's disposal and transfer them to the deposit and apportionment account.

Article 622. *Security of the attachment of interest, income and proceeds.*

1. Where the assets attached are comprised of interest, income or proceeds of any kind, a withholding order shall be sent to whoever must pay them or directly to whoever shall receive them, including the party subject to enforcement, so that, should they be interest, they are deposited

[347] Paragraphs 2 and 3 of this article are worded in accordance with Act 13/2009 of 3 November .

into the deposit and apportionment account or, should they be of any other kind, they are withheld and placed at the disposal of the court.

2. The Court Clerk shall solely decide on receivership to secure the attachment of proceeds and income where the nature of the productive assets and rights, the amount of the interest, income or proceeds attached or the circumstances of the party subject to enforcement should reasonably so suggest.

3. The Court Clerk may likewise agree to receivership where it has been verified that the paying or receiving institution or, as appropriate, the party subject to enforcement have not complied with the withholding order or have failed to deposit the proceeds and income referred to in the first paragraph of this Article.

Article 623. *Security of the attachment of securities and financial instruments.*

1. Should the assets attached be securities or other financial instruments, notice of attachment shall be given to whoever may be obliged to pay them in the event that this should be done on a periodic basis or on a specific date, or to the issuing institution should they be redeemable or paid off at the shall of the holder or owner thereof. A requirement stating that the financial instrument's amount or the same value thereof should be withheld and placed at the disposal of the court on their maturity date or, should there be no such date, on the date notice is served, along with any interest or dividends, if any, they may generate shall be included in such notice of attachment.

2. Where securities or financial instruments listed in secondary official markets are involved, notice of attachment shall be given to the governing body thereof for the purposes set forth in the preceding paragraph and, as appropriate, the governing body shall give notice to the clearing and settlement institution.

3. Should shares in companies incorporated under civil law, general partnerships, limited partnerships, limited liability companies or companies not listed in official secondary markets be attached, notice of attachment shall be given to the company's administrators, who shall have to inform the court of the existence of any agreements limiting the free transfer of shares or any other bylaw or contractual clause affecting the shares attached.

Article 624. *Processing the attachment of moveable property. Security of the attachment.*[348]

1. Where moveable property has to be attached, the following details shall be included in the certificate on the attachment's processing:

(i). A list of the assets attached, including a description as detailed as possible of their shape and aspect, main features, state of use and conservation, along with the existence of any clear defects or faults which could have an impact on diminishing their value. In order to do so, any graphic and visual means of documentation at the disposal of the court office or of any of the parties shall be used to better identify the assets.

(ii). Any statements made by anyone involved in the attachment, particularly those referring to the ownership of the attached assets and to any possible third-party rights.

(iii). The person appointed as the receiver and the place where the assets are deposited.

2. A copy of the certificate recording the processing of attachment shall be handed over to the parties.

Article 625. *Consideration as public effects or amounts.*

Any amounts of cash and other attached assets shall be deemed as public effects and amounts from the moment they are deposited or their withholding is ordered.

Article 626. *Deposit in court. Appointment of custodian.*[349]

1. Should titles, securities or especially valuable objects or any needing special conservation be attached, they may be deposited in the most suitable public or private establishment.

2. Should any moveable property attached be in the possession of a third-party, he shall be required through an order to move the proceedings forward to keep it at the disposal of the Court and shall be appointed as its custodian, except where the Court Clerk should decide otherwise, stating his grounds.

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[348] Item (i) worded in accordance with Act 13/2009 of 3 November.

[349] Paragraphs 2 and 4 of this article are worded in accordance with Act 13/2009, of 3 November).

3. The party subject to enforcement shall be appointed as the custodian should he have been using the attached assets for a productive activity or should they be difficult or costly to transport or store.

4. In cases other than the ones set forth in the preceding paragraphs or where it may be deemed more suitable, the Court Clerk may appoint the party seeking enforcement as the custodian or, after hearing such party, a third party by means of an order to move the proceedings forward.

The appointment may be made to the Professional Association of Court Representative of the location where the enforcement is being carried out, as long as it has a suitable service to undertake the legal responsibilities laid down for custodians. Should this be the case, the Association shall be empowered to proceed with the location, management and deposit of the assets and it shall be issued with the necessary credentials for such purposes.

5. Notice of the attachment of securities represented by account entries shall be given to the body or institution responsible for recording the entries in the accounts, so that it may be entered in the corresponding book.

Article 627. *Custodian's responsibilities. Temporary custodians.*[350]

1. The court-appointed custodian shall be obliged to conserve the assets with all due diligence and place them at the Court's disposal, to exhibit them under the conditions the Court Clerk may indicate and to hand them over to the person he may designate.

Should the custodian fail to fulfil his obligations, the Court Clerk in charge of the enforcement may, at the request of a party or on an ex officio basis, order the custodian to be relieved of his duties by means of an order to move the proceedings forward and appoint another, notwithstanding any criminal or civil liability in which the custodian relieved from his duties may have incurred.

2. Until a custodian is appointed or the assets are handed over, the obligations and responsibilities arising from the deposit shall fall on the party subject to execution and, should they be aware of the attachment, on the administrators, representatives, managers or third parties in whose possession the assets are to be found without the need for any prior acceptance or requirement.

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[350] Paragraph 1 worded in accordance with Act 13/2009, of 3 of November.

Article 628. *Costs of the deposit.*[351]

1. Should the custodian be a person other than the party seeking enforcement, the party subject to enforcement or a third party in whose possession the moveable property is to be found, he shall be entitled to the reimbursement of any costs resulting from the assets' transport, safekeeping, custody, exhibition and administration. The Court Clerk in charge of the enforcement may agree, by means of an order to move the proceedings forward, to the party seeking enforcement paying an advance of some amounts, notwithstanding his entitlement to reimbursement for costs.

Such third-party shall likewise be entitled to reimbursement for any damages he may suffer as a result of the deposit.

2. Where the assets are deposited in a suitable institution or establishment, as set forth in paragraph 1, Article 626, remuneration shall be set by the Court Clerk in keeping with the usual fee and price schedules through an order to move the proceedings forward. The party seeking enforcement shall incur such remuneration, notwithstanding his entitlement to reimbursement for costs.

Section 6. On the security of the attachment of real property and other assets subject to registration

Article 629. *Preventive attachment entry.*[352]

1. Where the attachment should fall on real property or any other assets or rights subject to registration at a registry, the Court Clerk in charge of the enforcement shall, at the request of the party seeking enforcement, issue an order for a preventive attachment entry to be made at the Land Registry or an equivalent entry at the registry in question. On the same date it is issued, the Court Clerk shall send the order to the Land Registry by fax or by any of the other means set forth in Article 162 contained herein. The Registrar shall extend the corresponding entry of submission and the recording of the entry shall be suspended until the original document is submitted as laid down by mortgage legislation.

2. Should the asset not be registered or should it be registered in favour of another person other than the party subject to enforcement, but the latter's

[351] Article worded in accordance with Act 13/2009, of 3 November .

[352] Paragraph 1 worded in accordance with Act 13/2009, of 3 of November.

right may be derived from it, a preventive entry suspending the attachment entry may be recorded with the effects laid down in mortgage legislation.

Section 7. On receivership

Article 630. *Cases in which it may proceed.*

1. Receivership may be set up when a company or group of companies is attached, or where shares or stakes representing the majority of the share capital, common stock or the assets and rights belonging to the companies or allocated to their operations are attached.

2. Receivership may likewise be set up to secure the attachment of proceeds and income in the cases set forth in paragraphs 2 and 3, Article 622.

Article 631. *Setting up receivership. Appointment of the receiver and auditors.*[353]

1. In order to set up the receivership, the parties shall be summoned to appear before the Court Clerk in charge of the enforcement, as shall the administrators of the companies, where they are not the party subject to enforcement, along with any partners or shareholders whose shares or stakes have not been attached, so that they may reach an agreement or file any relevant pleas and evidence concerning the appointment of the receiver, the person who shall hold such office, whether or not security is required, the manner of proceeding, whether or not current management should be retained, accountability and appropriate remuneration.

Any interested parties that fail to appear without due justification shall be deemed to be in agreement with whatever may have been agreed upon by those who have.

Should an agreement be reached, the Court Clerk shall set forth by means of an order to move the proceedings forward the terms and conditions of receivership in keeping with the agreement. In order to resolve any matters on which an agreement has not been reached or which may have been contested by any of the parties, they shall be summoned, should the taking of evidence have been sought, to appear before the Court which issued the general enforcement order, which shall then decide whatever it may deem appropriate regarding the receivership by means of a court order.

[353] Paragraphs 1 and 2 of this article have been worded in accordance with Act 13/2009 of 3 November.

Should the taking of evidence have not been sought, the records shall be passed on to Court so that it may decide on whatever may be appropriate.

2. Should the receivership of a company or group of companies be decided upon, the Court Clerk shall appoint an auditor designated by the owner or owners of the company or companies attached and, should solely the majority of share capital be attached or the majority of the assets or rights belonging to a company or allocated to its operations be attached, two auditors shall be appointed, one of whom shall be designated by the majority interest and the other by the minority interest.

3. The receiver's appointment shall be registered, where appropriate, at the Companies Registry. The receivership shall likewise be registered at the Land Registry where it may affect real property.

Article 632. *Functions of the office of receiver.*[354]

1. Where the receiver replaces the current administrators and nothing otherwise is set forth, the receiver's rights, obligations, powers and responsibilities shall be the ones that ordinarily correspond to the administrators replaced. Nonetheless, the receiver shall need the authorisation of the Court Clerk responsible for the enforcement to dispose of or encumber stakes in the company or its stakes in another company, real property or any other assets the Court Clerk may have indicated due to their nature or importance.

2. Should there be any auditors designated by the parties affected, they shall be summoned to appear to dispose of or encumber assets and the Court Clerk shall decide thereof by means of an order.

3. The decisions set forth in the preceding two items are subject to direct appeals for judicial review before the court which issued the general enforcement order.

Article 633. *Manner in which the receiver must act.*[355]

1. Once receivership has been agreed upon, the Court Clerk shall immediately grant office to the person appointed, requiring the party subject to enforcement to relieve the administrators who have held office up to then.

[354] Article worded in accordance with Act 13/2009, of 3 November.

[355] Article worded in accordance with Act 13/2009 of 3 November.

2. Any disputes that may arise with regard to the receiver's actions shall be decided upon by the Court Clerk in charge of the enforcement by means of an order to move the proceedings forward after hearing the parties affected and notwithstanding the entitlement of contesting the final accounts the receiver shall have to render.

3. The parties and the auditors shall be shown the final accounts rendered by the receiver and they may contest them within five days, which may be extended by up to thirty days due to their complexity.

Should a challenge be filed, a decision shall be taken after the interested parties are summoned to appear. An appeal for judicial review may be lodged directly before the court against such decision.

CHAPTER IV

ON DISTRAINT PROCEEDINGS

Section 1. General provisions for the realisation of attached assets

Article 634. *Direct handover to the party seeking enforcement.*[356]

1. The Court Clerk responsible for the enforcement shall directly hand over to the party seeking enforcement any assets for their nominal value which are:

(i) Cash.

(ii) Balances of current accounts and other immediately available accounts.

(iii) Convertible foreign currencies prior to their conversion, as appropriate.

(iv). Any other asset whose nominal value coincides with its market value or whose delivery for its nominal value, though it may be less, the creditor may accept.

2. In the case of favourable balances in accounts having a deferred maturity date, the Court Clerk shall take the necessary measures to achieve payment thereof and may appoint a receiver where suitable or necessary for their realisation.

356 Article worded in accordance with Act 13/2009 of 3 November.

3. In the enforcement of judgements dealing with the payment of any amounts owed resulting from a breach of hire purchase sales agreements involving moveable property, should the party seeking enforcement so request it, the Court Clerk shall immediately deliver the moveable property sold or financed on hire purchase for the value resulting from the reference depreciation schedules and tables set forth in the agreement.

Article 635. *Shares and other kinds of corporate stakes.*[357]

1. Should the assets attached be shares, bonds or other securities admitted to trading in a secondary market, the Court Clerk shall order that they be disposed of in accordance with the laws governing such markets.

The same shall be done should the asset attached be listed in any regulated market or may have access to a market listing official prices.

2. Should the assets attached be shares or corporate stakes of any kind which are not listed on the stock exchange, they shall be realised in accordance with any bylaw and legal provisions on the disposal of such shares and stakes and, in particular, on preferential acquisition rights.

Should there be no special provisions, their realisation shall be done through a notary public or duly authorised broker.

Article 636. *Realisation of assets or rights not included under the preceding articles.*[358]

1. Any assets or rights not included under the preceding articles shall be realised in the manner agreed upon among the parties and interested parties and as approved by the Clerk of the Court in charge of the enforcement in accordance with the provisions of this Act.

2. Should there be no agreement on their realisation, the disposal of the attached assets shall be carried out in one of the following ways:

(i) Disposal through a specialised person or organisation in the cases and in the manner provided for in this Act.

(ii) Judicial auction.

[357] Paragraph 1 worded according to Act 13/2009 of 3 November.

[358] Paragraph 3 amended by Article 1.2 of Law 19/2015 of 13 July.

Paragraphs 1 and 3 of this Article have been worded in accordance with Act 13/2009 of 3 November.

3. Without prejudice to the provisions of the preceding paragraphs, once the Clerk of the Court has attached the goods, the acts needed for their judicial auction will be carried out, which will be done within the time limit given if this is not requested and ordered beforehand that forcible realisation be carried out in a different manner, in accordance with the provisions of this Act.

Section 2. Appraisal of attached assets

Article 637. *Appraisal of assets.*

Should the attached assets not be those referred to in Articles 634 and 635, they shall be appraised, unless the party seeking enforcement and the party subject to enforcement have reached an agreement on their value before or during the enforcement proceedings.

Article 638. *Appointment of an appraisal expert, challenge thereto and involvement in the appraisal of the party seeking enforcement and the party subject to enforcement.*[359]

1. In order to appraise the assets, the Court Clerk in charge of the enforcement shall appoint an appraisal expert among those that provide services to the Justice Administration. Failing these, the appraisal may be entrusted to the bodies and technical services dependent on the Public Administrations equipped with qualified personnel that have undertaken the commitment to cooperate for such purposes with the Justice Administration. Should it not be possible to use such bodies and services, an appraisal expert shall be appointed among the natural or legal persons appearing on a list compiled from the lists provided by public bodies holding competence to confer certifications for the appraisal of assets, as well as by professional associations whose members are legally empowered to make such appraisals.

2. The expert appointed by the Court Clerk may be challenged by the party seeking enforcement and the party subject to enforcement who have duly entered an appearance.

3. The expert thus appointed may seek the provision of funds he may consider necessary, which shall be offset in the final settlement, within three days of his appointment. The Court Clerk shall decide on the provision of funds thus sought and, upon its payment, the expert shall issue his opinion.

[359] Article worded in accordance with Act 13/2009, of 3 Novembe.

Article 639. *Actions of the expert appointed and subsequent involvement of the parties and creditors in the appraisal.*[360]

1. Notice of the appointment shall be given to the expert thus appointed, who shall have to accept it on the following day should none of the grounds for abstention impede it.

2. The expert shall submit the appraisal of the attached assets to the Court within the time limit of eight days counting from the date the commission is accepted. Such time limit may solely be extended for justifiable reasons on the basis of the appraisal's amount or complexity, which the Court Clerk shall indicate through an order to move the proceedings forward.

3. The appraisal of assets or rights shall be done in accordance with their market value, without taking into consideration any charges or encumbrances they may bear in the case of real property. The provisions set forth in Article 666 shall apply with regard to such charges and encumbrances.

4. Until five days have elapsed from the date the expert thus appointed has submitted the appraisal of the assets, the parties and the creditors referred to in Article 658 may file pleas on such appraisal, as well as reports signed by the appraisal expert stating the economic valuation of the asset or assets subject to the appraisal. In such a case, the Court Clerk shall determine through an order to move the proceedings forward the definitive appraisal for the purposes of enforcement in view of the pleas filed and taking into consideration all the reports in accordance with the rules of fair criticism.

The decision issued by the Court Clerk shall be subject to a direct appeal for judicial review before the court which issued the general enforcement order.

Section 3. On the realisation agreement

Article 640. *Realisation agreement approved by the Court Clerk.*[361]

1. The party seeking enforcement, the party subject to enforcement and whoever may prove a direct interest in the enforcement may seek the Court Clerk in charge to summon an appearance in order to reach

[360] Paragraphs 2 and 4 have been worded in accordance with Act 13/2009 of 3 November.

[361] Article worded in accordance with Act 13/2009, of 3 November.

agreement on the most efficient manner of realising the mortgaged, pledged or attached assets subject to enforcement.

2. Should the party seeking enforcement be in agreement with the appearance and should the Court Clerk find no grounds to reject it, the Court Clerk shall agree to it through an order to move the proceedings forward without a stay of enforcement and summon the parties and whoever may have entered an appearance in the proceedings who could have an interest.

At the appearance, to which other persons may attend at the invitation of the party seeking enforcement or the party subject to enforcement, those attending may put forward any way of realising the assets subject to enforcement and introduce any persons willing to acquire such assets after posting a deposit at a foreseeably higher price than that likely to be obtained through a court auction. Other ways of satisfying the rights of the party seeking enforcement may also be put forward.

3. Should an agreement between the party seeking enforcement and the party subject to enforcement be reached, which may not harm the rights of any third parties protected by this Act, the Court Clerk shall approve it and stay the enforcement of the asset or assets subject to the agreement. he shall likewise approve the agreement with the same suspensory effects should it include the agreement of any persons who are affected by it other than the party seeking enforcement and the party subject to enforcement.

Where the agreement makes reference to any assets subject to registration at a registry, the agreement of any creditors or third parties who hold rights over the assets and have registered or recorded their rights at the relevant registry subsequent to the encumbrance undergoing enforcement shall be necessary.

4. The Court Clerk shall bring the enforcement proceedings concerning the asset or assets in question to an end when the agreement's fulfilment has been proven. Should the agreement fail to be fulfilled within the time limit agreed upon or the satisfaction of the party seeking enforcement fail to be attained under the terms agreed upon for any other reasons, the party seeking enforcement may seek the lifting of the stay of execution and an auction to be conducted in the manner set forth herein.

5. Should the agreement referred to in paragraph 3 of this Article not be reached, the appearance aimed at reaching it may be repeated under the terms set forth in the first two paragraphs of this Article where, in the Court

Clerk’s judgement, the case’s circumstances should so suggest to improve the assets’ realisation.

Section 4. On realisation by a specialised person or organisation

Article 641. *Realisation by a specialist person or organisation.*[362]

1. At the request of the party seeking enforcement, or of the party subject to enforcement with the consent of the party seeking enforcement, and where the nature of the attached asset makes it advisable, the Clerk of the Court responsible for the enforcement may agree through an order to move the proceedings forward that the asset be realised by a specialist person having knowledge of the market in which such assets are bought and sold and who meets the legal requirements to operate in the market in question.

The Clerk of the Court may also agree to the asset being disposed of by a specialist public or private organisation where it is requested under the terms provided for in the preceding paragraph. Where it should be so ordered, the disposal shall be in keeping with the rules and customs of the house or company auctioning or disposing of it, as long as they are not incompatible with the purpose of the enforcement and the interests of the party seeking enforcement and the party subject to enforcement are suitably protected.

For such purposes, the Procurators’ Associations may be designated as organisations specialising in the auctioning of assets.

2. In the cases set out in the preceding paragraph, the specialist person or organisation shall post security for the amount that the Clerk of the Court may determine to ensure the commission is fulfilled. Security shall not be required where the assets’ realisation is entrusted to a public organisation or to Procurators’ Associations.

3. The assets’ realisation shall be entrusted to the person or organisation designated in the application, as long as they meet the legal requirements. The same decision shall determine the terms and conditions under which the assets’ realisation shall be performed in accordance with whatever the

[362] Paragraph 3 is amended by single article 65 of Law 42/2015, of 5 October.
Article worded in accordance with Act 13/2009 of 3 November.

parties may have agreed upon in this regard. Failing an agreement, the assets may not be disposed of at a price of less than 50% of their valuation. Where the nature of the assets or the possible decrease in their value advise it, the Clerk of the Court in charge of enforcement, with consent from the enforcement creditor, may appoint the Procurators' Association where, in accordance with the provisions of article 626, the goods to be realised are deposited, as the specialist organisation for the auction.

For this purpose, the requirements and manner of organising the necessary services will be determined by the regulations, guaranteeing adequate publicity for the auction, the goods auctioned and its result.

Notwithstanding the provisions of the preceding paragraphs, where the assets to be realised immovable property, determining the person or organisation to be entrusted with the assets' realisation and the terms and conditions under which it shall be performed shall be done after an appearance to which the parties and whoever may appear in the proceedings as having an interest shall be summoned. The Clerk of the Court will decide, by order, as they deem appropriate, having heard the statements of those appearing, but may not authorise the disposal to be made for a price of less than 70% of the valuation given to the property in accordance with the provisions of article 666, unless there is a record of the agreement of the parties and all the interested parties, whether or not they attended the hearing.

4. As soon as the assets' realisation has finalised, the person or organisation in question shall proceed to deposit the amount obtained into the Deposits and Consignments Account, subtracting any expenses incurred and whatever may correspond to them for their intervention. The Clerk of the Court must approve the transaction or, as appropriate, request the relevant justifications for the realisation and its circumstances. Once the transaction has been approved, the security posted by the person or organisation entrusted to perform the assets' realisation shall be returned.

5. Where the assets' realisation has not come about after six months have elapsed from the date it was commissioned, the Clerk of the Court shall issue an order to move the proceedings forward revoking the commission, unless the person or organisation entrusted with the assets' realisation can prove it was impossible within the time limit indicated for reasons not attributable to them and that the commission may be fulfilled within a certain time limit, which may not exceed the following six months, because such reasons have disappeared or are likely to disappear in the near

future. Once the latter time limit has elapsed without the commission being fulfilled, the Clerk of the Court shall definitively revoke the commission.

Once the commission has been revoked, the security shall be applied for the purposes of enforcement, unless the person or organisation providing it can prove that the assets' realisation was impossible for reasons not attributable to them.

Article 642. *Persistence and cancellation of charges.*[363]

1. The provisions contained herein on the persistence and cancellation of charges shall also apply where the ownership of mortgaged or attached real property is transferred in accordance with the provisions set forth in this and the preceding Sections.

2. For the purposes set forth in the preceding paragraph, any disposal that may come about in accordance with the provisions set forth in the preceding two articles shall be approved by the Court Clerk in charge of the enforcement by means of an order moving the proceedings forward after verifying that the transfer of the assets has come about with the buyer being aware of registry situation arising from the certification of charges.

Once the transfer is approved, the provisions set forth for the auctioning of real property with regards to the distribution of the amounts received, the registration of the buyer's rights and the order to cancel any charges shall apply.

A certification of the order to move the proceedings forward approving the transfer of the asset shall be sufficient for the Land Registry.

Section 5. On the auctioning of moveable property

Article 643. *Preparation of the auction. Attached assets without significant value.*

1. The purpose of the auction shall be the sale of one or several assets or lots of assets according to whatever may turn out to be most suitable for the enforcement's success. The Court Clerk shall be responsible for putting together lots after hearing the parties. For such a purpose, before announcing the auction, the parties shall be summoned to file their pleas

[363] Paragraph 2 worded in accordance with Act 13/2009, of 3 of November.

on whatever they may deem suitable with regard to the creation of lots within five days.

2. The auction of assets or lots of assets shall not be called where it is foreseeable according to their definitive appraisal or valuation that the assets' realisation shall not obtain an amount of money that at least exceeds the costs resulting from the auction.

Article 644. *Calling the auction.*[364]

Once the fair price has been set for the attached movable property, the Clerk of the Court, by order, will agree to call the auction.

The auction will be carried out, in all cases, electronically on the Auctions Portal, with the Clerk of the Court being responsible for it.

Article 645. *Advertisement and publicity for the auction.*[365]

1. Once the order provided for in the preceding article is final, the call for the auction will be advertised in the Official State Gazette and the advertisement will serve as notice to the enforcement debtor who did not appear. The Clerk of the Court in charge of the enforcement proceedings will order publication of the advertisement calling the auction and will send it themselves, with the content referred to in the next article and electronically to the Official State Gazette. Furthermore, and merely for information purposes, the advertisement for the auction will be published on the Justice Administration Portal.

Additionally, at the request of the enforcement creditor or the enforcement debtor or should the Clerk of the Court in charge of enforcement deem it convenient, the auction shall be given reasonable publicity, using the most suitable public and private media in keeping with the nature and value of the assets to be realised.

2. Each party will be under the obligation to pay the costs arising from the measures that, to advertise the auction, they may have requested, without

[364] Amended by Article 1.3 of Law 19/2015 of 13 July.
Article worded in accordance with Act 13/2009 of 3 November on the reform of procedural legislation for the implementation of the new Court Office.

[365] Amended by Article 1.4 of Law 19/2015 of 13 July.

Paragraph worded according to Act 13/2009 of 3 November ("Official State Gazette" no. 266 of 4 November).

prejudice to the inclusion in the taxation of costs such expenses which, due to publication in the Official State Gazette, may have been generated by the enforcement creditor.

Article 646. *Contents of the advertisement and publicity for the auction.*[366]

1. The advertisement of the auction in the Official State Gazette will sole contain its date, the Court office where the enforcement proceedings are being carried out, its identification number and type, and the internet address for the auction on the Auctions Portal.

2. The notice will be included on the Auctions Portal, separately for each one of them, and this will include the general and particular terms and conditions for the auction and the goods to be auctioned along with such information and circumstances as may be relevant and, necessarily, the appraisal or valuation of the asset or goods to be auctioned which serves as a their reserve price. These data must be sent to the Auctions Portal in such a way that they may be processed electronically by it in order to provide and order the information.

The notice and the Auctions Portal will also record that is understood that all bidders accept the existing title to be sufficient, or that they assume its non-existence, along with the consequences if their bids do not exceed the reserves for the auction provided for in article 650.

3. The content of publicity carried out by other media will be in line with the nature of the media that, in each case, is used, in the most cost efficient manner, and may be limited to the data needed to identify the goods or lots of goods, their valuation, their ownership position, and the internet address for the auction within the Auctions Portal.

Article 647. *Requirements to bid. Enforcement creditor bidder.*[367]

1. In order to take part in the auction the bidders must comply with the following requirements:

(i) Identify themselves sufficiently.

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[366] Amended by Article 1.5 of Law 19/2015 of 13 July.

[367] Number (iii) of paragraph 1 and paragraph 3 amended by Article 1.6 of Law 19/2015, of 13 July.

Paragraph 1 amended by Article 7.6 of Law 1/2013 of 14 May.
Please note the transitional regime for enforcement proceedings regulated by Transitional Provision 4 of that Law.

Paragraph 3 worded in accordance with Act 13/2009, of 3 of November.

(ii) Declare that they are acquainted with the general and specific conditions of the auction.

(iii) Be in possession of the relevant accreditation, for which it will be necessary to lodge 5% of the value of the goods. The lodgement will be carried out by electronic means via the Auctions Portal, which will use the computer services that the Spanish Tax Office places at its disposal, which, in turn, will receive the payments via its collaborating entities.

2. The enforcement creditor may only take part in the auction when there are other bidders, being able to improve the bids that are made, without having to deposit any amount whatsoever.

3. Only the enforcement creditor or subsequent creditors may bid reserving the right to assign the final bid to a third party. The assignment shall be substantiated by appearing before the Clerk of the Court responsible for the enforcement, in the presence of the assignee, who shall accept the assignment, all of which shall be done prior to or at the same time as the payment or lodgement of the price of the final bid, which shall be recorded in a document. The enforcement creditor will have the same power, in the cases provided for, if they request the award of the asset or goods auctioned.

Article 648. *Electronic auction.*[368]

Electronic auctions will be held subject to the following rules:

(i). The auction will take place on the Portal which is a part of Official State Gazette State Agency for holding electronic auctions, and all Court offices have access to its management system. All exchanges of information which must be carried out between Court offices and the Auctions Portal will be made electronically. Each auction will be given a unique identification number.

(ii). The auction will open after, at least, twenty-four hours after the publication of the advertisement in the Official State Gazette, when the Auctions Portal has been sent the information needed to commence it.

(iii). Once the auction is open, only electronic bids may be made subject to the regulations of this Act regarding types of auction, lodgements and other rules which may be applicable. At any event, the Auctions Portal will, whilst being held, give information about the existence and amount of the bids.

[368] Amended by single article 66 of Law 42/2015, of 5 October.

(iv). To take part in the electronic auction, the interested parties must be registered as users of the system, accessing it using secure mechanisms for identification and electronic signatures in accordance with the provisions of Law 59/2003, of 19 December, on electronic signatures, in such a way that bidders are fully identified in all cases. Registration will be carried out via the Auctions Portal using secure mechanisms for identification and electronic signature and will necessarily include all of the interested party's identification details. Enforcement creditors will be identified in such a way as allows them to appear as bidders in auctions arising from the enforcement proceedings initiated by them, without the need to make a lodgement.

(v). The enforcement creditor, enforcement debtor or third party owner may, at their own liability and, in all cases, via the court office before which the proceedings are being run, send the Auctions Portal all the information that they have available about the subject of the bid, arising from valuation reports or other official documents, obtained directly by the judicial bodies or via a Notary and which, in their opinion, may be considered of interest to possible bidders. This may also be done by the Clerk of the Court, on their own initiative, if considered appropriate.

(vi). Bids will be sent electronically via secure communications systems to the Auction Portal, which will send a technical advice of receipt, including a time stamp, for the exact time the bid was received and its amount. The bidder must also indicate if they consent, or not, to the reserve referred to in the second sub-paragraph of section 1 of article 652 and whether they are bidding in their own name or on behalf of a third party. Bids for amounts higher than, the same as or lower than the highest yet made will be admissible, with it being understood that in the latter two cases they consent to the lodgement being reserved and they will be taken into account in the case that the bidder who has made an equal or higher bid does not, in the end, pay the remainder of the purchase price. In the case that there are bids for the same amount, the bid made earliest in time will be given preference. The auctions portal will only publish the highest bid from amongst those made up to that time.

Article 649. *Evolution and termination of the auction.*[369]

1. The auction will admit bids during the period of twenty calendar days after it opened. The auction will not close until one hour has passed after the last bid, as long as this is higher than the best bid made up to that time,

[369] Amended by single article 67 of Law 42/2015, of 5 October.

even if this means extending the initial period of twenty days referred to in this article by a maximum of 24 hours.

In the event that the Clerk of the Court becomes aware that the debtor has been declared bankrupt, they will suspend enforcement, by order, and the auction will be annulled even if it had already opened. This circumstance will be notified immediately to the Auctions Portal.

2. Suspension of the auction for a period of more than fifteen days will give rise to repayment of the lodgements, retroacting the situation to the time immediately prior to publication of the advertisement. The auction will be resumed by placing a new publication of the advertisement, as if a new auction was being dealt with.

3. On the closing date of the auction and immediately after it, the Auctions Portal will send the Clerk of the Court certified information about the electronic bid which was the winner, with the name, surnames and electronic address of the bidder.

In the event that the highest bidder does not fulfil the price offered, at the request of the Clerk of the Court the Auctions Portal will send certified information about the amount of the next bid in decreasing order and identity of the bidder making it, as long as the latter had opted for the bid reserve referred to in the second sub-paragraph of paragraph 1 of article 652.

4. Once the auction has closed and the information is received, the Clerk of the Court will make a record of it, including the name of the highest bidder and the bid they made.

Article 650. *Approval of the final bid. Payment. Award of goods.*[370]

1. If the highest bid is equal to or higher than 50% of the valuation, the Clerk of the Court shall issue an order on the same day or the day following the auction, approving the final bid in favour of the highest bidder. The highest bidder shall lodge the amount of such bid, less the deposit, within a time limit of ten days and, after delivery of the lodgement, shall be granted possession of the goods.

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[370] Amended by Article 1.9 of Law 19/2015 of 13 July.

Paragraphs 1 and 4 are worded in accordance with Act 13/2009 of 3 November on the reform of procedural legislation for the implementation of the new Judicial Office which, in turn, introduces a new paragraph 6.

2. If it is the enforcement creditor who placed the highest bid, equal to or higher than 50% of the valuation, once the final bid has been approved the Clerk of the Court shall carry out the settlement of the amount due as principal and interests and, after the said settlement has been notified, the enforcement creditor shall consign the difference, if any, within a time limit of ten days, resulting from the settlement of costs.

3. If only bids in excess of 50% of the valuation are placed but offering payment by instalments with adequate bank or mortgage guarantees of the price reached, these shall be notified to the enforcement creditor who, within the next five days, may request the awarding of the assets for 50% of the valuation. If the enforcement creditor does not make use of this right, the final bid shall be approved in favour of the highest of such bids.

4. If the highest bid placed at the auction is lower than 50% of the valuation, the enforcement debtor may, within a time limit of ten days, present a third party improving the bid by offering an amount in excess of 50% of the appraisal value or that, albeit lower than that amount, proves to be sufficient for the complete satisfaction of the right of the enforcement creditor.

If, upon expiry of such time limit, the enforcement debtor has failed to proceed as set out in the preceding subparagraph, the enforcement creditor may, within a time limit of five days, request the assets be awarded for half their appraisal value or for the amount due to them for all items, provided that this amount is higher than the highest bid.

If the enforcement creditor does not make use of this power, the final bid shall be approved in favour of the highest bidder, provided that the amount offered by the latter is higher than 30% of the appraisal value or, if lower, covers at least the amount for which the enforcement was dispatched, including the provision for interests and costs. If the highest bid fails to meet these requirements, the Clerk of the Court responsible for the enforcement, after hearing the parties, shall resolve on the approval of the final bid in view of the circumstances of the case and taking into account particularly the behaviour of the debtor in relation to fulfilling the liability under the proceedings, the possibilities of achieving the satisfaction of the creditor through the sale of other assets, the loss of assets involved in the final bid for the debtor and the benefit obtained from it by the creditor. In the latter case, a direct appeal for judicial review may be lodged against the order approving the final bid with the Court that issued the general order of enforcement.

If the Clerk of the Court refuses to approve the final bid, the matter shall proceed in accordance with the provisions of the following article.

5. If, due to the amount of the bid, the enforcement debtor or the enforcement creditor may exercise the powers granted in paragraphs 3 and 4 of this article, the Clerk of the Court, once the time limits shown have passed, will make the mandatory notification to the bidder who made the highest bid or, as appropriate, will notify them that the enforcement debtor or enforcement creditor have exercised their respective powers.

6. At any time prior to the approval of the final bid or the award to the enforcement creditor, the enforcement debtor may release their assets by paying the full amount due to the enforcement creditor in respect of principal, interests and costs. In this case, the Clerk of the Court will, by order, agree the suspension or annulment of the auction and will notify the Auctions Portal immediately in both cases.

7. Once the final bid has been approved and the difference between the deposit and the total price of the final bid lodged, as appropriate, in the Deposits and Consignments Account, the award order will be passed which will state, as appropriate, that the price has been lodged, and this order will also be made known to the Auctions Portal.

Article 651. *Awarding of assets to the enforcement creditor.*[371]

If there are no bidders at the auction, the creditor may seek the awarding of the assets at 30 per cent of the appraisal value or for the amount owed to him for all items.

Under no circumstances may the enforcement creditor seeking enforcement be awarded the assets or assign them to a third party for an amount below 30 per cent of the appraisal value, not even when acting as the highest bidder.

When the creditor fails to use this power within a time limit of twenty days, the Court Clerk shall lift the attachment at the request of the enforcement debtor.

Article 652. *Destination of the deposits made to bid.*[372]

1. Once the auction has closed, the amounts lodged by the bidders will be freed up or reimbursed, with the exception of the deposit made by the

[371] Amended by Article 4.33 of Act 37/2011 of 10 October.

[372] Amended by Article 1.10 of Law 19/2015 of 13 July.

Paragraph 1 worded in accordance with Act 13/2009 of 3 November .

highest bidder, which shall be kept on deposit as a guarantee for compliance with their obligation and, as appropriate, as part of the sale price.

However, if the other bidders request it, the amounts lodged by them will also be held in reserve so that, if the highest bidder fails to deliver the remainder of the price within the time limit, the final bid may be awarded to whoever follows them, in order of their respective bids and, if they should be the same, in the chronological order in which they were made.

2. Reimbursements to be made in accordance with the provisions of the preceding paragraph will be made to whoever lodged the deposit regardless of whether they acted on their own behalf as bidder, or on behalf of another.

Article 653. *Failure of the auction.*[373]

1. If none of the highest bidders referred to in the preceding article lodge the price within the time limit given or if, because of them, the sale becomes ineffective, they will lose the deposit which they have lodged and a new auction will be held, unless the deposits lodged by the highest bidders are sufficient to pay the capital and interest of the credit of the enforcement creditor and the costs.

2. The deposits of the highest bidders who caused the failure of the auction shall be applied by the Clerk of the Court for the purposes of the enforcement, in accordance with the provisions of Articles 654 and 672, but the remainder, if there is one, will be delivered to the depositors. If the deposits are insufficient to satisfy the right of the enforcement creditor and the costs, they shall be used in the first place to cover the expenses deriving from the new auction and the remainder shall be added to the sums obtained in such new auction and be applied in accordance with the provisions of Articles 654 and 672. In the latter case, any remainder will be delivered to the enforcement creditor until the price offered at the auction is reached and, as appropriate, they will be compensated for any reduction in price obtained in the new final bid; only once this compensation has been carried out shall the remainder be returned to the depositors.

3. Deleted.

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[373] Paragraph 3 deleted by Article 1.11 of Law 19/2015 of 13 July.
Paragraphs 2 and 3 of this article are worded in accordance with Act 13/2009 of 3 November.

Article 654. *Payment to the enforcement creditor, application of the remainder, allotment of payments and certification of outstanding debt in the event of a shortfall in the enforcement.*[374]

1. The price of the final bid shall be delivered to the enforcement creditor on account of the amount for which the enforcement was dispatched and, if higher than that amount, the remainder shall be withheld at the disposal of the Court until the settlement of what is finally due to the enforcement creditor and the amount of the costs of the enforcement has been carried out.

2. The remainder, if there is one after the compulsory sale of the assets has been completed, the enforcement creditor has been satisfied in full and the costs have been paid, shall be delivered to the enforcement debtor.

3. In the event that the enforcement is insufficient to pay the entire amount for which the enforcement was dispatched plus the interest and costs accrued during enforcement, the amount will be allotted in the following order: remunerative interest, principal, interest on late payment and costs. Furthermore, the court will issue a certificate recording the price of the final bid and the outstanding debt on all items, differentiating the amounts for principal, remunerative interest, interest on late payment and costs.

Section 6. On the auction of real property

Article 655. *Scope of application of this Section and supplemental application of the provisions of the preceding Section.*

1. The rules of this section shall apply to the auctions of real property and to those of moveable property subject to a system of registry publication similar to that of the former.

2. The rules governing the auction of moveable property shall apply to the auctions referred to in the preceding paragraph, with the exception of the special cases set out in the following articles.

Article 656. *Certification of ownership and charges.*[375]

1. Where the subject of the auction is included under this Section, the Clerk of the Court in charge of enforcement will issue an order to the

[374] Amended by Article 7.7 of Law 1/2013 of 14 May.
Please note the transitional regime for enforcement proceedings regulated by Transitional Provision 4 of that Law.

[375] Paragraph 1 is amended by single article 68 of Law 42/2015, of 5 October.

registrar in charge of the Registry in question to send the court a certificate in which the following facts are recorded:

(i) The title of ownership and other rights in rem of the encumbered asset or right.

(ii) The rights of any nature whatsoever existing on the attached registry asset and, in particular, a complete list of the registered charges on the asset or, as appropriate, a statement that the asset is free of charges.

In all cases the certificate will be issued electronically and will have information that is structured in content.

2. The Registrar shall make a marginal annotation of the issue of the certification referred to in the preceding paragraph, specifying the date and the proceedings it relates to.

The registrar will, immediately and electronically, notify the Clerk of the Court and the Auctions Portal of the fact that another title or titles have been submitted which affect or amend the initial information for the purposes of article 667.

The Auctions Portal will collect the information provided by the Registry immediately so that it may be sent to those who consult its content.

3. Without prejudice to the foregoing, the procurator for the enforcement creditor, duly authorised by the Clerk of the Court and after annotation of the attachment, may request the certification referred to in paragraph 1 of this provision, the issue of which shall also be recorded by means of a marginal annotation. In all cases the certificate will be issued electronically and with structured content.

Article 657. *Information on extinguished or reduced charges.*[376]

1. The Clerk of the Court responsible for the enforcement shall forward an ex officio order to the holders of previous credits that are preferential to the credit causing the dispatch of the enforcement and to the enforcement debtor so that they provide information on the current subsistence of the guaranteed credit and its current amount. Those who are requested to provide this information shall indicate with absolute accuracy if the credit

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[376] Paragraph 3 amended by Article 1.13 of Law 19/2015 of 13 July.

Article worded in accordance with Act 13/2009, of 3 November.

subsists or was extinguished for any reason and, if it subsists, the remaining amount pending payment, the date of maturity and, as appropriate, the time limits and conditions subject to which the payment must be made. If the credit has matured and was not paid, information shall also be given regarding the matured late-payment interests and the amount of the interests accruing per day of delay. If preference arises from a prior annotation of attachment, the amount pending payment in respect of principal and interests due on the date of the information shall be specified, as well as the amount of the late-payment interests accruing per day that the payment to the creditor is not made and the estimate of costs.

The writs issued by virtue of the provisions of the preceding sub-paragraph shall be delivered to the procurator for the enforcement creditor, who shall be responsible for their execution.

2. In view of the statements made by the enforcement creditor and the creditors referred to in the preceding paragraph in relation to the subsistence and the actual amount of the credits, if there is an agreement in that respect, the Clerk of the Court responsible for the enforcement shall issue the appropriate orders for the purposes provided for in Article 144 of the Mortgage Act. If there is disagreement, the Clerk of the Court will call them to a hearing before the Court which must be held within the following three days and be decided on by order, which cannot be appealed, within the following five days.

3. When ten days have passed since the request to the enforcement creditor and the creditors without any of them having replied, it shall be understood that the charge, for the sole purposes of the enforcement, is up to date at the time of the request in the terms set out in the preferential title.

Article 658. *Asset registered in the name of a person not being the enforcement creditor.*[377]

If the certification issued by the registrar evidences that the attached asset is registered in the name of a person other than the enforcement creditor, the Court Clerk, after hearing the parties of the proceedings, shall order the lifting of the attachment, unless the procedure is being carried out against the enforcement debtor in his capacity of heir of the person inscribed in the Registry as owner or the attachment was placed taking into account this concept.

[377] Paragraph 1 worded in accordance with Act 13/2009, of 3 November.

That set out in the preceding subparagraph notwithstanding, if the inscription of the ownership in the name of a person other than the enforcement creditor was made after the annotation of the attachment, the said attachment shall be upheld and the provisions of Article 662 shall apply.

Article 659. *Holders of rights inscribed subsequently.*[378]

1. The Registrar shall notify the existence of the enforcement to the holders of rights specified in the certification of charges and appearing on annotations subsequent to that of the right of the enforcement creditor, provided that their address is recorded at the Registry.

2. The holders of rights inscribed after the issuance of the certification of ownership and charges shall not receive any communication but if they evidence the inscription of their right to the Court Clerk responsible for the enforcement they shall be allowed to intervene in the valuation and other actions of the procedure affecting them.

3. If the holders of rights inscribed subsequent to the encumbrance being enforced pay the amount of the credit, interests and costs before the final bid, within the limits of the liability as evidenced by the Registry, they shall be subrogated in the rights of the claimant to the extent of the amount paid. The payment and the subrogation shall be recorded in the margin of the inscription or annotation of the encumbrance to which the said creditors are subrogated and those of their respective credits or rights, through the presentation at the Registry of the notary deed of delivery of the amounts indicated or the relevant order issued by the Court Clerk, as appropriate.

Article 660. *Form of delivering communications.*[379]

1. The communications referred to in articles 657 and 659 will be made to the address recorded at the Registry by registered post with proof of delivery or other provable means.

For the purposes of the provisions of this article, any registered holder of a right in rem, charge or encumbrance over an asset may record an address in Spanish territory at the Registry where they wish to be notified in the event of enforcement. This fact will be recorded in a marginal note on the registration of the right in rem, charge or encumbrance they are the holder

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[378] Paragraphs 2 and 3 of this article are worded in accordance with Act 13/2009 of 3 November.

[379] Second paragraph of paragraph 1 amended by single article 69 of Law 42/2015, of 5 October.

of. They may also record an electronic address for the purposes of notifications. If an electronic address is given, it will be understood that there is consent for this procedure for receiving notifications, without prejudice to the fact that these may made in addition to and not as an alternative to those given personally. In this case, time limits will be calculated from the day following the first of the positive notifications made in accordance with the procedural rules or Law 18/2011, of 5 July, regulating the use of information and communications technologies at the Justice Administration. Setting up or changing an address or electronic address may be notified to the Registry by any of the means with the effects referred to in paragraph 2 of article 683 of this Act.

The certification referred to in Article 656, either sent directly by the Registrar or presented by the procurator for the enforcement creditor, shall indicate the delivery of such communications.

In the event that the address does not appear at the Registry or that the communication is returned for any reason, the Registrar will send a new communication by public notice, which will be inserted in the Official State Gazette.

2. The absence of the communications of the Registry or any defects of form in them shall not prevent the registration of the right of whomever acquires the immovable property in the enforcement.

Article 661. *Communication of the enforcement to lessees and de facto occupiers. Advertisement of the possessory situation.*[380]

1. If, through the statement of assets of the enforcement debtor, by indication of the enforcement creditor, or in any other way, the procedure records the existence and the identity of individuals other than the enforcement debtor who are occupying the attached immovable property, they shall be notified of the existence of the enforcement, granting them a time limit of ten days to submit the titles justifying their situation to the Court. This notification may be made by the procurator for the enforcement creditor, if requested to so do, or where in the light of the circumstances this is agreed by the Clerk of the Court.

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[380] Amended by Article 1.15 of Law 19/2015 of 13 July.
Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

The advertisement for the auction placed on the Auctions Portal, and in public and private media as appropriate, will state, with the necessary detail, the possessory situation of the immovable property or that, on the contrary, it is unoccupied, if this circumstance is duly accredited to the Clerk of the Court responsible for the enforcement.

2. The enforcement creditor may request the Court to declare, prior to announcing the auction, that the occupier or occupiers do not have the right to remain in the property once the latter has been disposed of in the enforcement. The request shall be conducted in keeping with the provisions of paragraph 3 of Article 675 and the Court shall accept it and shall issue the requested declaration by means of a non-appealable order, if the occupier or occupiers can be considered merely de facto occupiers or lacking sufficient title. Otherwise, the Court shall declare, in an order which also may not be subsequently appealed, that the occupier or occupiers are entitled to remain in the immovable property, notwithstanding the actions that may correspond to the future acquirer to evict such occupiers.

The declarations referred to in the preceding subparagraph shall be included in the advertisement for the auction.

Article 662. *Third possessor.*[381]

1. If, before a real property is sold or adjucicated in the enforcement and subsequent to the annotation of its attachment or the recording of the commencement of the distraint proceedings in the Registry, the said real property is passed on to a third possessor, the latter may, evidencing the inscription of his title, request to be shown the records at the Judicial Office, which shall be ordered by the Court Clerk without suspending the course of the procedure, and shall also be informed of the subsequent proceedings.

2. The consideration of third possessor shall also be given to the person who, during the time referred to in the preceding paragraph, has acquired merely the usufruct or useful ownership of the mortgaged or attached property, or the bare legal title or legal ownership.

3. At any time prior to the approval of the final bid or the adjudication to the creditor, the third possessor may release the asset by paying the amount due to the creditor in respect of principal, interests and costs, within the

[381] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

limits of the liability encumbering the asset, and subject, as appropriate, to the provisions of paragraph 3 of Article 613 herein.

Article 663. *Presentation of title deeds of the attached real property.*[382]

1. In the same decision ordering the issuance of a certification of ownership and charges in respect of the attached real property, the Court Clerk may, by order, ex officio or at the request of a party, request the enforcement debtor to submit, within a time limit of ten days, the titles of ownership in his possession, if the property is inscribed in the Registry.

2. If the party so requests, the court representative of the enforcement creditor may carry out the request referred to in the preceding number.

The presentation of the titles shall be notified to the enforcement creditor to allow him to declare whether he considers them to be sufficient or to propose the rectification of any defects he may find in them.

Article 664. *Non-presentation or non-existence of titles.*[383]

If the enforcement debtor fails to present the titles within the time limit specified above, the Court Clerk may, at the request of the enforcement creditor, adopt the constraint measures he deems appropriate to force the enforcement debtor to present them, obtaining them, as appropriate, from the registries or files where they can be found, to which end the court representative of the enforcement creditor may be authorised if the files and registries arepublic.

In case no ownership titles exist, their absence may be substituted by the means established in title VI of the Mortgage Act. If the enforcement court is competent to conduct the court proceedings to be carried out to this effect, the latter shall be carried out as part of the enforcement proceedings.

Article 665. *Auction without substitute measures for the lack of titles.*

At the request of the enforcement creditor, the assets may be put up for public auction without previous substitute measures for the lack of ownership titles, expressing this circumstance in the public notices. In this case, that set out in rule 5 of Article 140 of the Regulations for enforcement of the Mortgage Act shall apply.

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[382] Paragraphs 1 and 2 are worded and numbered in accordance with Act 13/2009 of 3 November .

[383] Subparagraph 1 is worded in accordance with Act 13/2009 of 3 November.

Article 666. *Assessment of real properties for their auction.*[384]

1. The real properties shall be put up for auction for the value resulting from the deduction from their valuation carried out in accordance with the provisions of Article 637 and subsequent articles herein of the amount of all charges and rights existing before the encumbrance that resulted in the dispatch of the enforcement and whose preferential nature is evidenced by the registry certification of ownership and charges.

This operation shall be carried out by the Court Clerk by deducting from the value at which the real property has been assessed the total guaranteed amount resulting from the certification of charges or, as appropriate, the amount annotated in the Registry pursuant to the provisions of paragraph 2 of Article 657.

2. If the value of the charges or encumbrances is equal to or higher than the value determined for the asset, the Court Clerk shall suspend the enforcement of the said asset.

Article 667. *Calling the auction.*[385]

1. The call to the auction will be advertised and subject publicity in accordance with the provisions of article 645.

2. The Auctions Portal will communicate, via the Registrars' Association systems, with the relevant Registry so that the latter may prepare and issue electronic registration information for the property or properties auctioned which will be maintained permanently updated until the end of the auction and will be served via the Auctions Portal. In the same way, if the property is identified on the basis of drawings, this information will be made available. In the event that such information cannot be issued for any reason within forty-eight hours of publication of the advertisement, this will be stated and the auction will open, without prejudice to its later inclusion on the Auctions Portal prior the close of the auction.

Article 668. *Contents of the advertisement and publicity for the auction.*[386]

1. The content of the advertisement for the auction and its publicity will be carried out in accordance with the provisions of article 646.

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[384] Paragraph 2 worded in accordance with Act 13/2009, of 3 of November .

[385] Amended by Article 1.16 of Law 19/2015 of 13 July.

[386] Amended by Article 1.17 of Law 19/2015 of 13 July.

2. The Auctions Portal will include, separately for each one of them, the public notice which will express, in addition to the details shown in article 646, the identification of the property or properties at auction, their registration details, land office reference, if they have one, and any other details and facts that may be relevant for the auction and, necessarily, the appraisal or valuation which serves as a reserve for it, the subtraction of preferential charges, if any, and the possessory situation, if this is recorded in the enforcement proceedings. It will also be indicated, if appropriate, if it is possible to visit the property subject to auction as provided for in paragraph 3 of article 669. These data must be sent to the Auctions Portal in such a way that they may be processed electronically by it in order to provide and order the information.

The notice and the Auctions Portal will also record that is understood that all bidders accept the title existing in the enforcement proceedings to be sufficient, or that they assume its non-existence, along with the consequences if their bids do not exceed the reserves for the auction provided for in article 670. It will also be indicated that the charges or encumbrances existing prior to the credit of the claimant, if any, shall continue to subsist and that the mere participation in the auction implies that the bidder admits such charges or encumbrances and agrees to subrogation in the liability deriving from them in case the final bid is adjudicated in their favour.

3. The registration certificate, if appropriate, may be consulted via the Auctions Portal. The relevant Registry, via the Auctions Portal, will provide the certificate which was issued to commence the proceedings for all properties subject to bidding, along with the updated registration information referred to in article 667, the land office reference, if recorded there, and graphic, planning or environmental information associated with the property under the terms legally provided for, if this is possible.

Article 669. *Special conditions of the auction.*[387]

1. To take part in the auction bidders must lodge an amount equivalent to 5% of the value given to the assets in accordance with the provisions of article 666 of this Act, beforehand in the manner provided for in paragraph 1 of article 647.

2. By the mere fact of their participation in the auction the bidders shall be understood to accept as sufficient the titles indicated in the records, or that

[387] Amended by Article 1.18 of Law 19/2015 of 13 July.

no titles exist, and also to agree to their subrogation to the charges existing prior to the credit for which the enforcement is taking place, in case the final bid is adjudicated in their favour.

3. During the bidding period any party interested in the auction may apply to the Court to inspect the property or properties under enforcement. The court will notify whoever is in possession, requesting their consent. Where the holder consents to inspection of the property and cooperates adequately with the requirement of the Court to facilitate the best performance of the property's auction, the debtor may apply to the Court for a reduction of the debt up to 2% of the valuation for which the property would have been awarded if they had been the holder or if the latter had acted at their request. The Court, given the circumstances and having heard the enforcement creditor within a period of not more than five days, will decide on the appropriate reduction within the maximum deductible.

4. The resumption of an auction suspended for more than fifteen days will be carried out by a new publication of the advertisement and a new application for registration information, as appropriate, as if a new auction was being dealt with.

Article 670. *Approval of the final bid. Payment. Awarding the assets to the creditor.*[388]

1. If the highest bid is equal to or higher than 70% of the value at which the asset was put up for auction, the Clerk of the Court responsible for the enforcement shall, by order issued on the same day or the day following the close of the auction, approve the final bid in favour of the highest bidder. Within a time limit of forty days, the highest bidder shall lodge the difference between the amount deposited and the total price of the final bid in the Deposits and Consignments Account.

2. If it is the enforcement creditor who placed the highest bid equal to or higher than 70% of the value at which the asset was put up for auction, once the final bid has been approved, the Clerk of the Court shall carry out the settlement of the amount due as principal, interests and costs and,

[388] Paragraphs 1 and 7 are amended by single article 1.19 of Law 19/2015, of 13 July.

Paragraph 1 amended by Article 7.9 of Law 1/2013 of 14 May.
Please note the transitional regime for enforcement proceedings regulated by Transitional Provision 4 of that Law.

Paragraph 4(2) amended by final provision 2.2 of Royal Decree-Law 8/2011 of 1 July.

after such settlement has been notified, the enforcement creditor shall lodge the difference, if any.

3. If only bids in excess of 70% of the value at which the asset was put up for auction are made, but offering to pay in instalments with sufficient bank or mortgage guarantees of the deferred price, such bids shall be notified to the enforcement creditor who, within the next twenty days, may request the award of the immovable property at 70% of the starting value. If the enforcement creditor does not make use of this right, the final bid shall be approved in favour of the highest of such bids, with the conditions of payment and guarantees offered.

4. If the highest bid placed at the auction is lower than 70% of the value at which the asset was put up for auction, the enforcement creditor may, within a time limit of ten days, present a third party improving the bid by offering an amount in excess of 70% of the appraisal value or that, albeit lower than such amount, proves to be sufficient for the complete satisfaction of the right of the enforcement creditor.

If, upon expiry of such time limit, the enforcement debtor has failed to proceed as set out in the preceding paragraph, the enforcement creditor may, within the time limit of five days, seek the award of the property at 70% of the aforementioned value or for the amount owed to them for all items, provided that such amount does not exceed sixty per cent of its appraisal value and of the highest bid.

If the enforcement creditor does not make use of this power, the final bid shall be approved in favour of the highest bidder, provided that the amount offered by the latter is higher than 50% of the appraisal value or, if lower, covers at least the amount for which the enforcement was dispatched, including the provision for interests and costs. If the highest bid fails to meet these requirements, the Court Clerk responsible for the enforcement, after hearing the parties, shall resolve on the approval of the final bid in view of the circumstances of the case and taking into account particularly the behaviour of the debtor in relation to fulfilling the liability under the proceedings, the possibilities of achieving the satisfaction of the creditor through the sale of other assets, the loss of assets involved in the final bid for the debtor and the benefit obtained from it by the creditor. In the latter case, a direct appeal for judicial review may be lodged against the order approving the final bid with the Court that issued the general order of enforcement. If the Clerk of the Court refuses to approve the final bid, the matter shall proceed in accordance with the provisions of the following article.

5. Whoever is awarded the immovable property in accordance with the provisions of the preceding paragraphs must accept the subsistence of prior charges or encumbrances, if any, and subrogate to the liability arising from them.

6. When requested to establish the mortgage referred to in number (xii) of Article 107 of the Mortgage Act, the Clerk of the Court shall immediately issue a record of the order of approval of the final bid, even before the price has been paid, indicating the purpose for which it is issued. The request shall suspend the time limit for payment of the price of the final bid, which shall resume as soon as the record has been delivered to the applicant.

7. At any time prior to the approval of the final bid or the award to the enforcement creditor, the enforcement debtor may release their assets by paying the full amount due to the enforcement creditor in respect of principal, interests and costs. In this case, the Clerk of the Court will, by order, agree the suspension or annulment of the auction and will notify the Auctions Portal immediately in both cases.

8. Once the final bid has been approved and, as appropriate, the difference between the deposit and the total price of the final bid has been lodged in the Deposits and Consignments Account, an order of award shall be issued indicating, as appropriate, that the price has been lodged, as well as the other circumstances required for registration in accordance with mortgage legislation.

Article 671. *Auction with no bidders.*[389]

If there are no bidders at the auction, the creditor may, within a period of twenty days following the close of the auction, apply for the award of the property. If it is not the debtor's habitual residence, the creditor may apply for the award at 50% of the value for which the property would have gone to auction at or for the amount due to them for all items. If it is the debtor's habitual residence, the award will be made for an amount equal to 70% of the value for which the property would have gone to auction at or, if the amount owing for all items is lower than this percentage, for 60%. The rules for allotment of payments contained in article 654.3 will apply in all cases.

[389] Amended by single article 70 of Law 42/2015, of 5 October.

When the creditor fails to use this power within a time limit of twenty days, the Clerk of the Court shall lift the attachment.

Article 672. *Allocation of the amounts obtained in the real estate auction.*[390]

1. The Court Clerk shall allocate the price of the final bid as stipulated in paragraph 1 of Article 654, but the remainder, if there is one, shall be retained in order to pay those who have their rights registered or annotated subsequent to the enforcement creditor. If these creditors are satisfied and there is still a remainder, this shall be handed over to the enforcement debtor or to the third party owner.

The provisions in this article are understood notwithstanding the allocation of the remainder when its retention has been ordered in another particular enforcement or in any insolvency proceedings.

2. The Court Clerk responsible for the enforcement shall request the subsequent holders of credits to accredit the subsistence and enforceability of their credits within a time limit of thirty days and submit a settlement of these.

The Court Clerk shall transfer the settlements submitted to the parties so that they may allege what they have a right to and provide the documentary evidence they have within a time limit of ten days.

Once this time limit has elapsed, the Court Clerk shall decide what is right to be done through an order which may be appealed against, for the purposes of the distribution of the amounts collected in the enforcement while safeguarding the actions which might correspond to the subsequent creditors in order to uphold their rights as and against whom this may correspond. The order may be appealed against only for reconsideration and third party creditors who have submitted settlements shall be legitimised to lodge such an appeal.

Article 673. *Registration of the acquisition: title.*[391]

The record issued by the Clerk of the Court, of the order of award, including the resolution of approval of the final bid, of the award to the creditor or the transfer by agreement or by a specialist person or institution, in which shall

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[390] Article worded in accordance with Act 13/2009 of 3 November.

[391] Amended by Article 1.20 of Law 19/2015 of 13 July.

Article worded in accordance with Act 13/2009, of 3 November.

be stated, as appropriate, that the price has been deposited, as well as the other data required for registration in accordance with mortgage legislation, shall be sufficient title for registration at the Land Registry.

If applicable, the record shall state that the successful bidder has obtained a loan in order to pay the price of the final bid and, if applicable, the previous deposit, with a statement of the amounts financed and the institution which has granted the loan for the purposes provided for in Article 134 of the Mortgage Act.

Article 674. *Cancellation of charges.*[392]

At the request of the acquirer, as appropriate, an order shall be issued cancelling the annotation or registration of the encumbrance which has given rise to the successful bid or award.

Furthermore, the Clerk of the Court will order cancellation of all prior registrations and annotations, including those which may be verified after issue of the certificate provided for in article 656, and the same order will record that the sales or award value was the same as or less than the total credit of the claimant and, in the event that it exceeds it, that the remainder was retained at the disposal of the interested parties.

The order shall also state all other data which mortgage legislation requires for registration of the cancellation.

At the request of one of the parties, the record of the award order and the order to cancel the charges will be sent electronically to the relevant Land Registry or Registries.

Article 675. *Judicial possession and occupants of the property.*[393]

1. If the acquirer requests this, he shall be given possession of the property which shall be unoccupied.

2. If the property is occupied, the Court Clerk shall immediately agree to eviction when the court has decided, pursuant to the provisions in paragraph 2 of Article 661, that the occupant or occupants have no right to

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[392] Amended by Article 1.21 of Law 19/2015 of 13 July.

Article worded in accordance with Act 13/2009, of 3 of November.

[393] Paragraphs 2 and 3 of this article are worded in accordance with Act 13/2009, of November 3.

remain there. The evicted occupants may exercise the rights they believe they have in the corresponding proceedings.

When the property is occupied and procedure has not been in keeping with the provisions in paragraph 2 of Article 661, the acquirer may request the court to enforce the eviction of those who may be considered to be mere occupants of fact or without sufficient entitlement. The request must be made within the time limit of one year from the acquisition of the property by the successful bidder or the party adjudicated the property, once this time limit has elapsed the pretension to evict may only be attained in through the corresponding proceedings.

3. The occupants stated by the acquirer shall be notified of the request for eviction referred to in the preceding paragraph with a summons to a hearing which shall be stated by the Court Clerk within a time limit of ten days, within which they may allege and prove what they consider appropriate in this situation. Through a court order, the court shall decide on the eviction, which it shall order, in any case, if the occupants summoned fail to appear with no justification, and this may not be appealed.

4. The court order which decides on the eviction of the occupants of property shall safeguard the rights of the parties concerned which may be exercised in the corresponding proceedings, regardless of the content.

Section 7. On the administration for payment

Article 676. *Constitution of the administration.*[394]

1. At any time, the enforcement creditor may request the Court Clerk in charge of the enforcement to hand over all or part of the assets attached in administration so that their yield may be applied to the payment of the principal, interests and costs of the enforcement.

If the enforcement creditor decides that the administration be carried out by third parties, the Court Clerk shall establish the remuneration by an order at the expense of the enforcement debtor.

2. Through an order, the Court Clerk shall agree to the administration for payment when the nature of the assets make this advisable and shall provide that, once an inventory is made, the enforcement creditor shall

[394] Article worded in accordance with Act 13/2009 of 3 November.

take possession of the assets, and the persons designated by the enforcement creditor shall be notified of this.

Before administration is agreed to, as appropriate, the third parties who have rights over the asset attached registered or annotated subsequent to the enforcement creditor shall be heard.

3. At the request of the enforcement creditor, the Court Clerk may impose coercive fines on the enforcement debtor which may impede or hinder the exercise of the powers of the administrator, notwithstanding the other liabilities which the enforcement creditor might have incurred . In addition, at the request of the enforcement creditor, the court may impose coercive fines on third parties which might prevent or hinder the exercise of the powers of the administrator, in which case, the procedure established in paragraphs 2 and 3 of Article 591 shall be followed.

Article 677. *Form of administration.*

The administration for payment shall be carried out as agreed to by the enforcement creditor and the enforcement debtor; in the absence of an agreement, sit shall be understood that the assets be administered as per the customs of the country.

Article 678. *Rendering of accounts.*[395]

1. Unless otherwise agreed to by the Court Clerk in charge of the enforcement or the parties, the creditor shall annually render accounts to the Court Clerk for the administration of payment. As regards the accounts submitted by the creditor, the enforcement debtor shall be heard, within a time limit of fifteen days. If allegations are formulated, these shall be transferred to the enforcement creditor so that, within a period of nine days, he might state whether he is in agreement or not with these.

2. If there is no agreement between these, the Court Clerk shall convene both to appear within five days, within which the evidence proposed shall be admitted and considered as useful and pertinent, and a prudential time shall be established to examine these, which shall not exceed ten days.

As appropriate, the evidence admitted shall be examined and the Court Clerk shall issue an order within a time limit of five days, in which he shall decide on what is right.

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[395] Article worded in accordance with Act 13/2009, of 3 November.

On the approval or rectification of the accounts submitted. A direct appeal for judicial review may be lodged against this order.

Article 679. *Controversies on administration.*[396]

Except for controversies on the rendering of accounts, all the other questions which arise between the creditor and the enforcement debtor, due to the administration of the property attached,shall be substantiated by the steps established for the oral proceedings before the court which authorises the enforcement.

Article 680. *Finalisation of the administration.*[397]

1. When the enforcement creditor has paid his credit, interest and costs with the product of the assets administered, these shall return to the possession of the enforcement debtor.

2. The enforcement debtor may pay the rest of his debt at any time, in accordance with the last state of the account submitted by the creditor, in which case he shall immediately take possession of his assets and the creditor shall cease to administer the assets, notwithstanding the rendering of general accounts in the following fifteen days, and the other claims which both might believe they have a right to

3. If the enforcement creditor does not satisfy his right through administration, he may request that the Court Clerk in charge of the enforcement terminate this, with the previous rendering of accounts, and proceed to the compulsory realisation by other means.

CHAPTER V

ON THE PARTICULARITIES OF THE ENFORCEMENT OF MORTGAGED OR PLEDGED ASSETS

Article 681. *Procedure for demanding payment of debts guaranteed by a pledge or a mortgage.*[398]

1. Action intended to demand the payment of debts guaranteed by a pledge or mortgage may be exercised directly against the assets pledged

[396] Article worded in accordance with Act 13/2009, of 3 November.

[397] Paragraph 3 worded in accordance with Act 13/2009, of 3 November.

[398] Paragraph 2 is amended by final provision 2.1 of Law 14/2014, of 24 July.

or mortgaged, and its exercise shall be subject to the provisions of this heading, with the particulars established in this chapter.

2. Where payment is claimed for debts guaranteed by a marine mortgage, the provisions of the preceding paragraph may only be exercised in the cases described in article 140.a) and e) of the Shipping Act.

In the cases shown at letters c) and d) of that article, the action may only be exercised after prior verification of the true situation of the vessel via a certificate issued by the relevant authority and, in the case of letter b), it will be necessary to submit evidence of the enforcement action which records the declaration of bankruptcy.

Article 682. *Scope of this chapter.*[399]

1. The rules of this Chapter shall only be applicable when enforcement is directed exclusively against assets which are pledged or mortgaged in guarantee of the debt on which the proceedings are based.

2. When mortgaged assets are involved, the provisions of this chapter will apply on condition that the following requirements are complied with, as well the provisions in the preceding paragraph:

(i) That the mortgage deed sets out the price at which the interested parties value the property or asset mortgaged, so that it serves as the reserve in the auction, which may not be lower, in any case, than 75% of the value shown in the appraisal that, as appropriate, may be been made by virtue of the provisions of Law 2/1981, of 25 March, on Regulation of the Mortgage Market.

(ii) That, in the same document, there is an address given by the debtor for the service of summons and notifications. In addition, an electronic address may also be given for the purposes of receiving the relevant electronic notifications, in which case the provisions in the second sub-paragraph of paragraph 1 of article 660 will apply.

For mortgages on commercial establishments, the address must be considered to be the premises where the establishment mortgaged is installed.

3. The Registrar shall record the circumstances referred to in the preceding paragraph in the registration of the mortgage.

[399] Paragraph 2 amended by Article 1.22 of Law 19/2015 of 13 July.

Article 683. *Change of the address provided for summons and notifications.*[400]

1. The debtor and the non-debtor mortgager may change the addresses they designated for summons and notices, subject to the following rules:

(A) When the mortgaged assets are immovable property, the consent of the creditor shall not be necessary on condition that the change takes place within the same town designated in the document or any other which is located in the municipal area where the property lies and serves to determine the jurisdiction of the court.

In order to change this address to a point other than those stated, it shall be necessary to have the agreement of the creditor.

(B) When it is a question of a mortgage on moveable assets, the address cannot be changed without the consent of the creditor.

(C) In the case of a marine mortgage, it shall be sufficient to notify the creditor of the change of address.

At any event, it will be necessary to prove written notification to the creditor.

2. The changes of address referred to in the preceding paragraph will be recorded at the Registry in a marginal note on the mortgage registration, either by an entry with a signature authorised or ratified by the Registrar, or by an entry submitted electronically to the Registry, guaranteed with a certificate of recognised electronic signature or by a notarial act.

3. For the purposes of summons and notices, the address for third parties who acquire mortgaged assets shall be that appearing as designated in the registration of acquisition. At any event, the provision contained in paragraph 1 of article 660 will apply.

Article 684. *Competence.*

1. In order to deal with the procedures referred to in this chapter, the following shall be competent:

(i). If the mortgaged assets are real estate, the Court of First Instance of the place where the property is located and if this is located in more than one judicial district, or if there are several and these are located indifferent judicial districts, the Court of First Instance of any of these,

[400] Amended by Article 1.23 of Law 19/2015 of 13 July.

at the discretion of the claimant, and, in this case, the rules on express or tacit submittal contained herein are not applicable.

(ii). If the mortgaged assets are ships, the Court of First Instance to which the parties submitted in the constitutional entitlement of the mortgage and, in the absence of this, the court of the place in which the mortgage was constituted, of the port in which the ship mortgaged is located, the court of the address of the defendant or of the place where the Registry in which the mortgage is registered, at the discretion of the claimant.

(iii). If the assets mortgaged are moveable goods, the Court of First Instance to which the parties submitted in the document of constitution of the mortgage and, in its absence, that of the judicial district where the mortgage was registered. If there are several assets mortgaged and these are registered in different Registries, the Court of First Instance of any of the corresponding judicial districts shall be competent, at the discretion of the claimant.

(iv). If the assets are pledged, the Court of First Instance to which the parties submitted in the document or policy of the constitution of the guarantee and, in its absence, that of the place in which the assets are located, are stored or are understood to be deposited.

2. The court shall examine its own territorial jurisdiction ex officio.

Article 685. *The enforcement claim and the documents which must be attached to it.*[401]

1. The enforcement claim must be made against the debtor and, if appropriate, against the non-debtor mortgagor or against the third party owner of the assets mortgaged on condition that the latter had accredited the acquisition of such assets to the creditor.

2. The credit title or titles shall be attached to the claim, with the requirements which this Act imposes for dispatch of the enforcement, as well as the documents referred to in Article 550 and, in their respective cases, Articles 573 and 574 of this Act.

In the event of enforcement over assets mortgaged or non-dispossessory pledges of assets, if the title registered cannot be submitted, the document

[401] Paragraph 5 added by Article 1.24 of Law 19/2015 of 13 July.

submitted must have a certificate from the Registry attached, accrediting the registration and subsistence of the mortgage.

3. For the purposes of the proceedings regulated in this chapter, the private document constituting a marine mortgage registered at the Property Register in accordance with the provisions in Article 128 of the Shipping Act shall be considered to be sufficient title to dispatch enforcement.

4. As regards the enforcement of real estate mortgages constituted in favour of an institution which can legally issue mortgages or which, on commencement of the proceedings, may guarantee credits and loans attached to an issue of mortgage bonds, it shall be sufficient to submit a Land Registry certificate which certifies the registration and subsistence of the mortgage. This certificate shall be completed with an authorised copy of the mortgage, which may be partial and include only the property or properties which are subject to enforcement.

5. For the purposes provided for in paragraph 1 of article 579, in order to dispatch the enforcement for the amount due and against whoever is appropriate, it will be necessary to have notified them of the initial enforcement order. This notification may be made by the procurator for the enforcement creditor, if requested to so do, or where in the light of the circumstances this is agreed by the Clerk of the Court.

The amount claimed in it will serve as a basis for dispatching the enforcement against the guarantors or bondsmen and may not be increased due to late payment interest accrued during processing of the initial enforcement order.

Article 686. *Payment order.*[402]

1. The order authorising and dispatching the enforcement will include an order for payment from the debtor and, if appropriate, the non-debtor mortgagor or third party owner against whom the claim addressed, at the address recorded at the Registry.

2. Without prejudice to the notice of the dispatch of the enforcement to the debtor, the summons referred to in the preceding paragraph shall not be

[402] Paragraphs 2 and 3 are amended by single article 1.25 of Law 19/2015, of 13 July.

Paragraph 1 worded according to Act 13/2009 of 3 November .

Paragraph 3 added by Act 13/2009, of 3 November.

made when it is accredited that the summons was or were made extra-judicially, in accordance with the provisions in paragraph 2 of Article 581.

For these purposes, the summons to the debtor and, as appropriate, the notices to the third party owner, non-debtor mortgagor and holders, as appropriate, of rights registered after the right in rem of the mortgage being enforced, must be served at the address recorded for each one of them at the Registry. The summons or notice will be served by the Notary, in the form appearing in notarial legislation, to the consignee personally, if they are to be found at the address given. If they are not to be found at the address, the Notary will effect the process with such person of legal age as may be found there and who states that they have a personal or working relationship with the party being summoned. The Notary will expressly record the statement of such person regarding their consent to take charge of the writ and their obligation to ensure it reaches its addressee.

Notwithstanding the foregoing, a summons or notification served outside the address recorded at the Land Registry will be valid as long as it is served in person to the addressee and, having been identified by the Notary, with their consent, which will be expressed in the certificate of summons or notification.

In the event that the addressee is a corporate entity, the Notary will serve the proceedings on a person of legal age who is to be found in the address shown at the Registry and who is a part of the management body, who proves that they are a representative with sufficient powers or who, in the opinion of the Notary, palpably acts for the corporate entity as the person in charge of receiving summons or written notifications on its behalf.

3. Having attempted to serve the summons at the address recorded at the Registry without success and being unable to serve them on the persons referred to in the preceding paragraph, and once the Court Office has made the necessary checks to find out the debtor's address, the publication of public notices will be ordered in the form provided for in article 164.

Article 687. *Deposit of mortgaged motor vehicles and pledged assets.*[403]

1. When the subject of the procedure is debts guaranteed by a pledge or mortgage of motor vehicles, the Court Clerk shall order that the assets

[403] paragraphs 1 and 2 of this article have been worded in accordance with Act 13/2009, of 3 November.

pledged or the vehicles mortgaged be deposited in the possession of the person designated by the Court Clerk.

The vehicles deposited shall be sealed and cannot be used unless this is not possible due to special provisions, in which case the Court Clerk shall appoint a supervisor.

2. The deposit referred to in the preceding paragraph shall be agreed to through an order made by the Court Clerk if payment has been requested from the debtor extra-judicially. Otherwise, an order shall be given to request payment from the debtor in accordance with the provisions herein and, if the debtor does not attend to the request, an order shall be given to constitute the deposit.

3. When the assets pledged cannot be seized and the deposit of these cannot be constituted, the procedure shall not continue.

Article 688. *Certification of ownership and charges. Dismissal of the enforcement in the event of the non-existence or cancellation of the mortgage.*[404]

1. When the enforcement involves mortgaged assets, a certificate shall be claimed from the Registrar in which the points referred to in paragraph 1 of Article 656 are recorded, together with word for word insertion of the mortgage registration to be enforced, stating that the mortgage in favour of the enforcement creditor subsists and has not been cancelled or, as appropriate, the cancellation and modifications which appear in the Registry. At any event, the provisions of paragraph 3 of article 656 will apply.

2. The registrar shall record that the certification of ownership and charges has been issued in a marginal note on the registration of the mortgage, stating the date and the existence of the proceedings referred to.

Until such marginal note is cancelled by an order of the Clerk of the Court, the Registrar cannot cancel the mortgage for reasons other than the enforcement itself.

[404] Paragraph 1 amended by Article 1.26 of Law 19/2015 of 13 July.
Paragraphs 2 and 3 are worded in accordance with Act 13/2009, of 3 November.

3. If the certification shows that the mortgage on which the enforcement creditor grounds their claim does not exist, or has been cancelled, the Clerk of the Court shall issue an order terminating the enforcement.

Article 689. *Notification to the registered owner and to subsequent creditors of the procedure.*

1. If the registration certification shows that the person in whose favour the last registration of ownership was made has not been requested to pay in any notary or judicial form, stipulated in the preceding articles, this person shall be notified of the existence of the procedure, at the address recorded in the Registry so that he may intervene in the enforcement if this is advisable, in accordance with the provisions in Article 662, or in order to settle the amount of the credit and the interest and costs as regards the part which is insured with the mortgage of his property before the final bid.

2. When there are charges or property rights constituted subsequent to the mortgage which guarantees the credit of the claimant, the provisions in Article 659 shall be applied.

Article 690. *Administration of the property or the asset mortgaged.*[405]

1. When the time limit of ten days has elapsed from the request for payment or, when this is done extra-judicially, from the time of the arrangement of the enforcement, the creditor may request that he be granted the administration or the interim ownership of the property or the asset mortgaged. In this case, the creditor shall receive the income expired and not settled, if this was stipulated, and the subsequent benefits, revenue and products, thus covering the expenses of conservation and exploitation of the assets and then his own credit.

For the purposes stipulated above, the occupant of the property shall be notified of the interim administration, with the instruction that he is obliged to pay the administrator what is owing to the owner.

In the case of unoccupied property, the administrator shall be provisionally given material ownership of these.

2. If there are more than one creditors, the administration shall correspond to the one who has preference, according to the Registry, and if these have the same priority, any of these may request this in common benefit, applying the

[405] Paragraphs 2, 3 and 4 are worded in agreement with Act 13/2009, of November.

benefits, revenue and product as determined in the preceding paragraph, in proportion with the credits of all the claimants. If several parties with the same priority request this, the Court Clerk shall decide at his discretion through an order.

3. As a general rule, the duration of the administration and interim ownership which is granted to the creditor shall not exceed two years if the mortgage is on real estate, and one year if it is on moveable or naval assets. On its termination, the creditor shall render account of his administration to the Court Clerk in charge of the enforcement, who shall approve this if this is fitting. The enforcement cannot continue without this enforcement. A direct appeal for judicial review may be lodged against the decision of the Court Clerk.

4. When the procedure for debt guaranteed with a mortgage on a motor vehicle is processed, only the administration referred to in the preceding paragraphs shall be agreed to by the Court Clerk if the creditor who requests this seeks sufficient post security in any of the forms stipulated in the second sub-paragraph of paragraph 3 of Article 529.

5. When the mortgage enforcement occurs together with insolvency proceedings, as regards administration or interim ownership, the provisions of the court which deals with the insolvency proceedings shall apply, in accordance with the rules regulating this.

Article 691. *Calling the auction of mortgaged assets. Advertisement and publicity for the call.*[406]

1. Once the provisions in the preceding articles are complied with and twenty days have elapsed since service of the afore-mentioned payment order and the notices, at the request of the claimant, of the debtor or the third party owner, the property or asset mortgaged shall be auctioned.

2. The auction will be advertised and given publicity in the form set out in articles 667 and 668.

3. When the procedure for debt guaranteed with a mortgage on a commercial establishment is being processed, the notice published on the Auctions Portal shall state that the acquirer shall remain subject to the provisions of the Urban Leasing Act, with the acceptance, as appropriate, of the right of the lessor to increase the rent due to the assignment of the contract.

[406] Amended by Article 1.27 of Law 19/2015 of 13 July.

4. The auction of mortgaged assets, regardless of whether these are movable or immovable, shall be carried out in accordance with the provisions of this Act for the auction of immovable property.

5. Where the Clerk of the Court has evidence that the debtor has been declared bankrupt, the auction will be suspended even if it has already opened. In this case, the auction will be resumed where it is shown, by a record of the resolution of the Bankruptcy Judge, that the assets or right are not needed for continuity of the debtor's professional or business activity, with the provisions of paragraph 2 of article 649 being applicable. At any event, the Land Registrar will notify the Court Office before which the enforcement proceedings are being held of the registration of annotation of bankruptcy against the mortgaged property along with a register record that the asset is not affected or is not needed for the debtor's professional or business activity.

6. In the enforcement proceedings referred to in this chapter, it shall also be possible to use the realisation through an agreement and realisation through a specialist person or institution regulated in Sections 3 and 4 of chapter IV of this title.

Article 692. *Payment of mortgage credit and application of the remainder.*

1. The price of the final bid shall be assigned, without delay, to the payment of the principal of the credit of the claimant, the interest accrued and the costs involved, but what is handed over to the creditor for each of these items shall not exceed the limit of the respective mortgage cover; the excess, if there is any, shall be deposited at the disposal of the owners of subsequent rights registered or annotated on the asset mortgaged. When the possible subsequent creditors are paid, the remainder shall be handed over to the owner of the asset mortgaged.

Notwithstanding the provisions in the preceding paragraph, when the owner of the asset mortgaged is the debtor, the price of the final bid, insofar as this exceeds the limit of the mortgage cover, shall be assigned to the payment of the totality of what is owed to the enforcement creditor for the credit which s the subject of the enforcement, once the possible credits registered or annotated subsequent to the mortgage are settled, on condition that the debtor is not involved in temporary receivership, insolvency or bankruptcy.

2. The parties which consider that they have a right to the remainder which may remain after the payment made to the subsequent creditors may put forward the provision in paragraph 2 of Article 672.

The provisions in this paragraph and in the previous one are understood notwithstanding the allocation of the remainder when its retention was ordered in another singular enforcement or in any insolvency proceedings.

3. The order which is issued for the cancellation of the mortgage which guaranteed the credit of the enforcement creditor and, possibly, the subsequent registrations and annotations, shall state the provision in Article 674, and the fact that the notices referred to in Article 689 were also made.

Article 693. *Claim limited to part of the capital or the interest whose payment must be made within different time limits. Early due dates for instalment debt.*[407]

1. The provisions of this Chapter will be applicable in the case that a part of the capital of the credit or the interest are unpaid, where such payment must be made in instalments, if at least three monthly instalments become due and the debtor does not fulfil their obligation to pay, or a number of instalments which involves the debtor not fulfilling their obligation to pay during a period equivalent to, at least, three months. This will be recorded by the Notary in the mortgage deed and by the Registrar in the relevant entry. If it is necessary to transfer the asset mortgaged in order to pay any of the instalments of the capital or interest, and other instalments of the obligation are not yet due, the sale shall be verified and the property shall be transferred to the buyer with the mortgage corresponding to the part of the credit which has not been paid.

2. The entire amount owed for capital and interest may be claimed if total repayment had been agreed in the event of non-payment of, at least, three monthly instalments without the debtor fulfilling their payment obligations, or a number of instalments which involved the debtor not fulfilling their obligation to pay during a period equivalent to, at least, three months and this agreement is recorded in the mortgage deed and respective registry entry.

3. In the case referred to in the preceding paragraph, the creditor may request that, without prejudice to the enforcement being dispatched for the entire debt, the debtor is notified that, prior to the auction closing, the asset may be released by lodging the exact amount for principal and interest as may be due on the date of the claim was submitted, increased, as

407 Amended by Article 1.28 of Law 19/2015 of 13 July.

appropriate, with the accrued loan and interest on late payment due accumulating throughout the procedure and which are totally or partially unpaid. For these purposes, the creditor may request that procedure be in accordance with the provisions of paragraph 2 of Article 578.

Even if the asset mortgaged is the habitual residence, the debtor may, even without the consent of the creditor, release the asset by lodging the amounts stated in the previous paragraph.

Once an asset has been released for the first time, it may be released a second time or at other times on condition that, at least, five years have elapsed between the date of release and that of the judicial or extra-judicial payment order made by the creditor.

If the debtor pays under the conditions provided for in the preceding paragraphs, the costs shall be assessed by calculating the amount of the instalments in arrears paid, with the limit provided for in article 575.1 b, and, once these have been settled, the Clerk of the Court shall issue an order releasing the asset and declaring the proceedings terminated. The same agreement shall be made when payment is made by a third party with the consent of the enforcement creditor.

Article 694. *Realisation of the pledged assets.*

1. Once the deposit of the pledged assets is constituted, these shall be realised in accordance with the provisions herein for distraint proceedings.

2. When the assets pledged are not those referred to in Section 1 of chapter IV of this part, the auction shall be announced in accordance with the provisions in Articles 645 et seq. herein.

The value of the assets for the auction shall be established in the document or policy of constitution of the pledge and, if this is not stated, the value shall be the total amount of the claim for the principal, interest and costs.

Article 695. *Contesting enforcement.*[408]

1. In the proceedings referred to in this chapter, a challenge to enforcement shall solely be given leave to proceed where it is based on the following grounds:

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[408] Paragraph 4 is amended by final provision 3 of Law 9/2015, of 25 May.
Please note the transitional regime for enforcement proceedings regulated by Transitional Provision 4 of that Law.

(i) Extinction of the security or the obligation guaranteed, as long as a Registry certificate reflecting cancellation of the mortgage or, as appropriate, the non-dispossessory pledge, or a public deed of receipt of payment or cancellation of the security is submitted.

(ii) An error in determining the enforceable amount, where the guaranteed debt is the balance resulting from the closure of an account between the enforcement creditor and the enforcement debtor. The enforcement debtor shall attach a copy of the bank book recording the entries on the account and a challenge shall solely be given leave to proceed where the balance appearing in such savings book differs from the balance filed by the enforcement creditor.

It will not be necessary to attach the bank book where the proceedings refer to the final balance on closure of current accounts or similar transactions arising from commercial contracts granted by credit, savings or financial institutions in which it was agreed that the enforceable amount in the event of enforcement would be that specified in the certificate issued by the creditor entity, but the enforcement debtor must express with due precision the points where the settlement made by the entity is disputed.

(iii) In the case of the enforcement of mortgaged movable property or upon which a non-dispossessory pledge has been set up, the subjection of such assets to another pledge, movable or immovable property mortgage or attachment registered prior to the encumbrance giving rise to the proceedings, which shall be proven by means of the relevant registry certification.

(iv) The abusive nature of a contractual clause which constitutes the grounds for the enforcement or which may have determined the enforceable amount.

2. Once the challenge referred to in the preceding paragraph has been filed, the Clerk of the Court shall stay the enforcement and shall summon the parties to a hearing before the court which issued the general enforcement order. At least fifteen days shall have elapsed from the date the general enforcement order is issued. At such hearing, the court shall hear the parties, admit any documents submitted and agree upon whatever may be appropriate within two days by means of a court order.

3. The order upholding the challenge based on grounds a) and c) of paragraph 1 of this article will order the proceedings to be dismissed; the order upholding the challenge based on grounds b) will sent the amount for which the enforcement shall continue.

If grounds d) are upheld, it will be agreed to dismiss the enforcement where the contractual clause grounds the enforcement. In any other case, the enforcement will continue with non-application of the abusive clause.

4. An appeal may be lodged against the order ordering dismissal of the enforcement, non-application of the abusive clause or the dismissal of the challenge on the grounds provided for in paragraph 1.d) above.

Other than these cases, orders deciding on challenges referred to in this article may not be appealed in any way and their effects will exclusively be confined to the enforcement proceedings in which they were passed.

Article 696. *Third-party claims to ownership.*

1. In order to give third-party claims to ownership leave to proceed in the proceedings referred to in this chapter, a title of ownership irrefutably dated prior to the date on which security was established shall have to be attached to the claim. In the case of assets whose ownership is susceptible to registration at a registry, such title shall have to have been registered in favour of the third-party or his predecessor in title on a date prior to the security's registration, which shall be proven by means of a registry certification reflecting the registration of the third-party's ownership or that of his predecessor in title and a certification stating that the entry on such ownership has neither expired nor been cancelled.

2. Giving the third-party claim to ownership leave to proceed shall stay enforcement with regard to the assets such claim refers to, and should such assets comprise only a part of the assets making up the security, the proceedings may follow their course with regard to the other assets should the creditor so request.

Article 697. *Stay of enforcement due to preliminary criminal ruling.*

Apart from the cases referred to in the preceding two articles, the proceedings referred to in this chapter may only be stayed due to preliminary criminal rulings where the existence of a criminal case on apparently illegal facts which may determine the falsity of the title or may render the enforcement proceedings invalid or illegal is certified pursuant to Article 569 contained herein.

Article 698. *Claims not included under the preceding articles.*

1. Any claim that the debtor, a third-party holder or any other interested party may bring which is not included under the preceding articles,

including any concerning the nullity of title or on the expiry, certainty, extinction or amount of the debt, shall be dealt with in the relevant trial without ever having the effect of staying or hindering the proceedings set forth in this chapter.

Competence for dealing with such proceedings shall be determined by the ordinary rules.

2. At the time a claim referred to in the preceding paragraph is brought or during the course of the trial it may give rise to, the effectiveness of the judgement issued in such trial may be sought by withholding all or part of the amount which should be handed over to the creditor through the proceedings governed by this chapter.

The court shall order such withholding through a procedural court order in view of the documents filed should it deem that the grounds alleged are sufficient. Should the applicant of such withholding be widely known not have sufficient solvency, the court shall require him to post sufficient security beforehand to cover any late-payment interest and any other damages that may be caused to the creditor.

3. Should the creditor post security for the amount to be withheld as a result of the trial referred to in the first paragraph to the court’s satisfaction, the withholding shall be lifted.

TITLE V

ON NON-MONETARY ENFORCEMENT

CHAPTER ONE

ON GENERAL PROVISIONS

Article 699. *Conducting enforcement.*

Where an enforceable right should contain a penalty or an affirmative or negative obligation or an obligation to hand over something other than an amount of money, the court order dealing with the enforcement shall require the party subject to enforcement to comply with whatever may be set forth in the enforceable right under his/own terms within the time limit it may deem appropriate.

The court may threaten the party subject to enforcement with the employment of personal distraining measures or monetary fines in such requirement.

Article 700. *Attachment guarantee and alternative security.*[409]

Should it be impossible to immediately comply with the affirmative or negative obligation or the obligation to hand over something other than money, the Court Clerk may, at the request of the party seeking enforcement, agree upon any guarantee measures that may turn out to be suitable to ensure the penalty's effectiveness

The attachment of assets belonging to the party subject to enforcement for an amount sufficient to cover any possible alternative compensation and enforcement costs shall, in any event, be agreed upon. A direct appeal for judicial review lacking suspensory effects may be lodged against such order before the court which issued the general enforcement order.

The attachment shall be lifted should the party subject to enforcement post security for a sufficient amount set by the Court Clerk when agreeing to the attachment in any of the manners set forth in the second sentence of the paragraph 3, Article 529.

CHAPTER II

ON THE ENFORCEMENT OF OBLIGATIONS TO HAND OVER THINGS

Article 701. *Handover of a specific moveable asset.*[410]

1. Where of the enforceable right should set forth the obligation of handing over a certain specific moveable asset and the party subject to enforcement fails to hand it over within the time limit laid down, the Court Clerk responsible for the enforcement shall grant possession thereof to the party seeking enforcement, using any distraining measures he may deem necessary. Should it be necessary to gain entry to closed places, he shall seek the authorisation of the court which ordered the enforcement and, where necessary, may be aided by public law enforcement forces.

Where moveable property subject to registration similar to that of real property is involved, the necessary measures shall likewise be taken to adjust the registry to the matters dealt with by the enforceable right.

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409 Article worded in accordance with Act 13/2009, of 3 November.

410 Paragraphs 1 and 2 of this Article have been worded in accordance with Act 13/2009 of 3 November.

2. Should the asset's whereabouts be unknown or should it not be found at the place where it should be when it is sought, the Court Clerk shall question the party subject to enforcement and threaten him with contempt of court, so that he may reveal whether it is in his possession and whether he knows its whereabouts.

3. Where, despite having proceeded in accordance with the preceding paragraphs, the asset cannot be found, the court shall, at the request of the party seeking enforcement, order the replacement of the asset or assets owed for fair monetary compensation, which shall be set pursuant to Articles 712 and the following, through a procedural court order.

Article 702. *Handover of generic or indeterminate assets.*[411]

1. Should the enforceable right refer to the handover of generic or indeterminate assets which can be acquired in markets and the requirement has not been complied with once the time limit has elapsed, the party seeking enforcement may petition the Court Clerk to grant him possession of the assets owed or to empower him to acquire them at the cost of the party subject to enforcement and to order, at the same time, the attachment of sufficient assets to pay for such acquisition, of which the party seeking enforcement shall duly render accounts.

2. Should the party seeking enforcement state that the late acquisition of the generic or indeterminate assets in keeping with the preceding paragraph no longer satisfies his legitimate interests, a monetary equivalent shall be set, along with any damages that the party seeking enforcement may have suffered, which shall be settled in accordance with Article 712 and following.

Article 703. *Handover of immovable property.*[412]

1. Should the enforceable right set out the transfer or handover of immovable property, once the court order authorising and ordering the enforcement has been issued, the Clerk of the Court in charge of it shall immediately order measures to be taken in accordance with the judgment and, as appropriate, take the necessary steps to adjust the Registry to the enforceable right.

[411] Article worded in accordance with Act 13/2009, of 3 November.

[412] Paragraph 1 amended by Article 2.7 of Law 4/2013 of 4 June.

If there are items within the property which are not subject to the enforcement, the Clerk of the Court will demand that the enforcement debtor remove them within a given time limit. If they are not removed, they will be considered to be abandoned goods for all purposes.

In cases of repossession due to non-payment of rents or amounts due, or due to the legal or contractual expiry of the term, to avoid delays in the eviction process, with prior authorisation from the Clerk of the Court, the presence of a single official at Manager level will be sufficient, who may, if appropriate, request assistance from the police force.

2. Where in the procedure of eviction the party being evicted should claim ownership over inseparable items consisting of plant or facilities which are strictly necessary for the property's ordinary use, the obligation of paying for their value shall be decided upon in the enforcement proceedings should the interested parties request it within five days of the eviction.

3. Should the existence of any defects be recorded at the property caused by the enforcement debtor or its occupants during the eviction, the withholding and posting of a deposit of sufficient assets by the possible party responsible may be agreed upon to cover any damages caused, which shall be settled, as appropriate and at the request of the enforcement creditor, according to the provisions of Articles 712 et seq.

4. Should effective possession of the property be handed over to the claimant prior to the date set for eviction, in the event of an enforceable right consisting of a judgment in an urban property eviction hearing and the lessee should prove it before the Clerk of the Court in charge of the enforcement, an order moving the proceedings forward declaring the judgment enforced shall be issued and the procedure cancelled, unless the claimant should have an interest in maintaining it to draw up a certificate on the state in which the property is to be found.

Article 704. *Occupants of real property to be handed over.*[413]

1. Where the real property whose possession is to be handed over is the usual residence of the party subject to enforcement or whoever may be his dependants, the Court Clerk shall grant them one month to vacate it. Such time limit may be extended for an additional month should there be solid grounds.

[413] The first sentences of paragraphs 1 and 2 of this Article have been worded in accordance with Act 13/2009 of 3 November.

Once such time limits set forth have elapsed, the eviction shall be carried out immediately and the date for such eviction shall be set in the initial decision or in the decision agreeing to the extension.

2. Should the real property that must be handed over pursuant to the enforceable right be occupied by third parties other than the party subject to enforcement who share its use with the latter, the Court Clerk in charge of the enforcement shall give them notice of the enforcement or that it is pending as soon as he is aware of their existence, so that they may file any titles justifying their situation within ten days.

The party seeking enforcement may petition the court to evict whoever he may deem as mere occupants lacking sufficient title. Such petition shall be transferred to the persons indicated by the party seeking enforcement and the procedures shall proceed in accordance with paragraphs 3 and 4, Article 675.

CHAPTER III

ON THE ENFORCEMENT OF AFFIRMATIVE AND NEGATIVE OBLIGATIONS

Article 705. *Requirement and setting a time limit.*

Should the enforceable right oblige somebody to do anything, the court shall require the debtor to carry it out within a time limit which shall be set on the basis of the nature of the obligation and existing circumstances.

Article 706. *Penalty of affirmative non-personal obligation.*[414]

1. Where the enforceable right should set forth an affirmative non-personal obligation, the party seeking enforcement may petition that he be empowered to commission a third party to carry it out at the cost of the party subject to enforcement or claim compensation for damages should the party subject to enforcement fail to carry it out within the time limit set by the Court Clerk.

Where the enforceable right should contain an express provision in the event of non-compliance by the debtor, the provisions set forth therein shall apply without the party seeking enforcement being able to choose between performance by a third party or compensation.

[414] The first sentences of paragraphs 1 and 2 of this Article are worded in accordance with Act 13/2009 of 3 November.

2. Should the party seeking enforcement opt for commissioning a third party to carry out the obligation in accordance with the preceding paragraph, the cost thereof shall be previously appraised by an appraisal expert appointed by the Court Clerk and assets shall immediately be attached for their immediate realisation until the amount required is obtained should the party subject to enforcement fail to post the amount agreed upon by the Court Clerk by means of an order to move the proceedings forward, which is subject to an appeal for judicial review with non-suspensory effect before the court which issued the general enforcement order, or fail to guarantee payment.

Where the party seeking enforcement should opt for compensation for damages, they shall be quantified in accordance with the provisions set forth in Article 712 and the following.

Article 707. *Publication of judgement in the media.*[415]

Where the judgement should order the publication or dissemination of its contents, either partially or fully, in the media at the cost of the party condemned in the proceedings, enforcement may be carried out to ensure the effectiveness of such decision through the Court Clerk by requiring the party subject to enforcement to place the appropriate advertisements.

Should the party subject to enforcement fail to comply with such requirement within the time limit set, the party seeking enforcement may place the advertisement after obtaining funds at the cost of the assets belonging to the party subject to enforcement in accordance with the provisions set forth in paragraph 2 of the preceding Article.

Article 708. *Penalty of issuing a declaration of shall.*[416]

1. Where a definitive court judgement or arbitration award should set a penalty of issuing a declaration of shall, the competent court shall deem such declaration of shall to have been issued should the essential elements of the transaction be predetermined once the twenty-day time limit laid down in Article 548 has elapsed without it being issued by the party subject to enforcement. Once the declaration has been issued, the party seeking enforcement may petition the Court Clerk in charge of the enforcement to issue an order for an entry or registration in keeping with the contents and

[415] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

[416] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

purpose of the declaration of shall to be made at the relevant registry or registries, attaching a certification of the court order thereto.

The preceding shall be construed to be notwithstanding civil and commercial rules on the form and documentation of legal acts and transactions.

2. Should any unessential elements of the transaction or agreement which the declaration of shall should cover not be predetermined, the court shall, after hearing the parties, determine them in keeping with the usual practices of the market or legal transactions in the decision deeming the declaration to have been issued.

Where such lack of determination should affect essential elements of the transaction or agreement which the declaration of shall should cover, enforcement proceedings for damages caused to the party seeking enforcement shall be appropriate, which shall be settled in accordance with Articles 712 and the following, should the party thus penalised fail to issue it.

Article 709. *Penalty of affirmative personal obligation.*[417]

1. Where the enforceable right refers to an affirmative personal obligation, the party subject to enforcement may state before the court any reasons for refusing to carry out whatever the enforceable right sets forth and may allege whatever he may deem appropriate regarding the personal or non-personal nature of the obligation owed before the time limit granted to comply with the requirement referred to in Article 699 has elapsed. Once such time limit has elapsed without the party subject to enforcement having performed the obligation, the party seeking enforcement may opt between seeking the enforcement to proceed so that a monetary equivalent of the obligation is handed over or seeking that the party subject to enforcement be compelled through a fine for each month that elapses without carrying out the obligation from the finalisation of the time limit. The court shall decide whatever may be appropriate by means of a court order, agreeing to what the party seeking enforcement may have sought where it deems that the obligation set forth in the penalty has the special features that characterise a personal obligation. Otherwise, is shall order the enforcement to proceed in accordance with the provisions set forth in Article 706.

[417] Paragraph 3 worded in accordance with Act 13/2009 of 3 November.

2. Should it be agreed upon to proceed with the enforcement in order to obtain the monetary equivalent of the obligation owed, a single fine shall be imposed on the party subject to enforcement in accordance with the provisions set forth in Article 711.

3. Where it is agreed to compel the party subject to enforcement through monthly fines, the requirements shall be repeated on a quarterly basis by the Court Clerk in charge of the enforcement until one year has elapsed from the first such requirement. Should the party subject to enforcement continue to refuse to comply with the enforceable right after one year, enforcement shall proceed to hand over to the party seeking enforcement a monetary equivalent of the obligation or to adopt any other suitable measures to ensure the satisfaction for the party seeking enforcement the court may have agreed upon at the latter's request and after hearing the party subject to enforcement.

4. The provisions set forth in the preceding paragraphs shall not apply to this Article where the enforceable right should contain an express provision on the debtor's non-compliance. In such case, the provision set forth therein shall apply.

Article 710. *Penalty of negative obligation.*[418]

1. Should a party penalised with a negative obligation breach the judgement, such party shall be required by the Court Clerk in charge of the enforcement at the request of the party seeking enforcement to put right, if possible, any harm, done compensate any damages caused, and, as appropriate, refrain from repeating such breach with a threat of incurring in contempt of court.

Such procedure shall be repeated as many times as the penalty is breached and, in order to ensure that any harm done is put right, the party in question shall be advised by the Court Clerk of the imposition of fines for every month that elapses without putting it right.

2. Should such breach not be susceptible to repetition on the basis of the negative obligation's nature and should it also be impossible to put right the harm done, the enforcement shall proceed to compensate the party seeking enforcement for any damages such breach may have caused him.

418 Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

Article 711. *Amount of coercive fines.*[419]

1. The price of or consideration for the personal affirmative obligation set forth in the enforceable right shall be taken into consideration in order set the amount of the fines laid down and, should they not appear in it or an effort is made to put right any harm done, the monetary market value attributed to such behaviour shall be taken.

Monthly fines may amount to up to twenty per cent of such price or value and the single fine may amount to up to fifty per cent of said price or value.

2. A judgement upholding an action for cessation in defence of collective interests and of the diffuse interests of consumers and users shall, nevertheless, impose a fine ranging from six hundred to sixty thousand euros per day of delay in the enforcement of the court judgement within the time limit set forth therein, depending on the nature and significance of the damages caused and the economic capacity of the party thus condemned. Such fine shall be paid into in the Public Treasury.

CHAPTER IV

ON THE SETTLEMENT OF DAMAGES, PROCEEDS AND INCOME AND ON THE RENDERING OF ACCOUNTS

Article 712. *Scope of the procedure's application.*

The procedure laid down in the following articles shall be followed where the compulsory enforcement of the monetary equivalent of a non-monetary obligation has to be determined or where an amount owed for damages or for proceeds, income, gains or products of any kind has to be set or where the resulting balance of an administration's rendering of accounts has to be determined in accordance with this Act.

Article 713. *Petition for settlement and submission of list of damages.*[420]

1. The party that may have suffered damages shall submit a detailed list thereof containing their valuation along with a written statement petitioning the court to determine such damages. Any opinions and documents deemed appropriate may be attached thereto.

[419] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

[420] Paragraph 2 worded in accordance with Act 13/2009, of 3 of November.

2. The written statement along with of the list of damages and any other documents shall be transferred by the Court Clerk to whoever would have to pay for such damages, who may respond within ten days with whatever he may deem appropriate.

Article 714. *Debtor's acceptance of the list of damages.*[421]

1. Should the debtor accept the list of damages and their amount, the Court Clerk in charge of the enforcement shall accept them through an order to move the proceedings forward and the amount agreed upon shall be made effective in the manner laid down in Articles 571 and the following for monetary enforcement.

2. It shall be construed that the debtor has granted his agreement to the facts alleged by the party seeking enforcement should he not respond to the documents thus transferred within ten days or should he limit himself/herself to denying in a generic fashion the existence of the damages without either specifying the points at issue on the list submitted by the creditor or expressing the grounds and scope of the dispute.

Article 715. *Challenge by the debtor.*[422]

Should the debtor contest the claimant's claim regarding either the items setting out the damages or their monetary valuation within the legal time limit and with grounds, the settlement for damages shall be conducted through the procedures laid down for oral hearings. However, the court which issued the general enforcement order may, if it deems fit, at the request of a party or on an ex officio basis, issue an order to appoint an expert to issue an opinion on whether the damages have effectively come about and on their monetary appraisal, after submission of the writ of challenge from the opposing party. In this case, the court shall set a time limit for the expert to issue the opinion and file it before the court and the oral hearing shall not be held until ten days have elapsed after such opinion has been sent to the parties.

Article 716. *Court order setting the amount determined.*

The court shall issue the decision it may deem fair by means of a court order within five days from the date on which the hearing is held, setting the amount the creditor shall pay the debtor as compensation for damages.

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[421] Paragraph 1 worded according to Act 13/2009 of 3 November.

[422] Amended by single article 71 of Law 42/2015, of 5 October.

Article worded in accordance with Act 13/2009 of 3 November.

An appeal may be lodged against such court order without suspensory effects and expressly declaring the imposition of costs in accordance with the provisions set forth in Article 394 contained herein.

Article 717. *Petition for setting the monetary equivalent of a non-monetary obligation.*[423]

Where the setting of a monetary equivalent for an obligation not consisting of the handover of an amount of money is sought, monetary estimates of such obligation and the grounds for them shall be stated, attaching any documents the applicant may deem suitable to ground his petition, which the Court Clerk shall transfer to whoever may have to pay, so that they may respond with whatever they may consider appropriate within ten days.

The application shall be conducted and resolved in the same way as that set forth in Articles 714 to 716 to settle damages.

Article 718. *Settlement of proceeds and income. Application and requirement to debtor.*[424]

Should the setting of an amount owed for proceeds, income, gains or products of any kind be sought, the Court Clerk in charge of the enforcement shall require the debtor to file a settlement within a time limit which shall be determined according to the circumstances of the case, taking into consideration, as appropriate, the bases set forth by the enforceable right.

Article 719. *Settlement filed by the creditor and transferred to the debtor.*[425]

1. Should the debtor file the settlement of proceeds, income, gains or products of any kind as referred to in the preceding Article, it shall be transferred to the creditor and, should the latter be in agreement with it, an order moving the proceedings forward shall be issued and the amount agreed upon shall be made effective in the manner laid down in Articles 571 and the following for its monetary enforcement.

Where the creditor should not be in agreement with the settlement, it shall be conducted in accordance with the provisions set forth in Article 715 contained herein.

[423] Subparagraph 1 worded in accordance with Act 13/2009 of 3 November.

[424] Article worded in accordance with Act 13/2009 of 3 November.

[425] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

2. Should the debtor fail to file the settlement referred to in the preceding paragraph, the creditor shall be required to file whatever he may deem fair and such settlement shall be transferred to the party subject to enforcement and the procedures shall follow their course in accordance with Articles 714 to 716.

Article 720. *Rendering the accounts of an administration.*[426]

The provisions contained in Articles 718 and 719 shall apply should an enforceable right refer to an administration's obligation of rendering accounts and handing over the balance thereof. However, the time limits may be extended by means of an order to move the proceedings forward issued by the Court Clerk in charge of the enforcement where he may deem it necessary, taking into consideration the importance and complexity of the matter.

TITLE VI

ON INJUNCTIONS

CHAPTER ONE

ON INJUNCTIONS: GENERAL PROVISIONS

Article 721. *Need for a party's petition.*

1. Any claimant, either of the main claim or of the counterclaim, may under his liability seek an injunction under the provisions set forth in this Title from the court for the precautionary measures he may deem necessary to ensure the effective protection of the courts granted in a favourable judgement that has been issued.

2. The injunctions set forth in this Title may under no circumstances be agreed upon on an ex officio basis by the court, notwithstanding the provisions set forth for special proceedings. Neither may more onerous measures than the ones sought be agreed upon.

Article 722. *Injunctions in arbitration proceedings and foreign litigation.*[427]

Whoever may prove to be a party to an arbitration agreement may seek injunctions from the court prior to the arbitration proceedings. Whoever may

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[426] Article worded in accordance with Act 13/2009 of 3 November.

[427] First paragraph amended by final provision 2 of Law 11/2011 of 20 May.

Article worded in accordance with Act 13/2009, of 3 of November.

prove to be a party in pending arbitration proceedings in Spain may also seek them; or, as appropriate, whoever may have sought the court's certification referred to in Article 15, Act 60/2003 of 23 December on Arbitration; or, in the event of institutional arbitration, whoever may have duly filed an application or commission to the relevant institution according to their regulations.

Notwithstanding any special rules set forth in treaties and conventions or any European Union rules that may apply, whoever can prove to be party to any jurisdictional or arbitration proceedings being conducted in a foreign country may seek injunctions from a Spanish court should the legally required prerequisites be met, except in cases where the main matter at issue should solely lie within the competence of Spanish courts.

Article 723. *Competence.*

1. The competent court to deal with any petitions for injunctions shall be the court dealing with the matter in the first instance or, should the proceedings have yet to be initiated, the court holding competence to deal with the main claim.

2. The court responsible for dealing with any petitions for injunctions filed while the second instance or an extraordinary appeal for infringement of procedure is being conducted shall be the court holding competence to deal with the second instance or such appeals.

Article 724. *Competence in special cases.*

Where injunctions are sought whilst arbitration proceedings or a court's certification of arbitration are pending, the competent court shall be the court of the place where the arbitration award has to be enforced or, failing that, the court of the place where the injunction has to take effect.

The same rules shall apply where the proceedings are being conducted in a foreign court, unless any treaties should set forth otherwise.

Article 725. *Ex officio examination of competence. Precautionary injunction.*

1. If the injunction is requested prior to the claim, no declinatory plea based on a lack of territorial jurisdiction shall be admitted, but the Court shall examine ex officio its jurisdiction, its objective competence and its territorial competence. If it considers that it lacks jurisdiction or objective competence, after having heard the Public Prosecution Service and the applicant for the injunction, it shall issue a court order abstaining from hearing the case and

advise the parties to exercise their right before the appropriate body if the abstention is not based on the lack of jurisdiction of the Spanish Courts. The same decision shall be adopted if the territorial jurisdiction of the Court cannot be based on any of the legal venues, mandatory or not, that prove to be applicable in view of what the applicant intends to claim at the principal trial. However, if the applicable legal venue is dispositive, the Court shall not decline its competence if the parties have expressly submitted themselves to its jurisdiction for the principal case.

2. In the cases referred to in the preceding paragraph, if the Court considers itself to be territorially competent, it may nevertheless, if advisable in view of the circumstances of the case, take the precaution of ordering the injunctions proving to be most urgent, referring the records subsequently to the Court found to be competent.

Article 726. *Characteristics of the injunctions.*

1. By way of injunction, the Court may order any kind of direct or indirect proceedings in relation to the assets and rights of the defendant that have the following characteristics:

(i) Aimed exclusively at guaranteeing the effectiveness of the judicial protection that may be granted in a possible affirmative judgement, to ensure that it cannot be prevented or hampered by situations occurring while the relevant proceedings are still pending.

(ii) They cannot be replaced by another measure equally effective for the purposes of the preceding paragraph but less burdensome or damaging for the defendant.

2. Subject to the temporary, provisional and conditional nature and the possibility of modification and lifting established herein in relation to injunctions, the Court may adopt as such injunctions those consisting of orders and prohibitions with a content similar to that claimed in the proceedings, without prejudging the judgement to be finally passed.

Article 727. *Specific injunctions.*

In accordance with the provisions of the preceding article, the following injunctions may be ordered, among others:

(i) The pre-judgement attachment, aimed at ensuring the enforcement of judgements ordering the delivery of amounts of money or yields, rents and fungible goods that can be estimated in cash by applying fixed prices.

Apart from the preceding subparagraph, a pre-judgement attachment shall also be appropriate if it proves to be the most suitable measure and cannot be replaced by another measure that is equally or more efficient and less damaging for the defendant.

(ii) The intervention or court-ordered receivership of productive assets, when a judgement is sought ordering their delivery under the title of owner, usufructuary or any other title involving a legitimate interest in maintaining or improving productivity or when guaranteeing the latter is of paramount importance for the effectiveness of the judgement to be passed in due time.

(iii) The deposit of a moveable asset, when the claim seeks a conviction to deliver the said asset and the latter is in the possession of the defendant.

(iv) The drawing up of inventories of assets in accordance with the conditions to be specified by the Court.

(v) The precautionary registry notation of the claim when the latter refers to assets or rights subject to inscription in public Registries.

(vi) Other registry notations in cases where registry publication is useful to ensure adequate enforcement.

(vii) The court order to provisionally cease an activity, that of temporarily abstaining from performing a certain conduct or the temporary prohibition to suspend or to cease carrying out a performance that was being carried out.

(viii) The intervention and deposit of income obtained through an activity considered illicit and whose prohibition or cessation is requested in the claim, as well as the consignment or deposit of the amounts claimed as compensation for the intellectual property.

(ix) The temporary deposit of the works or objects allegedly produced contrary to the rules on intellectual and industrial property, as well as the deposit of the material employed for their production.

(x) The suspension of contested corporate resolutions when the claimant or claimants represent at least 1 or 5 percent of the corporate capital, depending on whether or not the defendant company has issued securities that, at the time of the contest, are admitted to negotiation on an official secondary market.

(xi) Any other measures expressly established by the laws for the protection of certain rights or deemed necessary to ensure the effectiveness of the judicial protection that may be granted in the affirmative judgement that may be passed at the trial.

Article 728. *Risk deriving from the procedural delay. Appearance of legal standing. Security.*[428]

1. Injunctions may only be decided if the applicant justifies that, in the case at hand, failure to do so could, during the course of the proceedings, lead to situations preventing or hindering the effectiveness of the protection that may be granted in case an affirmative judgement is eventually passed.

No injunctions shall be decided if it is their aim to alter de facto situations that the applicant has been accepting during a prolonged period, unless the latter duly justifies the reasons for which the said measures have not been requested until then.

2. Together with his application, the applicant for injunctions shall also submit the particulars, arguments and documentary evidence allowing the Court to justify, without prejudging the merits of the case, a provisional and circumstantial judgement in favour of the basis of his claim. Lacking such documentary evidence, the applicant may offer other means of evidence, which he shall propose in due form in the same brief.

3. Unless expressly decided otherwise, the applicant for the injunction shall post security sufficient to compensate, in a speedy and effective manner, the damages that the adoption of the injunction may cause to the estate of the defendant.

The Court shall determine the security taking into account the nature and contents of the claim and its assessment, in accordance with the preceding paragraph, of the basis of the application for the measure.

The security referred to in the preceding subparagraph may be granted in any of the modalities set out in the second subparagraph of paragraph 3 of Article 529.

In the procedures in which an action for cessation is filed in defence of the collective interests and the particular interests of consumers and users, the Court may exempt the applicant for the injunction from the obligation to post security taking into account the circumstances of the case and the financial significance and the social repercussion of the various interests affected.

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[428] Paragraph 2 worded in accordance with Act 13/2009, of 3 of November
Subparagraph (3) added by Act 39/2002 of 28 October.

Article 729. *Third-party claims in cases of pre-judgement attachment.*

In a pre-judgement attachment a third-party claim to ownership may be lodged, but no third-party intervention with a paramount right shall be admitted unless it is lodged by a party who, in different proceedings, is claiming the delivery of an amount of money from the same debtor.

The competence to examine the third-party claims referred to in the preceding subparagraph shall correspond to the Court that ordered the pre-judgement attachment.

CHAPTER II

ON THE PROCEDURE FOR THE ADOPTION OF INJUNCTIONS

Article 730. *Moments to apply for the injunctions.*[429]

1. As a rule, the injunctions shall be requested together with the main claim.

2. Injunctions may also be sought prior to the claim if, at the relevant time, the applicant alleges and evidences reasons of urgency or necessity.

In this case, the measures adopted shall cease to have effect if the claim is not lodged with the same Court that heard the request for the said measures within twenty days following their adoption. The Court Clerk shall issue ex officio an order lifting or revoking any acts of compliance that have been performed, ordering the applicant to pay the costs and declaring that the latter is liable for the damages caused to the person in relation to whom the measures were adopted.

3. The temporary requirement referred to in the preceding paragraph shall not apply in the cases of judicial formalisation of arbitration or institutional arbitration. For the injunction to be maintained in the latter cases it shall be sufficient for the party benefiting from the said injunction to carry out all the proceedings required to initiate the arbitration procedure.

4. Subsequent to the lodging of the claim or while an appeal is pending, the adoption of injunctions may only be sought when the request is based on facts and circumstances justifying the request at that time.

[429] Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

This request shall be carried out in accordance with the provisions of this chapter.

Article 731. *Accessory nature of the injunctions. Provisional enforcement and injunctions.*

1. An injunction shall not be maintained for any reason once the main proceedings have terminated, except in the event of a verdict of guilty or equivalent court order, in which case the adopted injunctions shall be maintained until the time limit referred to in Article 548 herein has expired. Upon expiry of the said time limit without the enforcement having been sought, the measures that were adopted shall be lifted.

Nor shall an injunction be maintained if he proceedings have been suspended for more than six months for reasons attributable to the applicant for the measure.

2. When the provisional enforcement of a judgement is dispatched, the injunctions that were ordered in relation to the said enforcement shall be lifted.

Article 732. *Application for the injunctions.*

1. The application for injunctions shall be formulated clearly and accurately, duly justifying the existence of the prerequisites legally required for their adoption.

2. The application shall be accompanied by the supporting documents or other means of proof shall be proposed to evidence the existence of the prerequisites allowing the adoption of injunctions.

When the injunctions are sought in relation to proceedings initiated concerning claims for the prohibition or cessation of illicit activities, the Court may also be asked, as a matter of urgency and without transferring the brief of petition, to request the reports or to order the inquiries that the petitioner is unable to submit or to carry out and that are necessary to resolve on the petition.

For the plaintiff, the possibility to submit evidence shall preclude with the application for injunctions.

3. The brief of petition shall include an offer to post security, specifying the type or types of security offered and justifying the amount proposed.

Article 733. *Hearing of the defendant. Exceptions.*[430]

1. As a general rule, the Court shall resolve on the petition for injunctions after hearing the defendant.

2. That set out in the preceding paragraph notwithstanding, if the applicant so requests and evidences the existence of reasons of urgency or that the prior hearing may jeopardise the efficiency of the injunction, the Court may order the said injunction without further ado by court order within a time limit of five days, explaining separately the existence of the requirements for the injunction and the reasons why it has considered it advisable to order the injunction without hearing the defendant.

No appeal of any nature may be lodged against the court order adopting injunctions without prior hearing of the defendant and the provisions contained in chapter III of this title shall apply. The court order shall be notified to the parties without delay and, if it cannot be notified sooner, immediately after the enforcement of the measures.

Article 734. *Hearing of the parties.*[431]

1. Upon reception of the application, the Court Clerk shall, by notice, except in the cases of the second subparagraph of the preceding article, within a time limit of five days as of the notification of the application to the defendant, summon the parties to appear at a hearing, which shall be held within the next ten days without need to follow the order of causes pending if required for the effectiveness of the injunction.

2. At the hearing the claimant and the defendant may put forward whatever is convenient for their right, submitting any evidence they have available, which shall be admitted and examined if relevant taking into account the prerequisites of the injunctions. They may also request, if necessary to demonstrate relevant issues, the examination of evidence by the Court, which, if considered relevant and impossible to examine at the hearing itself, shall be carried out within a time limit of five days.

Likewise, they may formulate pleas relating to the type and the amount of the security. And the party to be subject of the injunction may ask the Court to accept instead of the said injunction a substitute security, in accordance with the provisions of Article 746 herein.

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[430] Paragraph 2 worded in accordance with Act 19/2006 of 5 June.

[431] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

3. No appeal of any nature may be lodged against the decisions of the Court concerning the development of the appearance, its contents and the evidence proposed, notwithstanding the right to allege, after the appropriate protest, the infringements that may have occurred in the appearance, in the appeal against the court order resolving on the injunctions.

Article 735. *Court order establishing injunctions.*

1. Upon termination of the hearing, the Court shall, within a time limit of five days, decide by court order on the application for injunctions.

2. If the Court considers that all the established requirements are met and that, in view of the pleas and the justifications, the risk involved in a procedural delay is evident, taking into account the appearance of legal standing, it shall grant the request for measures, determine with absolute accuracy the measure or injunctions adopted and shall specify the system to which these shall be submitted, determining, as appropriate, the form and the amount of the security and the time limit within which it shall be posted by the applicant.

A remedy of appeal without suspensory effects may be lodged against the court order establishing injunctions.

Article 736. *Court order rejecting the injunctions. Reiteration of the application in the event of change of circumstances.*

1. The court order by which the Court rejects the injunction may only be subject of a remedy of appeal, which shall be conducted in a preferential manner. The costs shall be awarded in keeping with the criteria established in Article 394.

2. Although the petition for injunctions has been rejected, the plaintiff may renew his petition in case of a change in the circumstances existing at the time of the petition.

Article 737. *Posting of security.*

The security shall at all times be posted prior to any act of compliance with the injunction established.

The Court shall decide by procedural court order on the suitability and sufficiency of the amount of the security.

Article 738. *Enforcement of the injunction.*[432]

1. Once the injunction has been established and the security posted, it shall be complied with immediately ex officio, using to this end any means that are required, including those established for the enforcement of judgements.

2. If the pre-judgement attachment has been ordered, this shall be carried out in accordance with the provisions of Article 584 and subsequent articles concerning the attachments ordered in enforcement proceedings, although without the debtor being bound to submit the statement of assets established in Article 589. The decisions on extension, reduction or modification of the pre-judgement attachment shall be adopted, as appropriate, by the Court.

If a court-ordered receivership is ordered, the latter shall be carried out in accordance with Article 630 and subsequent articles.

In the case of a precautionary registry notation, this shall be carried out in accordance with the rules of the relevant Registry.

3. The depositories, receivers or persons responsible for the assets or rights subject of an injunction may only dispose of them by prior authorisation by means of a procedural court order issued by the Court and subject to the existence of circumstances of such an exceptional nature that preserving them would prove more costly for the estate of the defendant than disposing of them.

CHAPTER III

ON THE OBJECTION TO THE INJUNCTIONS ADOPTED WITHOUT HEARING THE DEFENDANT

Article 739. *Objection to the injunction.*

In the cases where the injunction has been adopted without previously hearing the defendant, the latter may file an objection within a time limit of twenty days as of the notification of the court order adopting the injunctions.

Article 740. *Grounds of objection.*

Offer of substitute security. The party lodging an objection to the injunction may put forward as grounds for the objection any facts and reasons

[432] The first and second subparagraphs of paragraph 2 have been worded in accordance with Act 13/2009 of 3 November.

contrary to the appropriateness, requirements, scope, type and other circumstances of the measure or measures actually adopted, without any limitation whatsoever.

He may also offer a substitute security, in keeping with the provisions or chapter V of this title.

Article 741. *Transfer of the objection to the applicant, appearance at the hearing and decision.*[433]

1. The brief of objection shall be transferred by the Court Clerk to the applicant and the procedure shall then continue in accordance with the provisions of Article 734.

2. After the hearing is held, the Court shall, within a time limit of five days, decide on the objection by means of a court order.

If it upholds the injunctions adopted, it shall order the opponent to pay the costs of the objection.

If it lifts the injunctions, it shall order the plaintiff to pay the costs and the damages caused by the said injunctions.

3. The court order resolving on the objection may be appealed against without suspensory effects.

Article 742. *Compulsory exaction of damages.*

Once the court order upholding the objection is final, at the request of the defendant and following the procedures established in Article 712 and subsequent articles, the damages caused, as appropriate, by the revoked injunction, shall be determined and, once determined, the applicant for the measure shall be requested to pay the said damages and, should he fail to do so, their compulsory exaction shall be carried out immediately.

[433] Paragraph 1 worded in accordance with Act 13/2009, of 3 of November.

CHAPTER IV

ON THE MODIFICATION AND LIFTING OF THE INJUNCTIONS

Article 743. *Possible modification of the injunctions.*

The injunctions can be modified by alleging and proving facts and circumstances that could not have been taken into account at the time of their approval or within the time limit established to object to them.

The request for modification shall be made and resolved in accordance with the provisions of Article 734 and subsequent articles.

Article 744. *Lifting of the measure after a non-definitive judgment.*[434]

1. Once the defendant has been acquitted in the first or second instance, the Court Clerk shall order the lifting of any injunctions adopted if the appellant does not seek that they be kept or the adoption of any other injunction at the moment of lodging an appeal against the judgment. Once the other party has been heard and prior to transferring the proceedings to the court holding jurisdiction to rule on the appeal against the judgment, the court shall in such case be informed and decide whether applying them is appropriate, taking into consideration the persistence of the assumptions and circumstances that justify the maintenance or adoption of such measures.

2. If the claim is upheld in part, the Court, having heard the counter-party, shall decide by court order on the maintenance, lifting or modification of the injunctions adopted.

Article 745. *Lifting of the measures after final judgement of acquittal.*[435]

Once a judgement of acquittal has become final, either as to the merits of the case or the proceedings, the Court Clerk shall lift ex officio all the injunctions adopted and the procedure shall continue in accordance with the provisions of Article 742 concerning the damages the defendant may have incurred.

The same shall be ordered in the cases of waiver of the action or abandonment of the proceedings.

[434] Paragraph 1 amended by Article 4.34 of Act 37/2011 of 10 October.

[435] Subparagraph 1 worded in accordance with Act 13/2009 of 3 November.

CHAPTER V

OTHE SECURITY SUBSTITUTING THE INJUNCTIONS

Article 746. *Substitute security.*

1. The party against whom injunctions have been requested or adopted may ask the Court to accept, in substitution of the measure, the posting by the said party of a security that, in the opinion of the Court, is sufficient to ensure the effective compliance with the affirmative judgement that may be passed.

2. In order to decide on the petition to accept a substitute security, the Court shall examine the basis of the request for injunctions, the nature and content of the claim for conviction and the possible favourable legal appearance of the position of the defendant. It shall also take into account whether the injunction would restrict or hinder the patrimonial or financial activity of the defendant in a serious and disproportionate manner compared to the guarantee the said measure would represent for the applicant.

Article 747. *Request for a substitute security.*[436]

1. The request for the posting of a security substituting the injunction may be made in accordance with the provisions or Article 734 or, if the injunction has already been adopted, in the procedure of objection or by means of a reasoned brief, which may be accompanied by the documents he considers convenient in relation to his solvency, the consequences of the adoption of the measure and the most detailed possible assessment of the risk deriving from the procedural delay.

Five days after the brief has been transferred to the applicant for the injunction, the Court Clerk shall summon the parties to a hearing on the request for a substitute security, in accordance with the provisions of Article 734. Once the hearing has been held, the Court shall resolve by court order as it deems appropriate, within a time limit of a further five days.

2. No appeal of any nature may be lodged against the court order resolving to accept or to reject the substitute security.

3. The security substituting the injunction may be posted in any of the forms established in the second subparagraph of paragraph 3 of Article 529.

[436] Paragraph 2 (1) worded in accordance with Act 13/2009 of 3 November.

BOOK IV

ON THE SPECIAL PROCEEDINGS

TITLE ONE

ON THE PROCEEDINGS REGARDING CAPACITY, KINSHIP, MARRIAGE AND MINORS

CHAPTER ONE

ON GENERAL PROVISIONS

Article 748. *Scope of application of this title.*[437]

The provisions of this Title will be applicable to the following proceedings:

(i) Those concerning the capacity of the individuals and those for declaration of prodigality.

(ii) Those of kinship, paternity and maternity.

(iii) Those of nullity of marriage, separation and divorce and those modifying measures adopted in them.

(iv) Those relating exclusively to the guardianship and custody of underage children or to maintenance payments claimed by one parent from the other on behalf of the underage children.

(v) Those for recognition the civil effectiveness of ecclesiastical resolutions or decisions in matrimonial issues.

(vi) Those concerning measures relating to the return of minors in cases of international abduction.

(vii) Those concerning challenges to administrative decisions relating to the protection of minors.

(viii) Those concerning the need for consent in adoptions.

Article 749. *Intervention of the Public Prosecution Service.*[438]

1. In proceedings on the capacity of individuals, annulment of marriages, international abduction of minors and those deciding and challenging kinship the Public Prosecution Service will always take part, even though it

[437] Amended by final provision 3.5 of Law 15/2015 of 2 July.

[438] Section 1 is amended by final provision 3.6 of Law 15/2015, of 2 July

did not initiate them or, in accordance with the Law, is not under a duty to defend one of the parties. The Public Prosecution Service will, throughout the entire process, ensure that the best interests of the affected person are safeguarded.

2. The intervention of the Public Prosecution Service shall be mandatory in all other proceedings referred to in this title, provided that one of the interested parties in the proceedings is a minor, incapacitated or in a situation of legal absence.

Article 750. *Representation and defence of the parties.*[439]

1. Apart from those cases where, under the law, they must be defended by the Public Prosecution Service, the parties shall act in the proceedings referred to in this title with the assistance of an attorney and represented by a court representative.

2. In the proceedings of separation or divorce requested by mutual agreement of the spouses, the latter may use one single counsel for the defence and representation.

That set out in the preceding subparagraph notwithstanding, if one of the covenants proposed by the spouses is not approved by the Court, the Court Clerk shall summon the parties to declare within a time limit of five days whether they wish to continue with one single counsel and representative or, on the contrary, prefer to litigate each of them with their own counsel and representative. Likewise, if, notwithstanding the agreement subscribed by the parties and ratified by the Court, either party requests the judicial enforcement of the said agreement, the Court Clerk shall request the other party to appoint an attorney and a court representative to defend and represent him or her.

Article 751. *Unavailability of the object of the proceedings.*

1. In the proceedings referred to in this title neither the waiver nor the acceptance of a claim or the settlement shall have any effect.

2. The abandonment shall require the conformity of the Public Prosecution Service, except in the following cases:

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[439] Subparagraph 2 (2) worded in accordance with Act 13/2009 of 3 November.

(i). In the proceedings of declaration of prodigality and those referring to kinship, paternity and maternity, provided none of the parties interested in the procedure are minors, incapacitated or absent.

(ii). In the proceedings of nullity of marriage due to minority, if the spouse who married while still a minor lodges the action for nullity after having become of age.

(iii). In the proceedings of nullity of marriage due to error, coercion or serious fear.

(iv). In the proceedings of separation and divorce.

3. The provisions of the preceding paragraphs notwithstanding, the pleas formulated at the proceedings referred to in this title and concerning objects of which the parties may freely dispose, according to the applicable civil legislation, can be the subject of waiver, acceptance of claim, settlement of abandonment, in accordance with the provisions of chapter IV of the first title of the first Book herein.

Article 752. *Evidence.*

1. The proceedings referred to in this Title shall be resolved in keeping with the facts that were object of the debate and have been proven, regardless of the moment when they were alleged or otherwise introduced in the procedure.

Notwithstanding the evidence submitted at the request of the Public Prosecution Service and the other parties, the Court may order ex officio the examination of any evidence it deems relevant.

2. The conformity of the parties with the facts shall not be binding upon the Court and neither may the latter resolve the matter in dispute exclusively on the basis of the said conformity or of the silence or evasive replies concerning the facts alleged by the counter-party. Nor shall the Court be bound, in the proceedings referred to in this title, by the provisions herein concerning the value as evidence of the questioning of the parties, of the public documents and the recognised private documents.

3. The provisions contained in the preceding paragraph shall be equally applicable to the second instance.

4. With regard to the pleas formulated in the proceedings referred to in this title in relation to objects of which the parties may freely dispose under the

applicable civil legislation, the special cases contained in the preceding paragraphs shall not apply.

Article 753. *Conduct.*[440]

1. Unless expressly established otherwise, the proceedings referred to in this title shall be conducted following the procedures of the oral trial, but the Court Clerk shall transfer the claim to the Public Prosecution Service, as appropriate, and to the remaining persons who, under the law, shall be party in the procedure, regardless of whether or not they have been sued, summoning them to reply to the claim within a time limit of twenty days, in accordance with Article 405 herein.

2. At the oral trial hearing in these proceedings and the appearance referred to in Article 771 herein, once the evidence has been submitted, the Court shall allow the parties to set out their conclusions verbally, in which respect the provisions of paragraphs 2, 3 and 4 of Article 433 shall apply.

3. The procedures referred to in this Title shall be conducted as fast-track procedures whenever any of the parties involved in the proceedings is a minor, a disabled person or legally declared missing.

Article 754. *Exclusion of publicity.*

In the proceedings referred to in this title the Courts may decide by court order, ex officio or at the request of a party, that the acts and hearings shall take place in closed session and that the proceedings shall be reserved, provided that it is advisable in view of the circumstances and even though it does not concern any of the cases of paragraph 2 of Article 138 herein.

Article 755. *Communication of the judgements to Public Registries.*[441]

When appropriate, the Court Clerk shall order that the judgements and other decisions passed in the procedures referred to in this Title shall be notified ex officio to the Public Registries to carry out the corresponding annotations.

At the request of a party, they shall also be notified to any other Public Registry for the purposes appropriate in each case.

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[440] Paragraph 3 added by Article 4.35 of Act 37/2011 of 10 October.
Article worded in accordance with Act 13/2009, of 3 November.

[441] Paragraph 1 worded in accordance with Act 13/2009, of 3 November.

CHAPTER II

ON THE PROCEEDINGS CONCERNING THE CAPACITY OF THE INDIVIDUALS

Article 756. *Competence.*

The Judge of First Instance of the place of residence of the individual referred to in the statement sought shall be competent to hear the claims concerning the capacity and the declaration of prodigality.

Article 757. *Legitimation in the proceedings of incapacitation and declaration of prodigality.*[442]

1. The declaration of incapacity may be requested by the presumed incompetent, the spouse or the person in a de facto situation of a similar nature, the descendants, ascendants or siblings of the presumed incompetent.

2. The Public Prosecution Service shall request the incapacitation if the persons mentioned in the preceding paragraph do not exist or have not requested the said incapacitation.

3. Any person is authorised to notify the Public Prosecution Service of the facts that may be decisive to determine the incapacitation. The authorities and civil servants who, by reason of their posts, are aware of the existence of a possible cause for incapacitation of a person shall notify this cause to the Public Prosecution Service.

4. That set out in the preceding paragraphs notwithstanding, the incapacitation or minors in the cases where this is appropriate in accordance with the law, may only be applied for by those who exercise the parental authority or the guardianship.

5. The declaration of prodigality may only be sought by the spouse, the descendants or ascendants who receive alimony from the presumed prodigal or are entitled to claim such alimony from the latter and the legal representatives of any of them. If the legal representatives fail to seek such declaration, the Public Prosecution Service shall do so.

[442] Paragraph 1 worded in accordance with Act 41/2003 of 18 November.

Article 758. *Appearance of the defendant.*[443]

Allegedly disabled persons or persons regarding whom a declaration of prodigality is sought may enter an appearance with their own defence and representation.

Should they not do so, they shall be defended by the Public Prosecution Service, as long as it did not initiate the proceedings. Otherwise, the Clerk of the Court shall appoint a counsel for the defence, unless such counsel has already been appointed.

Article 759. *Evidence and compulsory hearings in disability proceedings.*

1. In addition to the evidence taken pursuant to the provisions set forth in Article 752, in disability proceedings the court shall hear the allegedly disabled person's next of kin, examine him and agree to the necessary or relevant medical opinions with regard to the claim's petitions and any other measures laid down by the law. A decision on disability shall never be taken without an expert medical opinion agreed upon by the court.

2. Where the claim should seek the disabled person's incapacity to appoint the person or persons to help, represent and take care of him, the next of kin of the allegedly disable person shall be heard, as shall the disabled person, should he be of sound judgement, and any other people the court may deem appropriate.

3. Should an appeal be lodged against a judgement upholding disability, the taking of the compulsory evidence referred to in the preceding paragraphs shall also be ordered on an ex officio basis in the second instance.

Article 760. *Judgement.*

1. A judgement declaring disability shall determine the extent and limits of such disability, as well as the custodianship or guardianship scheme the disabled person shall be subject to and, as appropriate, a decision shall also be taken on the need for hospitalisation notwithstanding the provisions set forth in Article 763.

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[443] Second paragraph amended by final provision 3.7 of Law 15/2015, of 2 July.
Paragraph 2 worded in accordance with Act 13/2009, of 3 November.

2. In the event of the case referred to in paragraph 2 of the preceding Article, should the court uphold the petition, the judgement declaring disability or issuing the spendthrift decree shall appoint the person or persons who shall assist and represent the disabled person and take care of him in accordance with the law.

3. A judgement issuing a spendthrift decree shall determine any actions the spendthrift may not carry out without the consent of the person who should assist him.

Article 761. *Recovery of capacity and amendment of the scope of disability.*

1. A judgement upholding disability shall not hinder new proceedings being brought aimed at rendering without effect or amending the scope of the already established disability should new circumstances come about.

2. The persons referred to in paragraph 1, Article 757, those exercising custody or guardianship over the disabled person, the Public Prosecution Service or the disabled person himself/herself may file the petition to initiate such proceedings.

Should the disabled person have been deprived of the capacity to appear in trial, he shall have to obtain the court's express authorisation to act in the proceedings on his own behalf.

3. The compulsory taking of evidence referred to in Article 759 shall be conducted in the proceedings referred to in this Article in both the first instance and, as appropriate, the second instance.

The judgement to be issued shall decide on whether or not to render the disability ineffective and on whether or not the extent and limits of the disability should be amended.

Article 762. *Precautionary measures.*

1. Where a competent court should become aware of the existence of a possible cause of disability in a person, it shall adopt any measures it may deem necessary to suitably protect the allegedly disabled person or his assets and it shall give the Public Prosecution Service notice thereof, so that it may initiate disability proceedings should it deem them appropriate.

2. The Public Prosecution Service may likewise petition the court to immediately adopt the measures referred to in the preceding paragraph should it become aware of a possible cause of disability in a person.

Such measures may be taken on an ex officio basis or at the request of a party during any stage of the disability proceedings.

3. As a general rule, the measures referred to in the preceding paragraphs shall be taken after a hearing of the persons affected. In order to do so, the provisions contained in Articles 734, 735 and 736 contained herein shall apply.

Article 763. *Non-voluntary hospitalisation due to mental disorders.*[444]

1. The hospitalisation of a person due to mental disorders who is not in a condition to decide for himself/herself, even should he/she be subject to parental authority or guardianship, shall require court authorisation, which shall be obtained from the court of the place of residence of the person affected by such hospitalisation.

Authorisation shall be obtained prior to hospitalisation, unless reasons of urgency should make it necessary to adopt the measure immediately. In such case, the manager of the centre at which patient was admitted shall give the competent court notice thereof as soon as possible and, in any event, within twenty-four hours, so that the court may proceed to ratify the measure, which must take place within no more than seventy-two hours from the time the court was made aware of the hospitalisation.

In the event of emergency hospitalisations, competence for ratifying the measures shall lie with the court of the place in which the centre of hospitalisation is located. Such court shall act, as appropriate, in accordance with the provisions set forth in paragraph 3, Article 757 contained herein.

2. The hospitalisation of minors shall always be done in suitable mental health centres for their age after receiving a report from the minor's social services.

3. Prior to granting authorisation for or ratifying a hospitalisation that has already taken place, the court shall hear the person affected by such

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[444] The items highlighted in Paragraph 1 have been declared unconstitutional by Constitutional Court Judgment 132/2010 of 2 December.

decision, the Public Prosecution Service and any another person whose appearance it may deem appropriate or may be requested by the person affected by the measure. Furthermore, the court shall examine the person hospitalised and hear the opinion of the physician in whose care he has been entrusted, notwithstanding taking any other evidence it may deem relevant for the case. In all such procedures, the person affected by the hospitalisation measure shall be entitled to representation and defence under the terms set forth in Article 758 contained herein.

In any event, any decision the court may take with regard to the hospitalisation shall be subject to appeal.

4. The same decision agreeing to the hospitalisation shall state the obligation of the physicians in charge of the hospitalised person's care to periodically inform the court on the need to maintain the measure, notwithstanding any other reports the court may require where it deems them relevant.

Such periodic reports shall be issued every six months, unless the court should set a shorter period due to the nature of the disorder that has given rise to the hospitalisation.

Once such reports are received, the court shall decide on the suitability of whether or not to continue with the hospitalisation after conducting any procedures, if any, it may deem essential.

Where the physicians in charge of the hospitalised person's care should consider it unnecessary to continue with the hospitalisation, they shall discharge the patient and immediately give the competent court notice thereof notwithstanding the provisions set forth in the preceding paragraphs.

CHAPTER III

ON KINSHIP, PATERNITY AND MATERNITY PROCEEDINGS

Article 764. *Legal determination of kinship through a definitive judgement.*

1. The courts may be petitioned to legally determine kinship, as well as to contest legally determined kinship before them in the cases set forth by civil legislation.

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2. The courts shall not give leave to proceed to any claim aiming to contest kinship declared by a definitive judgement or to determine any kind of kinship which is contradictory to any other kind of kinship likewise established through a definitive judgement.

Should the existence of such definitive judgement be certified once the proceedings have initiated, the court shall proceed to shelve the proceedings.

Article 765. *Exercising actions corresponding to minor offspring or disabled persons and procedural succession.*

1. Any actions to determine or contest kinship which correspond to minor offspring or disabled persons pursuant to civil legislation may be indistinctly exercised by their legal representative or by the Public Prosecution Service.

2. Upon the death of the claimant, his heirs may continue with any of the proceedings referred to in this chapter which have already been initiated.

Article 766. *Legal capacity to act as a defendant.*

Any persons who may be deemed as parents or offspring, should they not have brought the claim, and whoever may be attributed with the status of being parents or offspring by virtue of legally determined kinship, where such kinship is being contested, shall be the defendant in the proceedings referred to in this chapter where the determination of kinship is sought. Should any of them have died, their heirs shall be the defendant.

Article 767. *Specificities concerning procedure and evidence.*

1. Under no circumstances shall a claim to determine or contest kinship be given leave to proceed should the preliminary evidence upon which it is grounded not be filed with it.

2. The examination of paternity and maternity through all kinds of tests, including biological tests, shall be admissible in kinship trials.

3. Despite the lack of direct evidence, kinship may be declared as a result of an express or implicit recognition, the possession of civil status, cohabitation during the time of conception or any other facts from which kinship may similarly be inferred.

4. An unjustified refusal to undergo biological paternity or maternity tests shall allow the court to declare the kinship thus claimed, as long as other evidence of paternity or maternity should exist and evidence thereof has not been obtained by other means.

Article 768. *Precautionary measures.*[445]

1. Whilst any proceedings aimed at contesting kinship may last, the court shall adopt any suitable protection measures for the person and assets under the authority of whoever may appear to be a parent.

2. Once kinship has been claimed in the courts, the court may agree to provisional alimony at the defendant's cost and, as appropriate, adopt any of the protection measures referred to in the preceding paragraph.

3. As a general rule, the measures referred to in the preceding paragraphs shall be taken after a hearing of the persons who may be affected. In order to do so, the provisions contained in Articles 734, 735 and 736 contained herein shall apply.

Nonetheless, where reasons of urgency should exist, such measures may be taken without further ado. The Court Clerk shall then order the interested parties to be summoned to a hearing, which shall be held within ten days and at which the court shall decide as appropriate by means of a court order after hearing those attending on the suitability of the measures thus adopted.

It may be possible not to require the applicants to post security for the adoption of precautionary measures in such proceedings.

CHAPTER IV

ON PROCEEDINGS DEALING WITH MATRIMONY AND MINORS

Article 769. *Jurisdiction.*[446]

1. Except where expressly provided for otherwise, the competent court to deal with the proceedings referred to in this chapter shall be the Court of First Instance in the place where the marital home is. Should the spouses reside in different court districts, either the court of the last marital home or

[445] Paragraph 2 (3) worded in accordance with Act 13/2009, of 3 of November.

[446] Paragraphs 1 and 2 amended by final provision 3.8 of Law 15/2015 of 2 July

that of the defendant's domicile shall hold jurisdiction at the claimant's choice.

A claim may be brought against those lacking a fixed domicile or residence either in the place they are to be found or in their last place of residence, at the claimant's choice. Should it prove to be impossible to determine jurisdiction in this manner, the court of the claimant's place of residence shall hold jurisdiction.

2. In the event of the uncontested separations or divorce proceedings referred to in Article 777, the Court of the last common domicile or of either of the claimants shall hold jurisdiction.

3. In the case of proceedings which solely deal with the guardianship and custody of minor children or the maintenance payments claimed by a parent against the other on behalf of minor children, the Judge of the Court of First Instance of the parents' last common domicile shall hold jurisdiction. Should the parents reside in different court districts, either the court of the defendant's domicile or the court of the minor's residence shall hold jurisdiction, at the claimant's choice.

4. The court shall examine its jurisdiction on an ex officio basis.

Any agreements between the parties which contravene this Article shall be null and void.

Article 770. *Procedure.*[447]

Apart from those set forth in Article lo 777, any claims for separation, divorce, nullity of matrimony and any others brought under Title IV, Book 1 of the Civil Code shall be conducted through the procedures for oral trials in accordance with the provisions set forth in chapter 1 of this title subject to the following rules:

1. A certification of the marriage's registration shall be attached to the claim and, as appropriate, of the Civil Registry entry on the birth of any offspring, along with any other documents upon which the spouse may ground his rights. Should any measures concerning assets be sought, the claimant shall file any documents he may have that would allow the economic situation of the spouses and, as appropriate, of the offspring to

[447] Rule 4 worded in accordance with Act 13/2009 of 3 November.

be assessed, such as tax returns, pay slips, bank certificates, titles of property or registry certifications.

2. The counterclaim shall be filed along with the defence of the claim. The claimant shall have 10 days to respond to it.

Counterclaims shall only be given leave to proceed:

a) Where the counterclaim is based on any of the grounds that could give rise to the matrimony's nullity.

b) Where the defendant spouse of a claim for separation or nullity seeks divorce.

c) Where the defendant spouse of a claim for nullity seeks separation.

d) Where the defendant spouse seeks the adoption of definitive measures, which have not been sought in the claim and regarding which the court does not have to issue a decision on an ex officio basis.

3. The parties shall attend the hearing on their own behalf with a warning that any unjustified absence may lead to the admission of the facts alleged by the other party who does attend to ground his petitions on definitive measures regarding assets. The presence of their respective attorneys shall also be obligatory.

4. Any evidence that cannot be taken at the hearing shall be taken within the time limit the court may set, which may not exceed thirty days.

During such time limit, the Court may decide on an ex officio basis to any evidence it may deem necessary to verify the existence of the circumstances required by the Civil Code in each case to decide on nullity, separation or divorce, as well as any evidence referring to the facts upon which decisions on measures affecting minor offspring or disabled persons may depend in accordance with the civil legislation that applies. Should the procedure be contentious, minor offspring or disabled persons over the age of twelve shall be heard, should they have sufficient judgement, on an ex officio basis or at the request of the prosecutor, the parties, members of the court's technical team or the minor.

The Judge shall ensure that any questioning of minors in civil proceedings is conducted under suitable conditions to safeguard their interests without interferences from other people, exceptionally making use of the help of specialists wherever necessary.

5. Where the requirements set forth in Article 777 are met, the parties may seek to continue with the proceedings through the procedures set forth therein at any stage of the proceedings.

6. In the case of proceedings which solely deal with the guardianship and custody of minor offspring or the alimony claimed by a parent against the other on behalf of minor offspring, the procedures set forth herein to adopt preventive, simultaneous or definitive measures in proceedings dealing with nullity, separation or divorce shall be followed in order to adopt precautionary measures in keeping with the former proceedings.

7. The parties may mutually agree on a stay of the proceedings according to the provisions set forth in Article 19.4 contained herein in order to submit themselves to mediation.

Article 771. *Provisional measures prior to a claim for nullity, separation or divorce. Application, hearing and decision.*[448]

1. A spouse aiming to bring a claim for nullity, separation or divorce of his matrimony may seek the effects and measures referred to in Articles 102 and 103 of the Civil Code before the court of his domicile.

The involvement of a court representative and attorney shall not be required to file such application, but their involvement shall be necessary for any subsequent written statements or procedures.

2. In view of the application, the Court Clerk shall summon the spouses and, should there be any minor offspring or disabled persons involved, the Public Prosecution Service to a hearing, at which an effort shall be made to reach an agreement between the parties. The date of such hearing shall be set by the Court Clerk within ten days. The defendant spouse shall have to attend such hearing, assisted by his attorney and represented by his court representative.

Should the urgency of the case so suggest, notice of such decision shall be given to the court on the same day, so that it may immediately take a decision on the effects referred to by Article 102 of the Civil Code and on the custody of the offspring and on the use of the family home and household goods. No kind of appeal may be lodged against such decision.

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[448] Paragraph 2 worded in accordance with Act 13/2009 of 3 November.
Paragraph 1 (3) worded in accordance with Act 13/2009.

3. Should an agreement between the parties fail to be reached at the hearing referred to in the preceding paragraph or should such agreement fail to be approved, either entirely or in part, by the court after hearing, as appropriate, the Public Prosecution Service, the allegations of those appearing shall be heard and any evidence they may propose shall be taken, unless it should be useless or irrelevant, along with any the court may decide on an ex officio basis. Should it be impossible to take any of the evidence at the hearing, the Court Clerk shall set a date for it to be taken as a single procedure within ten days.

The failure of any of the spouses to attend such hearing may lead to the facts alleged by the spouse who has attended being admitted to ground his petitions for provisional measures concerning assets.

4. Once the hearing or, as appropriate, the taking of any evidence that could not be taken at the hearing have finalised, the court shall take a decision within three days by means of a court order, against which no kind of appeal may be lodged.

5. Any effects and measures decided according to the provisions set forth in this Article shall persist only where the claim for nullity, separation or divorce is brought within thirty days.

Article 772. *Confirmation or amendment of the provisional measures taken prior to the claim, where the claim is given leave to proceed.*[449]

1. Where measures prior to the claim have been adopted and the claim has been given leave to proceed, the Court Clerk shall join the procedures on the adoption of such measures to the records of the proceedings on nullity, separation or divorce. For such a purpose, the relevant certification shall be requested should the procedures on the measures have been conducted in a court other than the one dealing with the claim.

2. Solely where the court should deem that completing or amending the measures previously agreed upon is appropriate shall it order that the parties be summoned to a hearing, which the Court Clerk shall set. Such hearing shall be conducted in accordance with the provisions set forth in the preceding Article.

No kind of appeal may be lodged against the court order thus issued.

[449] Article worded in accordance with Act 13/2009 of 3 November.

Article 773. *Provisional measures arising from giving the claim for nullity, separation or divorce leave to proceed.*[450]

1. A spouse seeking the nullity of his matrimony, separation or divorce may seek in the claim whatever he may deem suitable concerning any provisional measures to be adopted, as long as they have not been adopted beforehand. Both spouses may likewise submit for the court's approval any agreement they may have reached on such matters. Such agreement shall neither be binding for the respective pleas of the parties nor for the decision the court may take with regard to any definitive measures.

2. Once the claim is given leave to proceed, the court shall decide on the pleas referred to in the preceding paragraph and issue a ruling as appropriate, complying in any event with the provisions set forth in Article 103 of the Civil Code.

3. Before the court issues the ruling referred to in the preceding paragraph, the Court Clerk shall summon the spouses and, as appropriate, the Public Prosecution Service to a hearing, which shall be conducted in accordance with the provisions set forth in Article 771.

No kind of appeal may be lodged against the court order.

4. The defendant spouse may likewise seek provisional measures in accordance with the provisions set forth in the preceding paragraphs, where they have neither been adopted beforehand nor have been sought by the claimant. The application shall be made in the defence of the claim and shall be conducted at the main hearing, where it has been set within ten days of the defence of claim.

The court shall issue a decision by means of a court order not subject to appeal, where the judgement could not be issued immediately after the hearing.

Should it be impossible to set the date of the hearing within the time limit laid down, the Court Clerk shall call the hearing referred to in paragraph 3 of this Article.

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[450] Paragraph 1 (3) worded in accordance with Act 13/2009 of 3 November.
Paragraph 2 (4) worded in accordance with Act 13/2009, of 3 November.

5. Such measures shall be rendered without effect where they are replaced by any measures definitively set forth in the judgement or should the proceedings be brought to an end in any other way.

Article 774. *Definitive measures.*[451]

1. The spouses may submit any agreements they may have reached to govern the consequences of the nullity, separation or divorce and put forward any evidence they may consider suitable to justify their appropriateness at the trial hearing should they have not done so previously pursuant to the preceding articles.

2. Failing such agreement, any useful and relevant evidence shall be taken which the spouses or the Public Prosecution Service may put forward, along with any the court may decide on an ex officio basis about the relevant facts for the decision on the measures to be adopted.

3. The court shall decide in the judgement on the measures sought by the spouses by mutual agreement, whether they have already been adopted as provisional measures or have been put forward subsequently.

4. Failing such agreement between the spouses or should it not be approved, the court shall establish in the judgement the measures to replace any that may have been adopted beforehand regarding the offspring, the family home, the matrimony's encumbrances, the winding up of its financial arrangements and the respective safeguards and guarantees, setting forth any which are appropriate should no measures have been previously adopted for any such items.

5. Any appeals lodged in accordance with the law against the judgement shall not stay the effects of the measures which may have already been decided in it. Should the challenge solely affect the decisions on measures, the Court Clerk shall declare the definitive nature of the decisions on nullity, separation or divorce.

Article 775. *Amendment of definitive measures.*[452]

1. Should there be any minor children or disabled persons involved, the Public Prosecution Service and, in any event, the spouses may petition

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[451] Paragraph 5 worded in accordance with Act 13/2009 of 3 November.

[452] Amended by single article 72 of Law 42/2015, of 5 October.

Paragraph 2 worded in accordance with Act 15/2005 of 8 July .

the court which agreed to the definitive measures to amend any measures agreed upon by the spouses or any adopted failing such agreement, as long as the circumstances taken into account at the moment of agreeing to or deciding on them have changed substantially.

2. Such petitions shall be dealt with in accordance with the provisions of Article 770. Nevertheless, if the petition is made by both spouses by mutual agreement or by one with the consent of the other and accompanied by a proposal for a settlement agreement, the proceedings provided for in article 777 shall apply.

3. The parties may seek the provisional amendment of any definitive measures granted in a preceding case in the claim or defence of claim. Such petition shall be dealt with in accordance with the provisions of Article 773.

Article 776. *Compulsory enforcement of decisions on measures.*[453]

Any decisions on measures shall be enforced in keeping with the provisions set forth in Book III contained herein, with the following specificities:

a) Coercive judicial fines may be imposed on any spouse or parent who repeatedly fails to fulfil any obligations imposed on him to pay an amount of money pursuant to the provisions set forth in Article 771 and notwithstanding making effective any amounts owed and not paid up through his assets.

b) In the event of a breach of non-monetary personal obligations, the automatic replacement by a monetary equivalent set forth in Article 709 shall not proceed and monthly coercive fines may, should the court so deem, be maintained whilst necessary beyond the one-year time limit set forth therein.

c) A repeated breach of obligations arising from visiting rights arrangements by either the parent holding custody or by the parent that does not may give rise to the court amending such visiting rights arrangements.

d) Where any extraordinary expenses not expressly set forth in definitive or provisional measures are subject to compulsory enforcement, a declaration stating that the amount claimed is to be deemed as an extraordinary expense shall be sought prior to the enforcement being conducted. The other party shall be shown the

[453] Article worded in accordance with Act 13/2009, of 3 November.

written statement seeking the declaration of an extraordinary expense and, should it be contested, the court shall summon the parties to a hearing, which shall be conducted in accordance with Articles 440 and the following and decided upon by means of a court order.

Article 777. *Separation or divorce sought by mutual agreement or by one of the spouses with the other's consent.*[454]

1. Any petitions for separation or divorce submitted with both spouses' mutual agreement or by one of them with the other's consent shall be processed using the procedure provided for in this Article.

2. The certificate of registration of the marriage and, if appropriate, those for registration of the children's birth at the Civil Register must be attached to the writ bringing the proceedings, along with the proposal for a settlement agreement, in accordance with the provisions of civil legislation and the document or documents in which the spouse or spouses found their rights, including, if appropriate, the final agreement reached in family mediation proceedings. Should it be impossible to prove any relevant facts with documents, the writ shall set out the evidence the spouses put forward to prove it.

3. Once the petition for separation or divorce has been given leave to proceed, the Clerk of the Court shall summon the spouses within three days, so that they may ratify their claim separately. If this is not ratified by either of the spouses, the Clerk of the Court shall immediately decide to file the proceedings away and the spouses' right to bring a claim for separation or divorce in accordance with the provisions of Article 770 shall remain intact. A direct appeal for judicial review before the court may be lodged against such decision by the Clerk of the Court.

4. Once the petition has been ratified by both spouses, if the documents submitted be insufficient, the Judge or the Clerk of the Court shall grant the petitioners a time limit of ten days to complete them. Any evidence the spouses may have proposed, if any, shall be taken during this period, along with any other evidence the court may deem necessary to prove the existence of the circumstances required by the Civil Code for each case

[454] Paragraph 4 is amended and paragraph 10 is added by additional provision 3.9 of Law 15/2015, of 2 July.

Paragraph 3 worded in accordance with Act 13/2009 of 3 November

Paragraph 2 and worded according to Act 15/2005 of 8 July.

and to appreciate the appropriateness of approving the settlement agreement proposal.

5. Should there be any minor children or disabled persons be involved, the Court shall seek the Public Prosecution Service's report on the terms of the agreement with regard to the children and it shall hear the minors, should they have sufficient capacity, wherever the court may deem it necessary on an ex officio basis or at the request of the prosecutor, the parties, members of the court's technical team or the minor themselves. Such procedures shall be conducted within the time limit referred to in the preceding paragraph and, should such time limit have not begun, within five days.

6. Once the provisions in the preceding paragraphs have been fulfilled or should they not be necessary, the court shall, immediately after the spouses' ratification, issue a judgment granting or rejecting the separation or divorce and ruling, as appropriate, on the settlement agreement.

7. Once the separation or divorce has been granted, should the judgment fail to approve the settlement agreement, in whole or in part, the parties shall be granted ten days to put forward a new settlement agreement, which shall be limited, as appropriate, to the points the court has not approved. Once such proposal has been filed or the time limit has elapsed without it being filed, the court shall issue a court order deciding on whatever may be appropriate within three days.

8. Judgments dismissing the separation or divorce and any court orders deciding on measures that are not within the terms of the agreement put forward by the spouses may be subject to appeal. Any appeals lodged against a court order deciding on measures shall not stay their effects, nor shall they affect the definitive nature of the judgment on the separation or divorce.

Appeals against judgments or court orders approving the entire settlement agreement may solely be lodged, in the interest of minor children or disabled persons, by the Public Prosecution Service.

9. Any amendments made to the settlement agreement or to the measures agreed upon by the court in the proceedings referred to in this Article shall be conducted in accordance with its provisions where they are sought by mutual agreement by both spouses or by one of them with the other's consent and with a new settlement agreement proposal. Otherwise, the provisions of Article 775 shall apply.

10. If jurisdiction falls to the Clerk of the Court as there are no unemancipated minor children or with limited legal capacity who depend on their parents, immediately after the ratification by the spouses before the Clerk of the Court, the latter will issue an order pronouncing on the settlement agreement.

The order formalising the settlement agreement proposal will declare the separation or divorce of the spouses.

If, in their opinion, it is considered that any of the agreements in the agreement could be damaging or seriously prejudicial to one of the spouses or to the emancipated children affected, whether minors or of legal age, the proceedings will be terminated. In this case, the spouses may only go before the Judge for approval of the settlement agreement proposal.

The order may not be appealed.

Amendment to the settlement agreement formalised by the Clerk of the Court will be conducted in accordance with the provisions of this article where the necessary requisites to do so concur.

Article 778. *Civil efficacy of decisions of the ecclesiastical courts or pontifical decisions on matrimonio rato non consumado.*

1. As regards the claims requesting the civil efficacy of the decisions issued by the ecclesiastical courts on the annulment of matrimony under Canon Law or the pontifical decisions on matrimonio rato non consumado, if the adoption or modification of measures are not requested, the court shall give a hearing to the other spouse and to the Public prosecution Service within a time limit of ten days and shall decide what is appropriate regarding the efficacy in the civil order of the decision or the ecclesiastical decision through a court order.

2. When the adoption or modification of measures is requested in the claim, the request for the civil efficacy of the decision or the decision made under Canon Law jointly with the decision on the measures shall be substantiated, following the corresponding procedure in accordance with the provisions in Article 770.

Article 778 a. *Committal of minors with behavioural problems to specific protection centres.*[455]

1. The Public Authority which has custody or guardianship of the minor, and the Public Prosecution Service are authorised to request court authorisation to commit a minor to the specific protection centres for minors with behavioural problems referred to in article 25 of Organic Law 1/1996, of 15 January, on Legal Protection of Minors, partially modifying the Civil Code and Civil Procedure, and the request must be accompanied by the psychosocial assessment justifying it.

2. The Courts of First Instance where the centre is located will have jurisdiction to authorise committal of the minor to such centres.

3. Court authorisation is obligatory and must be given prior to such committal, unless reasons of urgency make immediate adoption of the measure necessary. In this case, the Public Authority or the Public Prosecution Service must notify the relevant Court, within twenty-four hours, for the purposes of proceeding with the mandatory ratification of such measure, which must be made within a maximum time limit of seventy-two hours from when the Court becomes aware of the committal, and the committal will cease to be effective immediately in the event that it is not authorised.

In the cases provided for in this paragraph, the Court of First Instance in the place where the committal centre is located will have jurisdiction to ratify the measure and continue to hear the proceedings.

4. The court, in order to grant authorisation or ratify the committal already made, must examine and hear the minor, who must be informed about the committal in accessible formats and in terms which are comprehensible to them and adapted to their age and circumstances, the Public Authority, to parents or guardians exercising parental authority or guardianship, and any other person whose appearance it deems fit or is requested of it, and the Public Prosecution Service will issue a report. The Court will have, at least, the opinion of a doctor appointed by it, without prejudice to the fact that it may take any other evidence which it considers to be relevant to the case or which is requested of it. The authorisation or ratification of the committal will solely proceed where it is not possible to look after minor adequately under less restrictive conditions.

[455] Added by single art. 2.1 of Law 8/2015 of 22 July.

5. An appeal may be lodged against the decision passed by the Court in relation to the authorisation or ratification of the committal by the affected minor, the Public Authority, the Public Prosecution Services, or the parents or guardians who continue to have authority to contest decisions relating to the protection of minors. The appeal will not have a suspensive effect.

6. The decision agreeing to the committal will also set out the obligation on the Public Authority and the Director of the centre to report periodically to the Court and the Public Prosecution Service on the condition of the minor and the need to keep the measure in place, without prejudice to such other reports that the Judge may demand as they deem fit.

Such periodic reports shall be issued every three months, unless the Judge sets a shorter period due to the nature of the behaviour that gave rise to committal.

Once the period ends and the reports have been received from the Public Authority and the Director of the centre, the Court, having carried out such acts as it deems essential and having heard the minor and the Public Prosecution Services, will decide on whether it is appropriate to continue with the committal or not.

The Court of First Instance in the place where the centre is located will be responsible for the periodic control of committals. In the event that the minor is moved to another specific protection centre for minors with behavioural problems, a new court authorisation will not be necessary and the Court of First Instance in the place where the new centre is located will take over hearing the proceedings. The decision in the transfer will be notified to the interested parties, the minor and the Public Prosecution Service, who may appeal it before the body overseeing the committal, which will pass a decision having received a report from the centre and having heard the interested parties, the minor and the Public Prosecution Service.

7. Minors will not stay at the centre for longer than strictly necessary to care for their specific needs.

Discontinuance will be agreed by the relevant judicial body, ex officio or at the proposal of the Public Authority or the Public Prosecution Service. This proposal will be grounded in a psychological, social and education report.

8. The minor will be notified of the decisions passed.

Article 778 b. *Entry into homes and other places for compulsory enforcement of measures for the protection of minors.*[456]

1. The Public Authority must apply to the Court of First Instance with jurisdiction in the place where the domicile is located for authorisation to enter homes and other buildings and places, where consent for access is required from their owner or occupier, where this is necessary for compulsory enforcement of the measures approved by it for the protection of a minor. Where dealing with enforcement of an act confirmed by a judicial decision, the application will be addressed to the body that passed it.

2. The application will commence with a writ which will record, at the least, the following facts:

a) The administrative order or the proceedings which gave rise to the application.

b) The specific home or place it is intended to access and the identity of its owner or occupier from whom consent is required for access.

c) Evidence that an attempt has been made to obtain such consent without success or with a negative result. In the event that such consent is not required, this fact will be recorded with the grounds for it in the writ of application and provision of the afore-mentioned evidence will not be necessary.

d) The need for such entry to enforce the Public Authority order.

3. Once the Public Authority has submitted the application, the Clerk of the Court, on the same day, will send it to the owner or occupier of the home or building so that, within the following 24 hours, they may assert their rights exclusively in relation to the suitability of granting the authorisation.

Nevertheless, where the applicant Public Authority so requests, with grounds, and proves that there are urgent reasons why entry should be granted, either because delay in enforcement of the administrative order could cause risk to the safety of the minor, or because there is a real and immediate impairment of their fundamental rights, the Judge may agree to it by immediately passing an order and, at any event, within a maximum period of the 24 hours following receipt of the application, after a report from the Public Prosecution Service. The order passed will reason the concurrence of the requirements for the measure and the grounds making agreement advisable without hearing the interested party separately.

[456] Added by single art. 2.2 of Law 8/2015, of 22 July.

4. Once the writ of allegations is submitted by the interested party, or if the time limit ends without it having been submitted, the Judge will agree to or deny entry by order within a maximum period of the following 24 hours, after a report from the Public Prosecution Service, having assessed concurrence of the facts mentioned in paragraph 3 of this article, the jurisdiction of the Public Authority to pass the order which it is intended to enforce and the legality, necessity and proportionality of the entry applied for to achieve the intended purpose of the protection measure.

5. The order authorising entry will record the material and time limits to carry it out, which will those which are strictly necessary for enforcement of the protection measure.

6. The record of the order authorising entry will be delivered to the applicant Public Authority so that it may proceed to carry it out. The order will be notified to the parties who may have appeared in the proceedings without delay and, if they did not appear or if notification is not possible prior to carrying out the entry procedure, the Clerk of the Court will proceed with notification when carrying out the procedure.

7. An appeal may be lodged, without suspensive effect, against the order agreeing or denying the authorisation, even where the order was passed without hearing the interested party beforehand, and this must be lodged within the three days following the notification of the order, which will be given preferential treatment.

Even where the application is denied, the Public Authority may reapply if the circumstances existing at the time of the application change.

8. Entry into the home will be carried out by the Clerk of the Court, within the established limits, and may be assisted by the police force, if necessary, and accompanied by the applicant Public Authority. Once the measure is finalised, the proceedings will be ordered to be filed.

CHAPTER IV A[457]

MEASURES RELATING TO THE REINSTATEMENT OR RETURN OR MINORS IN CASES OF INTERNATIONAL ABDUCTION

Article 778 c. *Scope of application. General rules.*[458]

1. In cases where, as an international convention or provisions of the European Union apply, it is intended to reinstate a minor or return them to their place of origin as they were the subject of unlawful removal or retention, and they are in Spain, the proceedings will be in accordance with the provisions of this Chapter. This will not be applicable in cases where the minor comes from a State which does not form a part of the European Union or is not a party to any international convention.

2. In these processes, the Court of First Instance of the capital of the province, of Ceuta or Melilla, with jurisdiction in the field of family law, in whose constituency the minor who has been the subject of unlawful removal or retention it so be found, shall have jurisdiction, if there is one, and, in default, the relevant court on duty. The court shall examine its jurisdiction on an ex officio basis.

3. The proceedings may be instigated by the person, institution or organisation who has guardianship or custody or a visiting or stay over arrangements, relationship or communication with the minor, the Central Spanish Authority in charge of complying with the obligations imposed by the relevant convention, as appropriate, and, representing it, the person appointed by that Authority.

4. The parties must act with assistance from a Lawyer and be represented by a Procurator. The intervention of the Public Prosecutor, where appropriate at the request of the Central Spanish Authority, will cease at such time as the applicant for reinstatement or return appears in the proceedings with their own Lawyer and Procurator.

5. The proceedings will be treated as urgent and preferential. In both instances, if in existence, they must be carried out within a compulsory total time limit of six weeks from the date the application requesting the reinstatement or return of the minor was submitted, unless there are exceptional circumstances which make this impossible.

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[457] Added by final provision 3.10 of Law 15/2015 of 2 July.

[458] Added by final provision 3.11 of Law 15/2015 of 2 July.

6. Civil action will in no case be suspended due to the existence of preliminary criminal rulings grounded on the exercise of criminal proceedings relating to the abduction of minors.

7. In these types of proceedings and for the purpose of facilitating judicial communications between the courts of the various countries, if this is possible and the Judge considers it to be necessary, they may request for assistance from the Central Authorities involved, from existing Judicial Cooperation Networks, from members of the International Hague Network of Judges and from liaison Judges.

8. The Judge may agree, during the process, ex officio, at the request of whoever instigates the proceedings or the Public Prosecution Service, appropriate precautionary measures and measures to safeguard the minor as they deem fit in accordance with article 773, in addition to those provided for in article 158 of the Civil Code.

Furthermore, the Judge may agree that during the course of the proceedings the claimant's stay over or visiting rights and rights to a relationship and communication with the minor are ensured, even if supervised, if this is appropriate to the interests of the minor.

Article 778 d. *Proceedings.*[459]

1. The proceedings will be instigated by a claim which will call for reinstatement of the minor or their return to their place of origin and will include all the information demanded by applicable international regulations and, in all cases, that relating to the identity of the claimant, the minor and the person who is considered to have abducted or retained the minor, along with the grounds used as a basis for claiming reinstatement or return. The claim must also provide all available information about the location of the minor and the identity of the person with whom it is supposed that they can be found.

The claim must have the documentation attached which is required, as appropriate, by the relevant convention or international law and any other on which the applicant founds their petition.

2. The Clerk of the Court will decide on admission of the claim within the following 24 hours and, if they understand that it is not admissible, will give

[459] Added by final provision 3.12 of Law 15/2015 of 2 July.

account to the Judge for an appropriate decision to be passed within that time limit.

In the order admitting the claim, the Clerk of the Court will summons the person attributed with the abduction or illegal retention of the minor so that, on the date given which may not exceed the next three days, they appear with the minor and declare whether they agree to their reinstatement or return, or if they oppose it, pleading, in this case, any of the grounds provided for in the relevant applicable convention or international law.

The summons will be served with the legal warnings and with delivery to the party summoned of the text of the relevant applicable convention or international law.

3. When the minor is not to be found in the place indicated in the claim and if, when the Clerk of the Court has made the relevant investigation into their home or residence, these are unsuccessful, the proceedings will be provisionally filed until the minor can be found.

If the minor is found in another province, the Clerk of the Court, after a hearing with the Public Prosecution Services and the parties appearing within a period of one day, will give account to the Judge for the appropriate decision to be passed, by order, on the following day, with the acts being sent, as appropriate, to the Court considered to have territorial jurisdiction and summoning the parties to appear before that Court within a time limit of the following three days.

4. On the day, if the party summoned appears and agrees to reinstatement of the minor or their return to their place of origin, as appropriate, the Clerk of the Court will draw up a record and the Judge will pass an order on the same day agreeing to conclude the process and the reinstatement or return of the minor, making an order as to costs, including travel expenses and the costs of the proceedings.

The defendant may appear at any time, prior to the end of the proceedings, and agree to hand over the minor, or to their return to their place of origin, and the provisions of this section will apply.

5. If the defendant does not appear or does not do so in form, or submit opposition or proceed, in this case, to hand over or return the minor, the Clerk of the Court will, on the same day, declare them to be in default and will order the proceedings to continue without them, solely calling the claimant and the Public Prosecution Service to a hearing before the Judge

which will take place within a period within the next five days, to be held in accordance with paragraph 6 of this article. Such an order, however, must be notified to the defendant, after which no further notification will be made apart from the order closing the process.

The Judge may order such precautionary measures as they deem fit in relation to the minor, in the event that they have not already been taken previously, in accordance with article 773.

6. If, at the first appearance, the party summoned contests the reinstatement or return of the minor on the grounds provided for in the relevant applicable convention or international regulations, this must be made in writing, the Clerk of the Court will notify the challenge on the same day and will summon all interested parties and the Public Prosecution Service to a hearing which will be held within a non-extendable period of the next five days.

7. The hearing will not be stayed if the claimant does not appear. If the defendant lodging the challenge does not appear, the Judge will take the challenge as withdrawn and will continue with the hearing.

At the hearing the parties appearing shall be heard so that they declare as appropriate, specifically, to the person who applied for the reinstatement or return, to the Public Prosecution Service and to the defendant, even if they are appearing in these proceedings for the first time.

If appropriate, useful, relevant evidence will be taken as proposed by the parties of the Public Prosecution Service and those agreed by the Judge ex officio on facts which a relevant to the decision on the unlawfulness, or not, of the removal or retention and the measures to be taken, within a non-extendable period of six days. The Judge may also gather, ex officio, at the request of one of the parties or the Public Prosecution Service, such reports as they deem appropriate which will be drawn up urgently and will take preference over any other process.

8. Prior to passing any decision in relation to the suitability or unsuitability of the reinstatement of the minor or their return to their place of origin, the Judge, at any time during the process and in the presence of the Public Prosecution Service, may hear the minor separately, unless this hearing is considered inappropriate given their age or level of maturity, which will be recorded in a grounded decision.

When cross examining the minor it will be ensured that they may be heard in ideal conditions which safeguard their interests, without interference from other people, and, exceptionally, calling on assistance from specialists where this should be necessary. This act may be carried out via video conferencing or another similar system.

9. Within the three days following the hearing being held and, as appropriate, the relevant evidence taken, the Judge will pass judgment in which they will solely pronounce on whether the removal or retention are unlawful and will resolve whether reinstatement of the minor to the person, institution or organisation allotted the guardianship or custody or their return to their place of origin to allow the applicant to exercise the stay over and visiting rights or a relationship with the minor is appropriate, or not, taking into account the best interests of the latter and the terms of the relevant convention or the provisions of the European Union on the subject, as appropriate. The order resolving reinstatement or return of the minor will set out in detail the form and time limit for enforcement and may take the necessary measures to prevent a new unlawful removal or retention of the minor after notification of the judgment.

10. If reinstatement or return of the minor is agreed, the order will provide that the person who removed or retained the minor must pay for the costs of the proceedings, including those incurred by the applicant, travel expenses and those incurred in reinstatement or return of the minor to the State where they habitually resided prior to the abduction.

In all other cases the costs of the proceedings will be awarded ex officio.

11. Only an appeal with suspensive effects may be made against the order passed, which will have preferential processing and must be resolved within a non-extendible period of twenty days.

The following particulars will be adhered to in the appeal procedure:

a) It will be lodged within a period of three days from the day following notification of the decision and the judicial body must resolve its admission or non-admission within the 24 hours following its submission.

b) Once the appeal is admitted, the other parties will have three days in which to submit a writ of challenge to the appeal or, as appropriate, a writ of rebuttal. In this last case, the main appellant will also have a period of three days in which to declare as appropriate.

c) After this, the Clerk of the Court will order remittance of the orders to be sent, on the same day, to the Court with jurisdiction to decide on the appeal and before which the parties must appear within a period of 24 hours.

d) Once the orders are received, the Court will resolve on their admission within a period of 24 hours. If evidence must be heard or if it is agreed to hold a hearing, the Clerk of the Court will set the date for within the following three days.

e) The decision must be passed within the three days following the end of the hearing or, if there is none, counted from the day following the day on which the Court with jurisdiction for the appeal received the orders.

12. At any point in the proceedings, the parties may request a stay of the proceedings in accordance with the provisions of article 19.4 in order to submit to mediation. The Judge may also, at any time, ex officio or at the request of any of the parties, propose a mediation solution if, given the concurring circumstances, it is considered possible that an agreement may be reached, without this involving an unjustified delay to the proceedings. In such cases, the Clerk of the Court will resolve to stay the proceedings for the time needed to process the mediation. The Public Authority having the duty to protect the minor may intervene as mediator, if requested to do so ex officio by the parties or the Public Prosecution Service.

The duration of the mediation procedure will be as short as possible and its acts will be held in the minimum number of sessions, and in no case may the stay of the proceedings for mediation exceed the time limit legally provided for in this Chapter.

The legal proceedings will resume if requested by any of the parties or, in the event of reaching an agreement in the mediation, this must be approved by the Judge taking into account current legislation and the best interests of the child.

13. In enforcing the judgment resolving reinstatement of the minor or their return to their State of origin, the Central Authority will give the necessary assistance to the Court to ensure that this is carried out without danger, adopting the appropriate administrative measures in each case.

If the parent who has been ordered to reinstate or return the minor opposes, prevents or impedes its fulfilment, the Judge must take the

necessary measures to enforce the judgment immediately and may call for assistance from social services and the Security Forces.

Article 778 e. *Declaration of an international removal or retention as unlawful.*[460]

Where a minor with habitual residence in Spain is the subject of an international removal or retention, in accordance with the provisions of the relevant convention or applicable international regulations, any interested person, apart from the proceedings initiated to request international reinstatement, may address the competent judicial authority in Spain in the substance of the matter for the purpose of obtaining a decision specifying that the removal or retention were unlawful, for which purpose they may use the procedural channels available in Title I of Book IV for adoption of definitive or provisional measures in Spain, including the measures in article 158.

The competent authority in Spain to issue a decision of certification of article 15 of The Hague Convention of 25 October 1980 on the civil aspects of international abduction of minors, which records that the removal or retention of the minor was unlawful in the sense provided for in article 3 of the Convention, where possible, will be the last judicial authority in Spain that heard any proceedings on parental responsibility affecting the minor. If there is none, the Court of First Instance in the last domicile of the minor in Spain will have jurisdiction. The Central Spanish Authority will do everything possible to provide assistance to the applicant in obtaining a decision or certification of this type.

CHAPTER V

CHALLENGES TO ADMINISTRATIVE DECISIONS IN RELATION TO THE PROTECTION OF MINORS, THE PROCEDURE TO DECIDE THE NEED FOR CONSENT TO ADOPTION AND CHALLENGES TO CERTAIN RESOLUTIONS AND ACTS OF THE GENERAL DIRECTORATE OF REGISTRIES AND NOTARIES IN RELATION TO THE CIVIL REGISTER[461]

Article 779. *Preferential nature of the procedure. Jurisdiction.*[462]

The procedures for substantiating the challenge to administrative decisions in relation to the protection of minors shall be of a preferential nature.

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[460] Added by final provision 3.13 of Law 15/2015 of 2 July.

[461] The heading is amended by final provision 4.2 of Law 20/2011, of 21 July

[462] Amended by Article 4.3 of Law 26/2015 of 28 July.
Article of agreement with Act 54/2007, of 28 December.

The Court of First Instance of the address of the Public institution shall have jurisdiction to hear them and, in its absence, or in the cases included in Articles 179 and 180 of the Civil Code, the Court of the address of the adoptive parent.

Article 780. *Challenges to administrative decisions in relation to the protection of minors.*[463]

1. A previous claim through administrative proceedings shall not be necessary in order to contest administrative decisions in relation to the protection of minors before the civil courts. They may be contested with a time limit of two months from notification.

The minors affected by the decision, parents, guardians, foster parents, carers, the Public Prosecution Service and any persons recognised law as being authorised, are authorised to context administrative decisions in relation to the protection of minors, as long as they have a legitimate, direct interest in such a decision. Even if they were not directly involved they may appear in person at any time during the proceedings without the actions being backdated.

Minors will have the right to be a part or and be heard in the process in accordance with the provisions of the Legal Protection of Minors Act. They will make their claims in relation to the administrative decisions affecting them via their legal representatives as long as the latter do not have interests that are in conflict with their own, or via the person appointed as their defender in representation of them.

2. The proceedings for contesting a decision in relation to the protection of minors will be initiated by submission of an initial writ in which the claimant expresses the claim succinctly and the decision being contested.

The writ will expressly contain the date of notification of the administrative decision and will state if there are existing proceedings in relation to the minor.

3. The Clerk of the Court shall claim a complete record of the proceedings from the administrative institution, which must be provided within a time limit of twenty days.

4. Once the record of the administrative proceedings has been received, the Clerk of the Court shall order the claimant to submit the claim within

[463] Paragraphs 1 and 2 are amended and article 5 added by single article 4.4 of Law 26/2015, of 28 July. Paragraphs 3 and 4 of this Article are worded in accordance with Act 13/2009, of 3 November. Paragraph 1 worded in accordance with Act 54/2007, of 28 December 28.

twenty days, which shall be processed in accordance with the provisions of Article 753.

5. If the Public Prosecution Service, the parties or the competent Judge are aware of the existence of more than one proceedings contesting administrative decisions in relation to the protection of the same minor, the first two will request, and the Judge, even if ex officio, will order joinder at the Court hearing the oldest proceedings.

Once joinder is agreed, proceedings will continue in accordance with the provisions of article 84, with the particular that the hearing already scheduled will not be stayed if it is possible to deal with the remaining proceedings joindered within the time limit set for the schedule. Otherwise, the Clerk of the Court will agree the proceedings where the hearing is already fixed to be stayed until the others are at the same stage, and will set a new date for all of them which will be preferential in nature and, in all cases, within the following ten days.

Appeals for reversal and appeals with no suspensive effect may be lodged against the order denying joinder. No appeal of any nature may be lodged against the order resolving joinder.

Article 781. *Procedure for determining the need for consent to adoption.*[464]

1. Parents intending that the need for their consent to the adoption is recognised may appear before the Court that is hearing the relevant adoption proceedings and state this. The Clerk of the Court, staying the proceedings, will grant a period of fifteen days to submit the claim and the same Court will have jurisdiction to hear it.

2. If the claim is not submitted within the period fixed, the Clerk of the Court will pass an order terminating the procedure and lift the stay on the adoption proceedings which will continue to proceed in accordance with the provisions of voluntary jurisdiction legislation. A direct appeal for judicial review may be lodged before the court against such order. Once this decision is definitive, no subsequent claim shall be admitted from the same parties regarding the need for consent to the adoption in question.

3. If the claim is submitted within the time limit, the Clerk of the Court will pass an order declaring the adoption proceedings to be contentious and

[464] Amended by Article 4.5 of Law 26/2015 of 28 July.

will resolve to process the claim submitted in the same proceedings, as a separate part, in accordance with the provisions of article 753.

Once the decision passed on the separate part relating to the need for consent from the parents of the child in adoption is definitive, the Clerk of the Court will resolve to summons the persons indicated in article 177 of the Civil Code to appear before the Judge, and they must give their consent or assent to the adoption and also be heard, if this has not already been done, and afterwards a decision must be passed on the adoption.

The summons will be made in accordance with the rules provided for in the Voluntary Jurisdiction Act for such cases.

The order terminating the proceedings may be appealed and such appeal would have a suspensive effect.

The record of the definitive decisions resolved for the adoption will be sent to the Civil Register so that it may be registered.

Article 781 a. *Challenge to resolutions and acts by the Directorate General of Registries and Notaries in relation to the Civil Register.*[465]

1. Challenges to resolutions of the Directorate General of Registries and Notaries in relation to the Civil Register, except for those passed in relation to nationality due to residence, may be made within a period of two months from their notification, without it being necessary to lodge a prior administrative claim.

2. Whoever intends to challenge the resolutions will submit an initial writ succinctly expressing their claim and the resolution being contested.

3. The Clerk of the Court will demand a complete record of the proceedings from the Directorate General of Registries and Notaries, which must be provided within a period of twenty days.

4. Once the record of the administrative proceedings has been received, the Clerk of the Court shall order the claimant to submit the claim within twenty days, which shall be processed in accordance with the provisions of Article 753.

[465] Added by final provision 4.3 of Law 20/2011, of 21 July.

TITLE II

ON THE judicial division of estates

CHAPTER ONE

ON THE DIVISION OF INHERITANCE

Section 1. On the procedure for the division of inheritance

Article 782. *Request for the legal division of an inheritance.*[466]

1. Any co-heir or legatee with a proportional share may claim the division of the inheritance judicially, on condition that this must not be carried out by a commissioner or accountant appointed by the testator, by agreement amongst the co-heirs, by the Clerk of the Court or by the Notary.

2. The death certificate of the person whose succession is being dealt with and the document which accredits the applicant's position as heir or legatee must be attached to the request.

3. The creditors cannot seek the division, without prejudice to such actions as correspond to them against the inheritance, the community of heirs or the co-heirs, which shall be carried out in the relevant declaratory proceedings, without suspending or hindering the proceedings for the division of the inheritance.

4. However, creditors recognised as such in the will or by the co-heirs and those who have their right documented in an enforceable title may oppose the partition of the inheritance being put into effect until the amounts of their credits are paid or guaranteed. This request may be deducted at any time before the handover of the assets adjudicated to each heir.

5. The creditors of one or more of the co-heirs may intervene in the partition at their own expense in order to prevent this being carried out fraudulently or to the detriment of their rights.

Article 783. *Convening of a meeting in order to appoint an accountant and experts.*[467]

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[466] Paragraph 1 is amended by final provision 3.14 of Law 15/2015, of 2 July

[467] Paragraphs 2, 4 and 5 of this article are worded in accordance with Act 13/2009, of 3 November .

1. Once the judicial division of the inheritance is requested, an agreement shall be reached on the intervention in the estate of the deceased person and the formation of an inventory when this is requested and is appropriate.

2. Once the preceding proceedings have been carried out or, if it is not necessary, in the light of the request for the judicial division of the inheritance, the Court Clerk shall convene the heirs, the legatees with an equiproportional part and the surviving spouse to a meeting, stating a day within the following ten days.

3. The summons made to the parties concerned and who were already present at the proceedings shall be made through the court representative. Those who have not been present shall be summoned personally if their addresses are known. If their addresses are not known, they shall be called through public notices, as stipulated in Article 164.

4. The Court Clerk shall also convene the Public Prosecution Service to represent the parties concerned in the inheritance who are minors or incapacitated and do not have legitimate representation and those who are absent and whose addresses are unknown. The representation of the Public Prosecution Service shall cease once the minors or incapacitated persons are authorised to have a legal representative or counsel for the defence and, as regards those who are absent, when they attend proceedings or may be personally summoned, even though they again absent themselves.

5. The creditors referred to in paragraph 5 of the preceding article shall be convened by the Court Clerk to a meeting when they are present in the proceedings. those who are not present shall not be summoned, but may participate in the meeting if they appear on the appointed day with the entitlements justifying their credits.

Article 784. *Designation of the accountant and the experts.*[468]

1. The meeting shall be held within those attending on the day and at the time stated and shall be presided by the Court Clerk.

2. The parties concerned must agree on the appointment of an accountant who shall carry out the operations involved in the division of the estate of the deceased person, as well as the appointment of the expert or experts who must intervene in the evaluation of the assets. Only one expert may

[468] Paragraph 4 worded in accordance with Act 13/2009, of 3 November.

be appointed for each class of asset and these must be given their fair price.

3. If no agreement is reached at the meeting as regards the appointment of an accountant, an accountant shall be assigned by drawing lots, in accordance with what is stipulated in Article 341, from among the practising attorneys with special knowledge in this matter and with a legal office in the place of the proceedings. If no agreement is reached on the experts, those which the accountant or accountants consider necessary to carry out the evaluations shall be appointed through the same procedure, but there shall never be more than one for each class of asset which must be evaluated.

4. The provisions regarding challenging and the provision of funds for the experts shall be applicable to the accountant appointed by drawing lots.

Article 785. *Handover of the documentation to the accountant. Obligation to comply with the order accepted and the time limit to do this.*[469]

1. Once the accountant and the experts are chosen, as appropriate, once accepted, the Court Clerk shall deliver the records to the accountant and shall place any objects, documents and papers required to make the inventory, when this has not been made, together with the evaluation, the settlement and the division of the estate of the deceased person at the disposal of the accountant and the experts.

2. The acceptance of the accountant shall give the right to each of the parties to oblige him to comply with his mission.

3. At the request of a party, the Court Clerk may establish a time limit for the accountant to submit the division operations through a formal document and, if he fails to verify these, he shall be liable for damages.

Article 786. *Carrying out of the dividing operations.*

1. The accountant shall carry out the dividing operations in accordance with the provisions in the law applicable to the succession of the causer; but if the testator has established other rules for the inventory, evaluation, settlement and division of his assets, these shall be followed on condition that they do not damage the legitimate proportions of the compulsory heirs. In any case,

[469] Paragraphs 1 and 3 are worded in accordance with Act 13/2009, of 3 November.

he shall endeavour to prevent non-division and the excessive division of the property.

2. The dividing operations must be submitted within a maximum time limit of two months from the time these commence, and they shall be contained in a document signed by the accountant, which shall state the following:

(i). The list of the assets which make up the estate divisible.

(ii). The evaluation of the assets in the list.

(iii). The settlement of the estate, its division and adjudication to each of the participants.

Article 787. *Approval of the dividing operations. Opposition to these.*[470]

1. The Court Clerk shall transfer the dividing operations to the parties, and shall summon them to formulate opposition over a period of ten days. During this period of time, the parties may examine the records and the dividing operations and obtain the copies they request, at their own expense, at the Judicial Office.

Opposition must be formulated in writing, stating the points in the dividing operations referred to and the reasons.

2. Once this period of time has elapsed, and no opposition has been lodged or, once the parties concerned have stated their agreement, the Court Clerk shall issue an order approving the dividing operations, and shall order their registration.

3. When opposition to the dividing operations is formalised within the authorised time limit, the Court Clerk shall convene the accountant and the parties to appear before the court, within the following ten days.

4. During the appearance, if the agreement of all the parties concerned as regards the questions tabled is achieved, what is agreed to shall be implemented and the accountant shall carry out the reforms agreed to in the dividing operations, which shall be approved in accordance with the provisions in paragraph 2 of this article.

5. If no agreement is reached, the court shall hear the parties and shall admit the evidence these might propose and which is not irrelevant or

[470] Paragraphs 1, 2, 3, 4 and 6 are worded in accordance with Act 13/2009, of November 3 .

useless, and the procedure shall be carried out in accordance with the provisions for the oral proceedings.

The judgement given shall be put into effect in accordance with the provisions in the following article, but it shall not have the efficacy of res judicata, and the parties concerned may uphold the rights they believe correspond to them as regards the assets adjudicated in the corresponding ordinary proceedings

6. In accordance with what is set out in Article 40 herein, when proceedings have been have been suspended as a criminal case involving the investigation of an offence of bribery committed in the evaluation of the assets of the inheritance is pending, the suspension shall be lifted by the Court Clerk, without waiting for the case to terminate with a definitive decision, when the parties concerned, renouncing the evaluation challenged, submit another fact by common agreement, in which case a decision shall be issued in keeping with the result of this case.

Article 788. *handover of the assets adjudicated to each heir.*[471]

1. Once the divisions are definitively approved, the Court Clerk shall hand over to each one of the parties concerned what has been adjudicated to them and the entitlements of ownership, and the actuary shall previously note the adjudication in these.

2. Once these are registered, the Court Clerk shall give testimony of their respective assets and adjudication to the participants who request this.

3. Notwithstanding the provisions in the preceding paragraphs, when a creditor of the inheritance formulates the request referred to in paragraph 4 of Article 782, none of the assets shall be handed over heirs or legatees unless these are completely paid up or guaranteed to the satisfaction of the Court Clerk.

Article 789. *Termination of the procedure by an agreement of the co-heirs.*[472]

At any point in the proceedings, the parties concerned may refrain from their pretensions and adopt the agreements they consider to be advisable.

[471] Paragraphs 1 and 2 of this article are worded in accordance with Act 13/2009, of 3 November .

[472] Article worded in accordance with Act 13/2009, of 3 November.

When requested by a common agreement, the Court Clerk must suspend the proceedings and place the assets at the disposal of the heirs.

Section 2. On the supervision of the estate of a deceased person

Article 790. *Guaranteeing the assets of the inheritance and the documents of the deceased.*[473]

1. On condition that the Court is notified of the death of a person and there is no record of a will, nor forebears, descendants or a spouse of the deceased, nor a person who is in a similar de facto position, nor are there relatives within the fourth degree, the court shall ex officio adopt the most essential measures for the burial of the deceased person, if necessary, and for the security of the goods, books, papers, correspondence and effects of the deceased which may be liable to removal or concealment.

Procedure shall be the same when the persons referred to in the preceding paragraph are absent or when any of these are minors or legally incapacitated and do not have legal representatives.

2. In the cases referred to in this article, after the relatives appear, or a legal representative is appointed for the minors or persons who are legally incapacitated, the goods and effects which belonged to the deceased will be handed over to them and judicial intervention shall cease, apart from the provisions of the following article, and they must go to a Notary for the purpose of initiating the proceedings to declare the heirs.

Article 791. *Judicial intervention in the inheritance when there is no record of the existence of a will nor of relatives with legitimate succession.*[474]

1. In the case referred to in paragraph 1 of the preceding article, once the proceedings mentioned are carried out, the Clerk of the Court shall adopt the measures they consider most appropriate to verify whether the person whose succession is involved has died having made a will or not, and for this purpose, they shall order that a certificate from the General Registry of

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[473] Amended by final provision 3.15 of Law 15/2015 of 2 July.

[474] Paragraph 2 is amended and paragraph 3 is added by additional provision 3.16 of Law 15/2015, of 2 July.

Paragraph 1worded in accordance with Act 13/2009 of 3 November (“Official State Gazette” no. 266 of 4 November).

Last Wills be brought to the proceedings, as well as the death certificate if this is possible.

If there are no other means, through a procedural court order the court shall order that the relatives, friends or neighbours of the deceased person be questioned regarding the fact that the person died intestate and whether they had relatives with a right to legitimate succession.

2. If, in fact, it turns out that the person died intestate and with no relatives with a right to succession in law the Court, by a court order, shall order that procedure be:

(i) To take possession of the books, papers and correspondence of the deceased person.

(ii) To make an inventory of and deposit the assets, stipulating what is to be done as regards their administration, in accordance with the provisions of this Act. The court may appoint a person, at the expense of the State, to carry out and guarantee the inventory and its deposit.

The same order will order ex officio notification to the relevant Tax Office in case it is appropriate to make a declaration of intestate successor in favour of the State, by transferring the result of the measures carried out and the documentation collected in accordance with paragraph 1.

3. From the moment when the General State Administration or the Administration of an Autonomous Region notifies the Court that it has initiated proceedings for its declaration as intestate successor, the latter will the appointment for administration of the goods will fall on the former. In this case, it will not demand that the Public Administration provide a guarantee and will prepare expert reports where they are necessary using their own technical services.

The Administration must notify the Court of the order terminating the proceedings. If such an order concludes that it is not appropriate to make the declaration of intestate successor in favour of the Administration, the latter may not continue to take charge of the estate, and will request the Court to appoint a new judicial administrator within a period of one month from the notification. Once this one month period has ended, in all cases, the Administration will cease to hold the post of administrator.

Where the order declares that the Administration is intestate successor, the judicial body hearing the intervention in the estate will, within one

month, adopt the provisions leading to the handover of the goods and rights making up the estate.

Article 792. *Judicial intervention in the inheritance during processing of the declaration of heirs or the judicial division of the inheritance. Intervention at the request of the creditors of the estate.*[475]

1. The proceedings referred to in paragraph 2 of the preceding article may be agreed to at the request of a party in the following cases:

(i) By the spouse or any of the relatives who believe they have a right to legitimate succession on condition that they accredit having sought the declaration of intestate heirs before a Notary, or the application for the court intervention in the estate of a deceased person is formulated at the same time as the notarial declaration of heirs is sought.

(ii) By any co-heir or legatee with a proportional share, when requesting the judicial division of the inheritance unless the intervention has been expressly forbidden by a provision in the will.

(iii) By the Public Administration which initiated proceedings for its declaration as intestate successor.

2. The creditors recognised as such in the will or by the co-heirs and those who have their right documented in an enforceable title may also request intervention in the estate in accordance with the provisions of the second paragraph of the preceding article.

Article 793. *First proceedings and the summons of the persons concerned for the formation of the inventory.*[476]

1. Once the supervision of the estate of a deceased person is agreed to in any of the cases referred to in the preceding articles, if it is necessary and has not been done previously, through a court order, the court shall order the adoption of the measures essential for the security of the assets, the books, papers, correspondence and effects of the deceased person subject to withdrawal or concealment.

2. Once this decision is issued, the Court Clerk shall state a day and time for the formation of the inventory, and shall order the persons concerned to be summoned.

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[475] Paragraph 1 is amended by final provision 3.17 of Law 15/2015, of 2 July

[476] Paragraph 2 worded in accordance with Act 13/2009 of 3 November .

3. The following persons must be summoned for the formation of the inventory:

(i). The surviving spouse.

(ii). The relatives who may have a right to the inheritance and are known when there is no record of a shall nor has the intestate declaration of heirs been made.

(iii). The heirs or legatees with an equiptroportional part.

(iv). The creditors at whose request the supervision of the estate of a deceased person was ordered and, possibly, those who attended the procedure for the division of the inheritance.

(v). The Public Prosecution Service on condition that there may be unknown relatives with a right to legitimate succession, or that any of the known relatives with a right to the inheritance or the heirs o legatees with an equiprortional part not be summoned personally as their addresses are not known, or when any of the persons concerned is a minor or is incapacitated and has no legal representative.

(vi). The State Lawyer or, in the cases legally stipulated, the Judicial Services of the Autonomous Communities, when there is no record of the existence of a shall nor a spouse or relatives who might have a right to legitimate succession.

Article 794. *Drawing up the inventory.*[477]

1. When those mentioned in the preceding article are summoned on the day and at the time stated, the Clerk of the Court shall draw up the inventory together with those attending, which shall contain the list of assets of the estate and such deeds, documents and papers of importance as are found.

2. If, due to testamentary provisions, special rules have been established for the inventory of the assets of the estate, the inventory shall be drawn up subject to such rules.

3. When it is not possible to finish the inventory on the day stated, it shall continue on the following days.

4. If any dispute arises over the inclusion or exclusion of the assets in the inventory, the Clerk of the Court will make a record of the claims of each one of the parties over such goods and their legal grounds and will summon

[477] Paragraph 4 is amended by single article 73 of Law 42/2015, of 5 October.

the interested parties to a hearing, with the procedure continuing in accordance with the provisions for oral hearings.

The judgment which is issued on the inclusion or exclusion of assets in the inventory shall safeguard the rights of third parties.

Article 795. *Decision on the administration, custody and conservation of the hereditary estate.*

Once the inventory is made, through a court order, the court shall determine what corresponds depending on the circumstances as regards the administration, custody and conservation of the estate of the deceased person, possibly, following what the testator had arranged in this matter and, in the absence of this, it shall determine subject to the following rules:

(i) Cash and public instruments shall be deposited in accordance with law.

(ii) The widower or widow shall be appointed administrator, and, in their absence, the heir or the legatee with an equiproportional part who has the greater part of the inheritance. In the absence of these, or if they do not have the capacity necessary to hold the post, in the opinion of the court, the court may appoint any of the heirs or legatees with a proportional part, if there are any, as administrator or a third party.

(iii) The administrator must provide sufficient security in any of the forms permitted by this law to respond for the assets handed over to him and this shall be established by the court. However, the court may dispense the widowed spouse or the heir designated administrator from the security when they have sufficient assets to respond for those handed over to them.

(iv) The heirs and legatees with a proportional part may dispense the administrator from the duty to provide security. if the re is no agreement on this point, the security shall be in proportion to the interest in the estate of the deceased person of those who do not grant the dispensation. In any case, security shall be constituted as regards the participation in the inheritance of the minors or those incapacitated who do not have legal representatives and those who are absent due to their not having been summoned as their addresses are unknown.

Article 796. *Cessation of the judicial supervision of the inheritance.*[478]

1. The judicial supervision of the inheritance shall cease when the declaration of heirs is made unless any of these request the judicial division

[478] Paragraph 2 worded in accordance with Act 13/2009 of 3 November

of the inheritance, in which case the supervision may subsist if this is requested until each heir is handed over the assets adjudicated to him.

2. During the performance of the procedure of judicial division of the inheritance, the heirs may, by common agreement, request that the judicial supervision cease. The Court Clerk shall agree to this through an order except when any of the persons concerned is a minor or incapacitated and does not have a legal representative or when there is an absent heir who it has not been possible to summon due to his address being unknown.

3. If there are creditors recognised in the shall or by the co-heirs or by a right documented in an executive entitlement, and these have opposed the partition of the inheritance until the amounts of their credits are paid or guaranteed, the cessation of the supervision shall not be agreed to until the payment or guarantee takes place.

Section 3. On the administration of the estate of a deceased person

Article 797. *Holding the post of administrator of the inheritance.*[479]

1. Once the administrator is appointed and he has provided security, the Court Clerk shall give him possession of the post and shall inform him of the persons he designates from those he must deal with in order to carry out his work.

2. So that he may accredit his representation, the Court Clerk shall provide him with testimony which shall record his appointment and the fact that he is in possession of the post.

3. The state of administration of the property of the inheritance and the appointment of the administrator may be registered in the Property Registry through the corresponding order issued by the Court Clerk with the requirements stipulated in mortgage legislation.

Article 798. *representation of the inheritance by the administrator.*

Until the inheritance is accepted by the heirs, the administrator of the assets shall represent the inheritance in all the actions brought or which had begun when the testator died and, with this representation, he shall

[479] Article worded in accordance with Act 13/2009, of 3 November .

carry out the actions which might correspond to the deceased person, until the declaration of heirs is made.

Once the inheritance is accepted, the administrator shall only have the representation of the inheritance as refers directly to the administration, the custody and conservation of the estate, and, as such, he can and must administer it properly, and carry out the actions required.

Article 799. *Periodical rendering of accounts.*[480]

1. The administrator shall render justified accounts within the time limits which the court states, which shall be in proportion to the importance and conditions of the estate, and in no case shall this exceed one year.

2. On rendering accounts, the administrator shall deposit the resulting balance or shall present the original receipt which accredits having deposited it at the establishment assigned for this purpose. In the first case, the Court Clerk shall immediately agree to the deposit through a formal document and, in the second case, the records shall include a formal document stating the date and the amount of the deposit.

3. For the examination of the accounts and in order to inspect the administration or to arrange measures concerning the rectification or approval of these, they shall be shown at the Judicial Office to the party who might request this at any time.

Article 800. *Final rendering of accounts. Challenging the accounts.*[481]

1. When the administrator ceases to hold their post, they shall render final accounts supplementary to those already submitted.

2. All the accounts of the administrator, including the final accounts, shall be shown to the parties at the Judicial Office, when they cease to hold their post, for a common period of time, which the Clerk of the Court shall state in a formal document depending on their importance.

3. Once that period of time has ended without the accounts being contested, the Clerk of the Court will pass an order approving them and declaring the administrator to be free from liability. In the same order he

[480] Paragraphs 2 and 3 are worded in accordance with Act 13/2009, of November 3.

[481] Paragraph 4 is amended by single article 74 of Law 42/2015, of 5 October.

shall order the security which may have been provided by the administrator to be returned to them.

4. If the accounts are challenged in due time, the writ of challenge shall be sent to the person reporting them so that they may respond in accordance with the provisions of article 438. The parties, in their respective writs of challenge and response, may request a hearing to be held, with the procedure continuing in accordance with the provisions for oral hearings.

Article 801. *Conservation of the assets of the inheritance.*[482]

1. The administrator is obliged under his own responsibility to conserve the assets of the inheritance with no impairment and to endeavour that these produce the corresponding income, products or usefulness.

2. For this purpose, he must carry out the ordinary repairs which are essential for the conservation of the assets. When repairs or extraordinary expenses are necessary, he shall notify the court, which, once it has heard the persons concerned at the appearance mentioned in paragraph 3 of Article 793, on the day and at the time stated by the Court Clerk for this purpose, with a previous expert examination and the formation of a budget, the court shall decide what it considers to be appropriate, taking into account the circumstances of the case.

Article 802. *Destination of the amounts collected by the administrator in performance of their duties.*[483]

1. The administrator shall deposit without delay the amounts collected in performing their duties at the disposal of the court, solely retaining the amounts required to attend to the expenses of judicial proceedings or notaries, payment of taxes and other ordinary expenses.

2. In order to pay the extraordinary costs referred to in the preceding article the Court may, through a procedural court order, leave the sum it believes necessary in the power of the administrator, and shall order that this be taken from the deposit if there is not sufficient ordinary income to cover these. This shall also be ordered when an ordinary expense occurs and the administrator does not have sufficient amount available from the administration of the estate.

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[482] Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

[483] Section 1 is amended by final provision 3.18 of Law 15/2015, of 2 July.

Article 803. *Prohibition to transfer the assets in the inventory. Exceptions to this prohibition.*

1. The administrator cannot transfer or encumber assets in the inventory.

2. The following are exceptions to this rule:

(i). Those which can deteriorate.

(ii). Those which are difficult and costly to conserve.

(iii). When it is considered that there are advantageous circumstances for the transfer of products.

(iv). The other assets whose transfer is necessary for the payment of debts, or to cover other requirements of the administration of the inheritance.

3. On the proposal of the administrator, and having heard the persons concerned referred to in paragraph 3 of Article 793, through a procedural court order, the court may order the sale of any of the assets, which shall be verified in a public auction as established in notary legislation or in voluntary jurisdiction procedure.

Securities admitted to official listing shall be sold through this market.

Article 804. *Remuneration of the administrator.*[484]

1. The administrator shall have no right to remuneration other than the following:

(i). From the liquid product of the sale of products and other moveable assets included in the inventory, he shall receive 2%.

(ii). From the liquid product of the sale of realty and payment from securities of all kinds, 1%.

(iii). from the liquid product of the sale of public instruments, 0.5%.

(iv). From the other income involved in the administration, for several items from among those stated in the preceding paragraphs, the Court Clerk shall state 4%, taking into consideration the products of the estate and the work of administration.

[484] Number 4 of paragraph 1 and paragraph 2 are worded in accordance with Act 13/2009.

2. When he considers it to be just, through an order, the Court Clerk may order that the administrator be paid travelling expenses when these are incurred while carrying out his work as administrator.

Article 805. *Subordinate administrations.*[485]

1. Any subordinate administrations the deceased may have to take care of his assets shall be maintained, with the same retribution and faculties as the latter has granted them.

2. The said administrators shall render their accounts and shall deliver whatever they collect to the court receiver, whose subordinates they are considered to be, but they cannot be removed by the latter without justifiable cause and authorisation by order of the Court Clerk.

3. Subject to the same authorisation, the court receiver may, on his own responsibility, cover any vacancies that may occur.

CHAPTER II

ON THE PROCEDURE FOR THE LIQUIDATION OF THE MATRIMONIAL ECONOMIC CONTRACT

Article 806. *Scope of application.*

The liquidation of any matrimonial economic settlement determining, by marriage settlement or legal provision, the existence of a common body of assets and rights subject to specific charges and liabilities, shall be carried out, failing an agreement between the spouses, in accordance with the provisions of this chapter and the civil rules that are applicable.

Article 807. *Competence.*

The competent court to hear the procedure of liquidation shall be the Court of First Instance that is hearing or has heard the proceedings of nullity, separation or divorce, or before which the proceedings concerning the dissolution of the matrimonial economic settlement are being or have been conducted on any of the grounds set out in the civil legislation.

Article 808. *Request of inventory.*

1. Once the petition for nullity, separation or divorce has been admitted or the proceedings requesting the dissolution of the matrimonial economic

[485] Paragraph 2 worded in accordance with Act 13/2009 of 3 November.

settlement have been initiated, either of the spouses may request the that an inventory be drawn up.

2. The request referred to in the preceding paragraph shall be accompanied by a proposal setting out, duly separated, the various items to be included in the inventory in accordance with civil legislation.

In addition, the request shall be accompanied by the documents justifying the various items included in the proposal.

Article 809. *Drawing up the inventory.*[486]

1. In view of the request referred to in the preceding paragraph, the Clerk of the Court shall set a date and time for drawing up the inventory within a maximum time limit of ten days, ordering that the spouses be summoned.

On the specified day and time, the Clerk of the Court shall, together with the spouses, proceed to draw up the inventory of the marital community property, complying with the provisions of civil legislation governing the matrimonial financial regime in question.

If one of the spouses fails to appear on the specified day without justifiable reason, they shall be deemed to agree with the inventory proposal made by the spouse who did appear. In this case, as in the case when, both spouses having appeared, an agreement is reached, the latter shall be placed on the record and the act shall be concluded.

On the same or the following day, the Court shall resolve as appropriate with respect to the administration and disposal of the assets included in the inventory.

2. If any dispute arises over the inclusion or exclusion of any item in the inventory, or over the amount for any of the entries, the Clerk of the Court will make a record of the claims of each one of the parties over such goods and their legal grounds and will summon the interested parties to a hearing, with the procedure continuing in accordance with the provisions for oral hearings.

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[486] Paragraph 2 is amended by single article 75 of Law 42/2015, of 5 October.

The first and fourth subparagraphs of paragraph 1 and the first subparagraph of paragraph 2 have been worded in accordance with Act 13/2009 of 3 November.

The judgment shall resolve on all issues that arose, approving the inventory of the marital community property, and shall decide as appropriate on the administration and disposal of the jointly held assets.

Article 810. *Liquidation of the matrimonial economic settlement.*[487]

1. Upon conclusion of the inventory and once the decision declaring the dissolution of the matrimonial economic settlement is final, either of the spouses may seek the liquidation of the said settlement.

2. The request shall be accompanied by a liquidation proposal including the payment of the compensations and reimbursements owed to each spouse and the division of the remainder in the corresponding proportion, taking into account at the time of forming the lots the preferences established by the applicable civil rules.

3. Once leave has been given to proceed with the liquidation request, the Court Clerk shall, within a maximum time limit of ten days, set a day and time for the spouses to appear before him with a view to reaching an agreement and, failing such agreement, to appoint an auditor and, as appropriate, experts, to perform the division operations.

4. If one of the spouses fails to appear on the established day without justifiable reason, the said spouse shall be deemed to agree with the liquidation proposal made by the spouse who did appear. In this case, as in the case when, both spouses having appeared, an agreement is reached, the latter shall be recorded in the deed and the act shall be concluded, and that agreed upon shall be put into effect in accordance with the first two paragraphs of Article 788 herein.

5. If no agreement is reached among the spouses on the liquidation of their matrimonial economic settlement, an order shall be issued appointing an auditor and, as appropriate, experts, in accordance with the provisions of Article 784 herein, continuing the procedure in accordance with the provisions of Article 785 and subsequent articles.

Article 811. *Liquidation of the participation settlement.*[488]

[487] Paragraphs 3 and 5 have been worded in accordance with Act 13/2009 of 3 November.

[488] Paragraph 3 and the first subparagraph of paragraph 5 are worded in accordance with Act 13/2009 of 3 November.

1. The liquidation of the participation settlement cannot be requested until the decision declaring the dissolution of the matrimonial economic settlement has become final.

2. The request shall be accompanied by a liquidation proposal including an assessment of the initial and final estate of each spouse, specifying, as appropriate, the resulting amount payable by the spouse who has obtained the largest patrimonial increase.

3. In view of the liquidation request, the Court Clerk shall set, within a time limit of ten days, the day and time for the spouses to appear before him with a view to reaching an agreement.

4. If one of the spouses fails to appear on the established day without justifiable reason, the said spouse shall be deemed to agree with the liquidation proposal made by the spouse who did appear. In this case, as in the case when, both spouses having appeared, an agreement is reached, the latter shall be recorded in the deed and the act shall be concluded.

5. Failing an agreement between the spouses, the Court Clerk shall summon them to a hearing and the procedure shall continue in accordance with the provisions for the oral trial.

The judgement shall resolve on the issues that have arisen, determining the initial and final estates of each spouse and, as appropriate, the amount to be paid by the spouse whose estate has increased the most and the form in which the said payment shall be made.

TITLE III

ON THE SMALL CLAIMS AND NEGOTIABLE INSTRUMENTS PROCEDURES

CHAPTER ONE

ON THE SMALL CLAIMS PROCEDURE

Article 812. *Cases in which the small claims procedure is appropriate.*[489]

1. Whoever seeks payment from another party for a net, specific, due and enforceable monetary debt of any amount may file a small claims procedure where such debt can be proven by any of the following means:

[489] Paragraph 1 amended by Article 4.36 of Act 37/2011 of 10 October

(i). By documents which are signed by the debtor or contain his seal, stamp or mark or any other physical of electronic sign, regardless of their form and nature or the support used.

(ii). By invoices, delivery notes, certifications, telegrams, telefaxes or any other documents which, even if created unilaterally by the creditor, are commonly used to prove credits and debts in relationships of the nature that appear to exist between creditor and debtor.

2. Notwithstanding the provisions of the preceding paragraph and in the event of debts meeting the requirements established in the said paragraph, a small claims procedure may also be lodged to claim the payment of such debts in the following cases:

(i). When, together with the document recording the debt, commercial documents are submitted evidencing a previous enduring relation.

(ii). When the debt is evidenced by means of certifications of non-payment of amounts owed as common expenses of communities of owners of urban real properties.

Article 813. *Jurisdiction.*[490]

The Court of First Instance of the address or place of residence of the debtor or, if the latter are unknown, of the place where the debtor can be found for the purposes of the payment request by the Court, shall be exclusively competent, except in the case of a claim of debt referred to in number (ii) of paragraph 2 of Article 812, in which case the Court of the place where the property is located shall equally be competent, at the discretion of the applicant.

At all events, the rules concerning explicit or tacit submission contained in section 2 of chapter II of title II of Book I shall not apply.

If the relevant enquiries on the address or residence conducted by the Court Clerk bear no fruit or if the debtor is located in another court district, the judge shall issue an order deeming the proceedings to have come to an end, reflecting such circumstance in the records and reserving the creditor's entitlement to bring the proceedings once again before the competent court.

[490] Last paragraph added by Article 1.5 of Act 4/2011 of 24 March.

Paragraph 1 worded in accordance with Act 13/2009, of 3 November.

Article 814. *Initial request of the small claims procedure.*

1. The small claims procedure shall commence with a request by the creditor expressing the identity of the debtor, the address or addresses of the creditor and the debtor or the place where they reside or can be found and the origin and amount of the debt, accompanied by the document or documents referred to in Article 812.

The request may be issued on a printed or other form facilitating the expression of the circumstances referred to in the preceding paragraph.

2. The presentation of the initial request of a small claims procedure shall not require a court representative and attorney.

Article 815. *Admission of the claim and payment order.*[491]

1. If the documents submitted with the claim are among those described in paragraph 2 of Article 812 or constitute a principle of evidence of the right of the claimant, confirmed by what is set out in the claim, the Clerk of the Court shall request the debtor to pay the claimant within a time limit of twenty days, proving payment to the Court, or to appear before it to allege in a justified and grounded manner, in a writ of objection, the reasons why, in their opinion, they do not owe the amount claimed, either in full or in part. Otherwise they shall give account to the Judge who shall resolve as appropriate on admission of the initial claim to proceedings.

The payment order shall be notified in the manner provided for in Article 161 of this Act, with the warning that, should they fail to pay or appear alleging the reasons for refusal to pay, an enforcement order shall be dispatched against them in accordance with the provisions of the following article. The payment order to the defendant by means of public notices shall only be admitted in the case regulated in the following paragraph of this article.

2. In the claims of debt referred to in number (ii) of paragraph 2 of Article 812, notification shall be made at the address previously indicated by the

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[491] The first sub-paragraph of paragraph 1 is amended and paragraph 4 added by single article 76 of Law 42/2015, of 5 October.
Please note the transitional regime for enforcement proceedings regulated by Transitional Provision 2 of that Law.

Paragraph 3 added by Article 1.6 of Act 4/2011 of 24 March.

Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

debtor for notices and summons of all kinds relating to the affairs of the community of owners. If no such address has been given, an attempt shall be made to serve the notice at the flat or premises and, should this also prove impossible, notification will be made in accordance with the provisions of Article 164 of this Act.

3. Should the amount claimed appear to be incorrect according to the documents attached to the plea, the Clerk of the Court shall notify the judge who, if appropriate, may make a proposal to the claimant to either accept or reject a proposed payment order for an amount lower than the amount initially claimed, which the judge shall specify.

The claimant shall be informed in such proposal that the plea shall be dismissed if they do not reply within ten days or rejects the proposal.

4. If the claim for the debt is grounded on a contract between a business person or professional and a consumer or user, the Clerk of the Court, prior to making the payment order, will give account to the Judge so that they may assess the possible abusive nature of any clause constituting grounds for the application or which may have determined the enforceable amount.

The Judge will review ex officio whether any of the clauses constituting grounds for the application or which may have determined the enforceable amount could be classified as abusive. If any clause appears that could be classified as such the parties will be given five days for a hearing. Once they have been heard, the appropriate decision will be made by order within the following five days. Intervention of a lawyer or procurator will not be compulsory for these proceedings.

If any of the contractual clauses are deemed to be abusive, the order passed will set out the consequences of such consideration resolving on either the inadmissibility of the claim or continuation of the proceedings without applying the clauses which are considered to be abusive.

If the court does not find the existence of abusive clauses, it will declare as such and the Clerk of the Court will proceed to summons the debtor under the terms provided for in paragraph 1.

A direct appeal may be lodged against the order passed in all cases.

Article 816. *Failure of the summoned debtor to appear and dispatch of the enforcement. Interest.*[492]

1. If the debtor does not comply with the payment order or does not appear, the Clerk of the Court will pass an order terminating the small claims process and will send it to the creditor so that they may call for dispatch of the enforcement, with a simple request being sufficient for this purpose, without the need for the twenty day period provided for in article 548 of this Act to have passed.

2. Once the enforcement has been dispatched, this will follow the procedure provided for in court judgments, and the challenge provided for in these cases may be made, but the small claims applicant and the enforcement debtor may not subsequently, in ordinary proceedings, claim the amount claim in the small claims procedure or reimbursement of the amount obtained through the enforcement.

From the moment the order dispatching the enforcement is issued, the debt shall accrue the interest referred to in Article 576.

Article 817. *Payment of the debtor.*[493]

If the debtor complies with the payment request, the Court Clerk shall order the staying of the proceedings as soon as the payment has been evidenced.

Article 818. *Challenge by the debtor.*[494]

1. If the debtor files a writ of challenge in due time, the matter shall be resolved definitively in the relevant hearing and the judgment passed shall have the effect of res judicata.

The writ of challenge shall be signed by a lawyer and a procurator if their intervention is required in view of the amount, in accordance with the general rules.

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[492] Paragraph 1 is amended by single article 77 of Law 42/2015, of 5 October.

Paragraph 1 worded in accordance with Act 13/2009 of 3 November («Official State Gazette» number 266 of 4 November), on the reform of procedural legislation for the implementation of the new Judicial Office.

[493] Article worded in accordance with Act 13/2009 of 3 Novembe.

[494] Paragraph 2 is amended by single article 78 of Law 42/2015, of 5 October.

Paragraph 3 added by Act 19/2009 of 23 November.

Paragraph 2 worded in accordance with Act 13/2009, of 3 of November .

If the challenge of the debtor is based on the existence of an excess amount sought, action will be taken with respect to the amount recognised as due in accordance with the second paragraph of Article 21 of this Act.

2. Where the amount of the claim does not exceed that set for an oral hearing, the Clerk of the Court will issue an order terminating the small claims procedure and resolving to continue the process in accordance with the provisions for that type of hearing, sending the challenge to the claimant, who may object to it in writing within a period of ten days. The parties, in their respective writs of objection and challenge, may request an oral hearing, following the procedures provided for oral hearings in articles 438 et seq.

If the amount of the claim is higher than such amount and the claimant does not lodge the corresponding claim within a time limit of one month from the transfer of the writ of challenge, the Clerk of the Court shall issue an order declaring the staying of the proceedings and ordering the creditor to pay the costs. If the claim is lodged, the order putting an end to the small claims procedure shall resolve the transfer of such claim to the defendant, in accordance with the provisions of Article 404 et seq unless its admission is not appropriate, in which case it shall be resolved to notify the Judge for the latter to decide as appropriate.

3. At all events, when rents or amounts due from a lessee of urban property are claimed and the latter files a writ of challenge, the issue shall be definitively resolved by oral hearing, regardless of the amount.

CHAPTER II

OTHE NEGOTIABLE INSTRUMENTS COLLECTION PROCEEDINGS

Article 819. *Cases in which it is appropriate.*

The negotiable instruments collection proceedings shall be appropriate only if, at the time of filing, a bill of exchange, cheque or promissory bill is presented meeting the requirements set out in the Act on Negotiable Instruments and Cheques.

Article 820. *Competence.*

The competent court for the negotiable instruments collection proceedings shall be the Court of First Instance of the address of the defendant.

If the holder of the title sues several debtors whose liability derives from the same title, the competent court shall be that of the address of any one of them, who may appear at the trial by means of an independent representation.

The rules concerning explicit or tacit submission contained in Section 2 of chapter II, title II of Book I shall not apply.

Article 821. *Initiation. Claim. Payment request and pre-judgement attachment.*

1. The negotiable instruments collection proceedings shall commence with a succinct claim to be accompanied by the title of the negotiable instrument.

2. The Court shall analyse by means of a court order the formal accuracy of the negotiable instrument and, if it finds it to be in order, shall adopt the following measures without further ado:

(i) Request the debtor to pay within a time limit of ten days.

(ii) Order the immediate pre-judgement attachment of the assets of the debtor in the amount specified in the enforcement title, and a further amount for late-payment interests, expenses and costs, in case the payment request is not complied with.

3. The claimant may lodge the appeals referred to in paragraph 2 of Article 552 against the court order rejecting the adoption of the measures referred to in the preceding paragraph.

Article 822. *Payment.*

If the debtor of the negotiable instrument complies with the payment request the steps set out in Article 583 shall be taken, but the costs shall be for the account of the debtor.

Article 823. *Lifting of the attachment.*

1. If the debtor appears in person or through his representative within five days following the day on which he was requested to pay and categorically denies the authenticity of his signature or alleges an absolute lack of representation, the Court may, in view of the circumstances of the case and the documentation submitted, lift the attachments that had been ordered requesting, if it deems it convenient, the adequate security or guarantee.

2. The attachment shall not be lifted in the following cases:

(i). If the issuance, acceptance, guarantee or endorsement has been made, with indication of the date, before an official notary public or the respective signatures have been authenticated on the bill of exchange itself by a notary public.

(ii). If, at the time of the protest or the payment request through a notary public, the debtor of the negotiable instrument did not categorically deny the authenticity of his signature on the title or fails to allege an absolute lack of representation.

(iii). If the obligee of the negotiable instrument has acknowledged his signature before the court or in a public deed.

Article 824. *Objection to the negotiable instruments collection proceedings.*

1. Notwithstanding the provisions of the preceding article, the debtor may lodge a claim of objection to the negotiable instruments collection proceedings within ten days following the payment request.

2. The objection shall be lodged in the form of a claim. The debtor of the negotiable instrument may allege against the holder of the bill of exchange, cheque or promissory note all the reasons or grounds for objection set out in Article 67 of the Act on Negotiable Instruments and Cheques.

Article 825. *Effects of the lack of objection.*[495]

If the debtor fails to lodge a claim of objection within the established time limit, the Court shall dispatch enforcement for the amounts claimed and, thereupon, the Court Clerk shall order an attachment if the said enforcement has been impossible to carry out or has been lifted in accordance with Article 823.

In this case, the dispatched enforcement shall be carried out in accordance with the provisions herein for judgements, court rulings and arbitration awards.

Article 826. *Conduct of a challenge to negotiable instruments collection proceedings.*[496]

Once the writ of challenge has been submitted by the debtor, the Clerk of the Court will send this to the creditor so that they may object to it in writing

[495] Paragraph 1 worded in accordance with Act 13/2009 of 3 November.

[496] Amended by single article 79 of Law 42/2015, of 5 October.

Subparagraph 1 worded in accordance with Act 13/2009 of 3 November.

within a period of ten days. The parties, in their respective writs of challenge and objection, may request an oral hearing, following the procedures provided for in articles 438 et seq for oral hearings.

If a hearing is not requested, or if the court does not consider it appropriate to hold it, the challenge will be decided on without further ado.

Where it is agreed to hold a hearing, if the debtor does not appear, the court will take the challenge to have been abandoned and will pass the decisions provided for in the preceding article. If the creditor does not appear, the Court shall resolve on the challenge without hearing them.

Article 827. *Judgement on the objection. Enforceability.*

1. Within a time limit of ten days, the Court shall pass judgement resolving on the objection. If the latter is dismissed and the judgement is appealed against, the said judgement shall be provisionally enforceable in accordance with the provisions herein.

2. If the judgement upholding the objection is appealed against, the provisions of Article 744 shall apply with respect to the pre-judgement attachments that were executed.

3. The final judgement passed in negotiable instruments collection proceedings shall have the effects of res judicata in relation to the issues that may have been alleged and discussed in the said proceedings, while the remaining issues may be raised in the corresponding trial.

ADDITIONAL PROVISIONS

One. Ordinary nature and Scope of powers.[497]

1. This law is ordinary with the exception of articles 763, 778 a and 778 b which are organic and passed under article 81 of the Constitution.

2. This Act is passed under the powers which correspond to the State in accordance with Article 149.1.6.a of the Constitution, without prejudice to the necessary special cases arising in this order from the particular features of the substantive law of the Autonomous Regions.

Two. Updating of amounts.

1. The Government may, by Royal Decree, update the amounts specified herein every five years, subject to a prior report of the General Council of the Judiciary and an opinion of the Council of State.

2. At least six months prior to the full implementation of the European currency (euro), the Government, subject to a prior report of the General Council of the Judiciary and an opinion of the Council of State, shall convert the amounts established in pesetas herein into the said currency, elimination the fractions of the latter and establishing the amounts in euro to ensure that, as is customary in our laws, the said amounts are easy to use. The above notwithstanding, together with the new amounts expressed in the European currency, those established in pesetas by this Act shall be maintained in the rules on the determination of the type of trial to be held and on access to appeals.

Three. *Material means and human resources for the recording of trials, hearings and appearances.*

Within a time limit of one year as of the approval herein, the Government of the Nation and the Councils of Government of the Autonomous Regions to whom the relevant competences have been transferred shall adopt the measures required to allow the Courts and Tribunals to avail of the material means and human resources necessary for the recording of the oral proceedings in accordance with the provisions of Article 147 herein.

Four. *Fees for the obtaining of copies of documents and instruments.*

Within a time limit of six months as of the approval herein, the Government of the Nation shall approve by Royal Decree a system of rated prices for

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[497] Amended by single article 2.3 of Law 8/2015 of 22 July.

the obtaining of non-certified copies of documents and instruments forming part of the records and requested by the parties of the proceedings.

Five. *Measures to speed up certain civil proceedings.*[498]

1. The Ministry of Justice, in accordance with the relevant autonomous region having jurisdiction in the matter, subject to a favourable report from the General Council of the Judiciary, may create offices for the immediate setting of trial dates (Oficinas de Señalamiento Inmediato) in those judicial districts where courts of firts instance and magistrates courts are separate.

These Offices shall render a common procedural service and perform the functions of registry, distribution and setting of dates for hearings, appearances and proceedings in the procedures referred to in this additional provision.

2. In the court districts where Offices of Immediate Assignment are set up, the claims and applications concerning the following issues shall be submitted to the said offices, provided that the claimant or applicant is able to indicate an address or place of residence of the defendant for the purposes of his summons:

a) Claims of amounts referred to in paragraph 2 of Article 250 herein.

b) Evictions from urban property resulting from the legal or contractual expiry of the term or failure to pay rents or amounts due and, as appropriate, claims of these rents or amounts when the claim proceedings are joined to the eviction proceedings.

c) Injunctions prior or simultaneous to the claim referred to in rule 6 of Article 770.

d) Provisional measures of nullity, separation or divorce, prior to simultaneous to the claim, as set out in Articles 771 and 773.1.

e) Petitions for separation or divorce lodged by mutual agreement or by one of the spouses with the consent of the other.

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[498] The highlghted paragraph in section 1 is declared unconstitucional and null and void, in accordance with legal grounds 7), by Constitucional Court ruling 224/2012, of 29 November.

Provision added by the Organic Act 19/2003 of 23 December on the modification of the Organic Act 6/1985 of 1 July on the Judiciary, paragraphs 2 and 3 are worded in accordance with the Acts 13/2009 of 3 November on the reform of procedural legislation for the implementation of the new Judicial Office, and 19/2009 of 23 November on measures for the promotion and procedural speeding up of the lease and the energy efficiency of the buildings.

3. These claims and petitions lodged with the Immediate Assignment Offices shall be processed in accordance with the rules herein, with the following peculiarities:

First. Prior to giving leave to proceed, on the same day of their lodging or, if this is impossible, on the next working day, the Immediate Assignment Offices shall, in one single proceeding:

a) Register the claims or petitions set out in the preceding paragraph that are submitted to them.

b) Agree their distribution to the corresponding Court and directly set the date for the hearing referred to in Article 440.1, the appearance referred to in Articles 771.2 and 773.3, the appearance for the ratification of the claim contemplated in Article 777.3, and the date and time when the eviction shall take place in the case referred to in Article 440.3.

c) Resolve and issue the relevant order for the performance of the corresponding summonses and judicial instructions for the latter to be carried out through the common notifications service or, as appropriate, by the court representative who so requests, and their delivery, once completed, directly to the corresponding Court.

d) Request the claimant, if necessary, to rectify any procedural defects in the filing of the claim or petition, which shall be remedied within a maximum time limit of three days.

e) Forward the submitted claim or petition immediately to the corresponding Court.

Two. The summonses for the appearances and hearings referred to in the preceding rule shall contain the requests and warnings contemplated in each case herein. They shall also indicate the circumstances referred to in paragraph 3 of Article 440.

Furthermore, the summons shall indicate that, if the defendant requests the acknowledgement of the right to free legal assistance or desires the appointment of a legal aid attorney and court representative in the case of Article 33.2, he shall so request before the Court within a time limit of three days as of the reception of the summons.

Three. Upon reception of the claim or petition, the appropriate decision shall be made regarding the leave to proceed. If leave is given to proceed with the claim, the date set shall be observed. If leave to proceed is not given, the setting of the date shall cease to have effect and the Court shall notify this circumstance to those who have already

been summoned, through the common notification service or, as appropriate, by the court representative who requested it.

If either of the parties seeks the acknowledgement of the right to free legal assistance or the appointment of a legal aid attorney and court representative, in the same decision to give leave to proceed with the claim if at that moment the said request is already known or, otherwise, in a subsequent order, the immediate appointment of the professionals shall be requested in accordance with the provisions of paragraph 3 of Article 33. In this case, the appointment shall be made in favour of the professionals assigned for the date on which the set hearing or appearance has to take place, in accordance with a special shift of assistance established to this end by the Bar Associations.

Fourth. The Immediate Assignment Offices shall perform the setting of dates referred to in subparagraph b) of paragraph 3, First, of this provision, before the Court of First Instance corresponding by shift in accordance with a programmed system of designations, on the nearest possible working day and time and, at all events, within the following times limits:

a) The setting of dates for the hearings referred to in Article 440.1 shall take place within the time limits indicated in the same provision, calculated as of the fifth day following that of lodging of the claim with the Immediate Assignment Office.

b) The setting of a date for the hearings referred to in Articles 771.2 and 773.3 shall be carried out between the fifth and tenth day following the lodging of the petition or claim with the Immediate Assignment Office.

c) The setting of a date for the appearances for the ratification of the claim contemplated in Article 777.3 shall take place within three days following the lodging of the relevant claim.

d) The setting of a date and time when, as appropriate, the eviction shall take place in accordance with the final subsection of paragraph 3 of Article 440 shall take place within a time limit of less than one month as of the date on which the date of the corresponding hearing has been set.

Five. Each Court of First Instance in the court districts where Immediate Assignment Offices are set up shall reserve its entire agenda on the dates when it is their turn to render continued assistance, in order to allow the Immediate Assignment Office to directly carry out the said setting of dates.

The General Council of the Judiciary, pursuant to a favourable report of the Ministry of Justice, shall issue the necessary Regulations to

regulate the organisation and operation of the programmed system of date setting, the establishments of the shifts or continued assistance among the Courts of First Instance and the fractioning of time schedules for the direct setting of dates.

Six. The rules of distribution of the court districts where Immediate Assignment Offices are set up shall assign the hearing of the procedures contemplated in paragraph 2 of this provision to the Court of First Instance assigned to act in a shift of continued assistance on the date on which the dates are set for the hearings and appearances as referred to in rule four.

4. In the proceedings carried out in the scope of this additional provision, the court representatives of the parties of the proceedings may carry out, at their request and at the expense of the party they represent, the notices, citations, summonses and requests by any of the means generally admitted herein.

These acts of communication shall be deemed validly carried out when there is sufficient evidence of their delivery to the person or at the address of the adressee.

To these effects, the court representative shall evidence, on his personal responsibility, the identity and condition of the recipient of the notification, ensuring that the copy contains his signature and the date on which the notice has been served.

With regard to the communications by means of delivery of a copy of the decision or summons at the address of the addressee, the provisions of Article 161 shall be adhered to as far as applicable, and the court representative shall evidence the existence of the circumstances contemplated in the said provision, to which end he may request the assistance of two witnesses or use any other adequate means.

Six. *Awarding* of real property.[499]

In the case of awards sought by the enforcement creditor under the terms set forth in Section VI, Chapter IV, Title IV, Book III and as long as the auctions at which there were no bidders concern real property other than the debtor's normal place of residence, the creditor may seek the awarding of the assets for an amount equivalent to or greater than fifty per cent of their appraisal value or for the amount owed to him for all items.

[499] Added by Article 4.37 of Act 37/2011 of 10 October.

Likewise, under the terms set forth in the aforementioned Section and regarding real property other than the debtor's normal place of residence, where the highest bid offered is less than 70 per cent of the property's starting price and the enforcement debtor has not submitted a bid, the creditor may seek the awarding of the property at 70 per cent or for the amount he is owed for all items, provided such amount is greater than the highest bid.

TRANSITIONAL PROVISIONS

First. *System of appeals against interlocutory or non-definitive decisions.*

The system of ordinary appeals set forth herein shall apply to any interlocutory or non-definitive decisions issued in all kinds of proceedings and instances after the entry into force of this Act.

Two. *Proceedings in the first instance.*

Except as set forth otherwise in the First Transitional Provision, any declaratory proceedings which are in the first instance at the time this Act enters into force shall continue to be conducted until a judgement is issued in such instance in accordance with the preceding procedural legislation. The provisions set forth herein shall apply to appeals, the second instance, enforcement, including provisional enforcement, and extraordinary appeals.

Three. *Proceedings in the second instance.*

Except as set forth otherwise in the First Transitional Provision, where any declaratory proceedings are in the second instance at the time this Act enters into force, they shall be conducted in accordance with the preceding Act, and this Act shall apply for all intents and purposes as from the judgement.

Nonetheless, the provisional enforcement of a judgement upholding the claim which is subject to appeal may be petitioned in accordance with the provisions set forth herein.

Fourth. *Matters in cassation.*

Any matters pending an appeal in cassation upon the entry into force of this Act shall continue to be conducted and decided upon in accordance with the preceding Act. Nonetheless, the provisional enforcement of a

judgement upholding the claim which is subject to an appeal in cassation may be sought in accordance with this Act.

Five . *Enforcement proceedings.*

Any enforcement proceedings which are pending upon the entry into force of this Act, whatever the title upon which they are grounded may be, shall continue to be conducted in accordance with the preceding Act. Nonetheless, should the proceedings have reached the distraint procedure, this Act shall apply with regard to such procedure.

Six. *Compulsory enforcement.*

Any enforcement proceedings which have already been initiated upon the entry into force of this Act shall be governed by the provisions set forth herein with regard to any procedures that have yet to be conducted or amended until the party seeking enforcement is fully satisfied.

Seven. *Injunctions.*

1. Any injunctions sought after the entry into force of this Act in proceedings initiated before its entry into force shall be governed by the provisions set forth herein.

2. Any injunctions that may have already been adopted before this Act enters into force shall be governed by the provisions set forth in preceding legislation. Nonetheless, a petition for their review and amendment may be filed and obtained in accordance with this Act.

REPEALING PROVISION

Single.

1. The Civil Procedure Act approved by Royal Decree on 3 February 1881 shall be repealed, with the following exceptions:

a) Titles XII and XIII of Book II and Book III, which shall remain in force until the Insolvency Act and the Voluntary Jurisdiction Act respectively enter into force, apart from Article 1,827 and Articles 1,880 to 1,900, both inclusive, which shall be repealed.

Until the aforementioned Acts enter into force, items (i) and (v) of Article 4, items (i) and (iii) of Article 10 and rules 8, 9, 16, 17, 18, 19, 22, 23, 24, 25, 26 and 27 of Article 63 of the Civil Procedure Act of 1881 shall likewise remain in force.

Whilst the Insolvency Act does not enter into force, any incidents which may arise in insolvency proceedings shall be governed by the provisions set forth herein to deal with such incidents.

Whilst the Voluntary Jurisdiction Act does not enter into force, any references to the appropriate contentious procedure contained in Book III shall be construed to be done through an oral trial.

b) Title I of Book II, as well as Article 11 on conciliation, and Section 2, Title IX of Book II on declaring heirs ab intestato, which shall remain in force until the rules on both matters in the Voluntary Jurisdiction Act enter into force.

c) Articles 951 to 958 on the efficacy in Spain of judgements issued by foreign courts, which shall remain in force until the International Judicial Co-operation Act on Civil Matters enters into force.

2. The following rules, laws and provisions shall also be repealed:

(i). Paragraph 2, Article 8; the second sentence of paragraph 6, Article 12; Articles 127 to 130, both inclusive; paragraph 2 of Article 134 and Article 135; Articles 202 to 214, both inclusive; Articles 294 to 296, both inclusive, and Article 298; and Articles 1,214, 1,215, 1,226 and 1,231 to 1,253, both inclusive, all of them of the Civil Code.

(ii). Articles 119, 120, 121 and 122.1 of the revised text of the Public Limited Companies Act approved by Royal Legislative Decree 1564/1989 of 22 December.

(iii). Articles 11, 12, 13, 14 and 15 of Act 62/1978 of 26 December on the Jurisdictional Protection of Fundamental Personal Rights.

(iv). Articles 2, 8, 12 and 13 of the Act of 23 of July 1908 on the nullity of certain loan agreements.

(v). Articles 17 and 18 of the revised text of the Civil Liability and Circulating Motor Vehicle Insurance Act approved by Decree 632/1968 of 21 March.

(vi). Articles 38 to 40, both inclusive, of Act 29/1994 of 24 November on Urban Property Leases.

(vii). Articles 123 to 137 of Act 83/1 980 of 31 December on Rural Property Leases.

(viii). Articles 82, 83, 84, 85, 92 and 93 of the Non-Transferable Real Estate Mortgage and Pledge Act of 16 December 1954.

(ix). Articles 41 and 42 the Naval Mortgage Act of 21 August 1893.

(x). The First to Ninth Additional Provisions of Act 30/1981 of 7 July amending the governance of matrimony in the Civil Code and setting forth the procedure to be followed in proceedings on nullity, separation and divorce.

(xi). Articles 23, 25 and 26 of Act 3/1991 of 10 January on Unfair Competition.

(xii). Articles 29, 30 and 33 of Act 34/1988 of 11 January, the General Advertising Act.

(xiii). Article 142 of the revised text of the Intellectual Property Act approved by Royal Legislative Decree 1/1996 of 12 April.

(xiv). Paragraphs 3 and 4, Article 125; paragraph 2, Article 133; Article 135; and paragraphs 1 and 2, Article 136 of Act 11/1986 of 20 March on Patents.

(xv). Paragraph 3, Article 9 and Articles 14, 15, 18 and 20 of Act 7/1998 of 13 April on General Contracting Terms and Conditions.

(xvi). Article 12 of Act 28/1998 of 13 July on the Hire Purchase of Moveable Property.

(xvii). Decree-Act 18/1969 of 20 October on receivership in the event of the attachment of companies.

(xviii). Decree of 21 November 1952 regulating the tenth base of the Act of 19 July 1944 on the procedural rules which apply to municipal justice.

(xix). Act 10/1968 of 20 June on attributing competencies on civil matters to the Provincial Courts.

(xx). Decree of 23 February 1940 on the reconstitution of court orders and records.

(xxi). Decree-Act 5/1973 of 17 July on declaring all days in the month of August as holidays for judicial purposes.

3. Likewise, any legislation which may oppose or contradict the provisions set forth herein shall be deemed to have been repealed pursuant to paragraph 2, Article 2 of the Civil Code.

Act 52/1997 of 27 November on Legal Assistance to the State and Public Institutions shall be deemed to be in force.

FINAL PROVISIONS

First. *Amendment of the Condominium Property Act.*

1. The third sentence of paragraph 2, Article 7 of Act 49/1960 of 21 July on Condominium Property, amended by Act 8/1999 of 6 April shall be worded as follows:

> "Should the offender's behaviour persist, the President may, after having received authorisation from the Condominium Owners' Meeting duly called for such a purpose, bring an action for cessation against him, which shall be conducted through an ordinary trial on any matters not expressly set forth in this Article."

2. Article 21 of Act 49/1960 of 21 July on Condominium Property shall be worded as follows:

> "1. The obligations referred to in items e) and f) of Article 9 shall be fulfilled by the owner of the dwelling or shop within the time and in the manner established by the Meeting. Otherwise, the president or the administrator may require it through the courts by means of a small claims procedure should the Condominium Owners' Meeting so resolve.
>
> 2. The use of the small claims procedure shall require the prior certification of the Meeting's resolution approving the settlement of the debt with the condominium of owners by whoever may act as its secretary, along with the president's counter-signature, as long as notice thereof has been given in the manner set forth in Article 9 to the property owners affected.
>
> 3. Any amounts arising from the costs of the prior notice of payment may be added to the amount claimed in accordance with the provisions set forth in the preceding paragraph, as long as service thereof is recorded in documents and the receipt of such costs is attached to the claim.
>
> 4. Where the former owner of the dwelling or shop may be held jointly and severally liable for the payment of the debt, the claim may be brought against him without prejudice to his right of subsequently bringing it again against the current owner. Likewise, the claim may be brought against the owner appearing in the registry entry, who shall be entitled to the same right mentioned above.
>
> In all these cases, the initial claim may be brought against any of those liable or jointly against all of them.

5. Where the debtor should contest the initial claim of the small claims procedure, the creditor may seek the preventive attachment of the former's assets sufficient to cover the amount claimed, interest and costs.

The court shall, in any event, agree to such preventive attachment without the need of the creditor posting security. Nonetheless, the debtor may render the attachment ineffective by posting a bank guarantee for the amount agreed upon by the court.

6. Where the professional services of an attorney and court representative are used to petition for the amounts owed to a condominium of property owners in the initial claim, the debtor shall pay any fees and duties due from both for their involvement, subject in any case to the limits set forth in paragraph 3, Article 394 of the Civil Procedure Act, where the debtor either responds to the requirement of payment or fails to appear before the court. Should the claim be contested, the general rules on costs shall be followed. Nonetheless, should the creditor obtain a totally favourable judgement on his petition, the fees of the attorney and the court representative arising from their involvement shall be included, even though such involvement may not have been obligatory."

Two. *Amendment of* the Intellectual Property Act.

1. Article 25.20 of the revised text of the Intellectual Property Act approved by Royal Legislative Decree 1/1996 of 12 April shall be worded as follows:

"20. In the circumstance indicated in the preceding paragraph and in any other circumstance involving the failure to pay remuneration, the management organisation or organisations or, as appropriate, the management representative or association may, without prejudice to any civil or criminal actions they may be entitled to, petition the court to adopt any injunctions that may proceed in accordance with the Civil Procedure Act and, more specifically, the attachment of the relevant equipment, devices and material. The assets thus attached shall be allocated to the payment of the remuneration claimed and suitable compensation for any damages."

2. Article 103 of the revised text of the Intellectual Property Act approved by Royal Legislative Decree 1/1996 of 12 April shall be worded as follows:

"Article 103.Protection measures. The holder of the rights recognised in this Title may bring the actions and proceedings which are generally set forth in Title I, Book III contained herein and seek any injunctions

that may proceed in accordance with the provisions set forth in the Civil Procedure Act.”

3. Article 143 of the revised text of the Intellectual Property Act approved by Royal Legislative Decree 1/1996 of 12 April shall be worded as follows:

“Article 143.Criminal proceedings. Any injunctions which may proceed in civil proceedings in accordance with the provisions set forth in the Civil Procedure Act may be adopted in criminal proceedings conducted as a result of an infringement of the rights recognised herein. Such measures shall not impede the adoption of any other measures set forth in criminal procedural legislation.”

4. Article 150 of the revised text of the Intellectual Property Act approved by Royal Legislative Decree 1/1996 of 12 April shall be worded as follows:

“Article 150. Legal capacity. Once they are duly authorised, management organisations shall have the legal capacity resulting from their own bylaws to exercise any rights entrusted to their management and assert them in any kind of administrative or judicial proceedings.

To certify such legal capacity, management organisations shall only have to file a copy of their bylaws and a certification of their administrative authorisation at the start of the proceedings. The defendant may solely ground his challenge on the claimant’s lack of representation, the authorisation of the exclusive holder of the right or the payment of the relevant remuneration.”

Three. *Amendment of the Public Limited Companies Act.*

1. Article 118 of Royal Legislative Decree 1564/1989 of 22 December approving the revised text of the Public Limited Companies Act shall be worded as follows:

“The procedures for ordinary trials and the provisions contained in the Civil Procedure Act shall be followed in order to contest corporate resolutions.”

2. Paragraphs 2 and 3, Article 122 of the aforementioned text of the Public Limited Companies Act shall respectively become paragraphs 1 and 2 of said Article.

Fourth. *Amendment of the Unfair Competition Act.*

Article 22 of Act 3/1991 of 10 January on Unfair Competition shall be worded as follows:

”Article 22. Procedure. Any proceedings dealing with unfair competition shall be conducted in accordance with the provisions on ordinary trials set forth in the Civil Procedure Act.”

Five. *Amendment of the Patents Act.*

1. Paragraph 1, Article 125 of Act 11/1986 of 20 March on Patents shall be worded as follows:

“1. Any civil litigation which may arise pursuant to this Act shall be resolved in the corresponding trial in accordance with the Civil Procedure Act.”

2. Article 133 of Act 11/1986 of 20 March on Patents shall be worded as follows:

“Whoever may or plans to exercise an action among the ones set forth herein may petition the court responsible for dealing with it for the adoption of any injunctions aimed at ensuring the effectiveness of such actions, as long as he duly justifies the exploitation of the patent at issue in the action under the terms set forth in Article 83 contained herein or has initiated serious effective preparatory actions to such an effect.”

Six. *Amendment of the General Contracting Terms and Conditions Act.*

1. Paragraph 2, Article 12 of Act 7/1998 of 13 April on General Contracting Terms and Conditions shall be worded as follows:

“2. An action for cessation is aimed at obtaining a judgement that penalises the defendant to delete from his general terms and conditions any that may be deemed null and void and to refrain from using them in the future, setting or clarifying, wherever necessary, the agreement’s contents which may be deemed as valid and effective.

The reimbursement of any amounts charged according to the terms and conditions affected by the judgement and compensation for any damages caused by the application of such terms and conditions may be joined as accessory claims to the action for cessation.”

2. Paragraph 3, Article 12 of Act 7/1998 of 13 April on General Contracting Terms and Conditions shall be worded as follows:

“3. An action for withdrawal is aimed at obtaining a judgement that declares and imposes on the defendant, whether or not he is the

stipulator, the obligation of withdrawing a recommendation he has made to use the clauses of the general terms and conditions which are deemed null and void and to refrain from continuing to recommend them in the future.”

3. Paragraph 4, Article 12 of Act 7/1998 of 13 April on General Contracting Terms and Conditions shall be worded as follows:

“4. A declaratory action is aimed at obtaining a judgement which recognises a clause as a general contracting condition and orders its registration, where appropriate, in accordance with the provisions set forth in the final item, paragraph 2, Article 11 contained herein.”

4. A new paragraph has been added the end of Article 16 of Act 7/1998 of 13 April on General Contracting Terms and Conditions, which shall be worded as follows:

“Such entities may enter an appearance in any of the proceedings brought by any other such entity should they deem it appropriate to defend the interests they represent.”

5. A Fourth Additional Provision has been added to Act 7/1998 of 13 April on General Contracting Terms and Conditions, which shall be worded as follows:

“Fourth Additional Provision.

Any references to consumers and users contained in the Civil Procedure Act shall be construed to refer to all parties to any litigation, whether or not they are consumers or users, where individual or class-action suits are exercised arising from this General Contracting Terms and Conditions Act.

Likewise, any references to consumer and users associations contained in the Civil Procedure Act shall be construed to also apply to any other persons or entities having the legal capacity to act as a claimant in any litigation in which the class-action suits set forth in herein are exercised.”

Seven. *Amendment of the Hire Purchase of Moveable Property Act.*

1. The first sentence of paragraph 3, Article 15 of Act 28/1998 of 13 July on the Hire Purchase of Moveable Property shall be worded as follows:

“3. “In the event of the preventive attachment or compulsory enforcement of moveable property, all distraint proceedings regarding

such assets or their proceeds or income shall be shelved as soon as a certification from the registrar should appear in the records stating the existence of rights in favour of a person other than the person against whom the attachment was ordered or against whom the proceedings are being conducted, unless the proceedings were brought against such person as the heir of the person appearing as their owner in the registry. The enforcement creditor's right to seek in the same proceedings other of the debtor's assets shall be reserved, as well as his right to resolve in the corresponding trial any rights he may deem to enjoy over the assets with regard to which the proceedings have been stayed."

2. Paragraph 1, Article 16 of Act 28/1998 of 13 July on the Hire Purchase of Moveable Property shall be worded as follows:

"1. "The creditor may seek the fulfilment of any obligations arising from the agreements governed by this Act by exercising the relevant actions in ordinary declaratory proceedings, small claims proceedings or enforcement proceedings in accordance with the Civil Procedure Act.

Agreements on the hire purchase of moveable assets shall only constitute sufficient title for grounding enforcement actions on the debtor's assets where such agreements are recorded in any of the documents referred to in items 4 and 5, paragraph 2, Article 517 of Civil Procedure Act."

3. Item d), paragraph 2, Article 16 of Act 28/1998 of 13 July on the Hire Purchase of Moveable Property shall be worded as follows:

"d) Where the debtor neither pays the amount claimed nor hands over the assets for disposal in the public auction referred to in the preceding item, the creditor may petition the court to summarily protect his rights by exercising the actions laid down in items (x) and (xi), paragraph 1, Article 250 of the Civil Procedure Act."

4. Paragraph 2 of the First Additional Provision of Act 28/1998 of 13 July on the Hire Purchase of Moveable Property shall be worded as follows:

"The financial lessor may seek the fulfilment of any obligations arising from the agreements governed by this Act by exercising the relevant actions in ordinary declaratory proceedings, small claims proceedings or enforcement proceedings in accordance with the Civil Procedure Act.

Financial leasing agreements shall only constitute sufficient title for grounding enforcement actions on the debtor assets where such agreements are recorded in any of the documents referred to in items 4 and 5, paragraph 2, Article 517 of Civil Procedure Act."

5. The first sentence and item c), paragraph 3 of the First Additional Provision of Act 28/1998 of 13 July on the Hire Purchase of Moveable Property shall be worded as follows:

"3. "In the event of a breach of a financial leasing agreement recorded in any of the documents referred to in items 4 and 5, paragraph 2, Article 517 of the Civil Procedure Act, which has been duly registered at the Hire Purchase of Moveable Property Registry and executed through the official form laid down for such purposes, the lessor may petition for the asset's recovery in accordance with the following rules.

c) Where the debtor neither pays the amount claimed nor hands over the assets to the financial lessor, the latter may petition the competent court for the immediate recovery of the assets ceded through financial leasing by exercising the actions set forth in item (xi), paragraph 1, Article 250 of the Civil Procedure Act."

Eight. Amendment of the Arbitration Act.

Article 11 of Act 36/1988 of 5 January on Arbitration shall be worded as follows:

"1. The arbitration agreement shall oblige the parties to fulfil and perform the stipulations and shall impede the courts from dealing with any of the matters at issue submitted to arbitration in the agreement, as long as the party interested therein should invoke it through a declinatory plea.

2. The parties may agree to waive the arbitration agreed upon, thus freeing the way for the judicial track. They shall, in any event, be deemed to have waived the agreement where the defendant or defendants, should there be several, perform any procedural action after entering an appearance in the proceedings other than filing a declinatory plea once a claim has been brought by any of them."

Nine. Amendment of the Mortgage Act.

Articles 41, 86, 107, 129, 130, 131, 132, 133, 134 and 135 of the Mortgage Act of 8 February 1946 have been amended, which shall be worded as follows:

1. Article 41:

“Any actions in rem arising from duly registered rights may be exercised through the oral trials governed by the Civil Procedure Act against whoever may contest such rights or hinder them from being exercised without registered title. Such actions, which are based on capacity arising from the registry as recognised by Article 38, shall always require the registrar’s certification that the corresponding entry is in force without any contradiction whatsoever.”

2. Article 86:

“Caveats, whatever their cause may be, shall expire four years from the date of the entry, except for any with a shorter term of validity as set forth by the law. They may, nonetheless, be extended for a period of four years at the request of the interested party or by the authorities that mandated them, as long as the mandate ordering such extension is filed before the entry expires. Extended entries shall expire four years from the date of the entry of such extension. Successive subsequent entries may be made under the same terms.

The expiry of caveats shall be recorded at the registry at the request the owner of the real property or right in rem thus affected.”

3. Article 107.12:

“12. Successful bidder’s right over real property auctioned in court proceedings. Once the price of the successful bid has been satisfied and ownership registered in favour of the successful bidder, the mortgage shall persist directly on the assets adjudicated.”

4. Article 129:

“Mortgage repossession proceedings may be exercised directly against the mortgaged goods subject to the provisions set forth in Title IV, Book III of the Civil Procedure Act with the specificities laid down in Chapter IV thereof. Furthermore, the out-of-court sale of the mortgaged asset may be agreed upon in the mortgage deed in accordance with Article 1,858 of the Civil code in the event of a failure to fulfil the guaranteed obligation. The out-of-court sale shall be made through a notary public, complying with all the formalities laid down in the Mortgage Regulations.”

5. Article 130:

"The procedure of direct enforcement against mortgaged assets may only be exercised as the realisation of a registered mortgage and, given its establishing nature, on the basis of the details contained in the relevant entry."

6. Article 131:

"Any caveats of a claim for nullity of the mortgage itself or any others which are not grounded on any of the circumstances that may determine a stay of enforcement shall be cancelled by virtue of a mandate of cancellation as referred to in Article 133, as long as they are subsequent to the marginal note on the issuance of a certification of encumbrances. A deed of receipt for full payment of the mortgage may not be registered as long as the aforementioned marginal note has not been cancelled through a court mandate for such a purpose."

7. Article 132: "The registrar's classification shall include the details set forth below for the purposes of any entries and cancellations arising from direct enforcement proceedings on mortgaged assets:

(i). That a claim has be brought against and payment claimed from the debtor, non-debtor mortgagor and third-party owners who have had their rights duly registered at the registry at the moment the certification of encumbrances is issued in the proceedings.

(ii). That notice of the existence of the proceedings has been given to any creditors and third parties whose rights have been entered or registered subsequent to the mortgage, apart from any which are subsequent to the marginal note on the issuance of encumbrances, regarding which the marginal note shall serve the purposes of giving notice.

(iii). That whatever may have been handed over to the creditor as payment for the loan's principal, any interest accrued and any costs caused does not exceed the limit of the relevant mortgage coverage.

(iv). That the value of what has been sold or adjudicated was equivalent to or less than the full amount of the claimant's loan, or in the event of having exceeded it, that such excess was deposited in a public establishment for the purposes of placing it at the disposal of subsequent creditors."

8. Article 133:

"The certification issued by the Court Clerk of the court order on the successful bid or adjudication and the certification resulting from the

deposit of the price, as appropriate, shall be sufficient title to register the property or right adjudicated in favour of the successful bidder, as long as the mandate of cancellation of the encumbrances referred to in Article 674 of the Civil Procedure Act is attached thereto.

The court mandate on the cancellation of encumbrances and the certification of the court order on the successful bid or adjudication may appear in a single document, which shall, in any event, set forth the fulfilment of the requirements laid down in the preceding Article and any other circumstances which may be necessary to perform the registration and cancellation."

9. Article 134:

"The certification of the court order on adjudication and the mandate of cancellation of encumbrances shall lead to the registration of the property or right in favour of the successful bidder and the cancellation of the mortgage which led to enforcement, as well as of all charges, encumbrances and entries of third-party holders which are subsequent to them without exception, including any that have been verified subsequent to the marginal note on the issuance of the certification of encumbrances in the relevant proceedings.

Solely subsequent declarations of new works and condominium divisions shall persist, where the mortgage entry states that the mortgage should also extend to the new buildings by law or through an agreement."

10. Article 135:

"The registrar shall give notice of the performance of any subsequent entries that may affect enforcement, even where they may fall directly on the mortgaged assets, to the Judge before whom the enforcement proceedings are being conducted."

Ten. Amendment of the Negotiable Instruments and Cheques Act.

1. The last paragraph of Article 67 of Act 19/1985 of 16 July on Negotiable Instruments and Cheques has been amended, which shall be worded as follows:

"Solely the exceptions set forth in this Article shall be admissible against an action on negotiable instruments."

2. The second paragraph of Article 49 of Act 19/1985 of 16 July on Negotiable Instruments and Cheques has been amended by replacing the

expression: "... as in the enforcement..." for the following expression: "... through special negotiable instrument proceedings...".

3. Article 66 of Act 19/1985 of 16 July on Negotiable Instruments and Cheques has been amended, which shall be worded as follows:

> "The bill of exchange shall entail enforcement through the negotiable instrument trial governed by the Civil Procedure Act in chapter II, Title III, Book IV for the amount set forth in the title and for any other amounts in accordance with Articles 58, 59 and 62 contained herein without the need for the court examining the signatures. »

4. Article 68 of Act 19/1985 of 16 July on Negotiable Instruments and Cheques has been amended, which shall be worded as follows:

> "The exercising of actions on negotiable instruments through the special negotiable instrument trial shall be subject to the procedure set forth in the Civil Procedure Act."

Eleven. Reform of the Employment Procedural Act.

Articles 2, 15, 47, 50, 18 3, 186, 234, 235 and 261 of the Royal Legislative Decree 2/1995, of April 7, whereby the revised text of the Employment Procedural Act was approved, and is worded in the following terms:

1. Article 2:

> «d) Between the associates and the Mutual Associations, except for those established by the Professional Associations, in the terms stipulated in articles 64 et seq. and in the additional fifteenth provision of Act 30/1 995, of November 8, on the Organisation and Supervision of Private Insurance, as well as between employment foundations or between these and their beneficiaries, on the compliance with, existence or declaration of their specific obligations and rights of their estate, related to the objectives and obligations of these institutions.»

2. Article 15:

> "1. As regards their causes, abstention and challenging shall be governed by the Organic Act on the Judiciary Branch, and, as regards procedure, by the stipulations in the Civil Procedure Act.
>
> Notwithstanding the above, the challenge shall have to be proposed at an instance previous to the acts of reconciliation and proceedings and,

in appeals, before the day appointed for the vote and ruling or, possibly, for the hearing.

In any case, the proposal for a challenge shall not suspend the enforcement.

2. The following shall examine challenges:

a) When the party challenged is the President or one or more of the Senior Judges of the Labour Chamber of the High Court, of the Labour Chamber of the Higher Courts of Justice, or of the Labour Chamber of the National Court, a Senior judge of the Chamber the party challenged belongs to, designated due to a rota established by order of seniority.

b) When all the Senior Judges of a Court of Justice are challenged, the Senior Judge from the corresponding court due to rota by seniority, on condition that he is not affected by a challenge, and if all the Senior Judges who make up the chamber involved are challenged, a Senior Labour Law Judge of the Contentious-Administrative Chamber shall be designated by drawing lots among all the Judges of this Chamber.

c) When the party challenged is Judge of the Labour Court, a Senior Judge of the Labour Court of the High Court of Justice, designated due to the rota established by seniority.

Seniority shall be regulated by order of the ranking in the judicial career.

In the cases in which it is not possible to comply with what is stipulated in the foregoing paragraphs, the governing Chamber of the corresponding court shall designate the examining magistrate, endeavouring that he be of a higher category or, at least, with seniority over the party or parties challenged.

3. Challenging incidents shall be decided on by the following:

a) The Chamber stipulated in article 61 of the Organic Act on the Judiciary when the party challenged is the President of the Labour Chamber or two or more of the Senior Judges of this Chamber.

b) When a judge of the Labour Chamber of the High Court is challenged.

c) The Chamber referred to in article 77 of the Organic Act on the Judiciary, when the President of the Labour Chamber of this High Court has been challenged.

d) The Chamber referred to in article 69 of the Organic Act on the Judiciary when the President of the Labour Chamber, of the National Court or more than two Senior Judges of a Section of this Chamber have been challenged.

e) When one or two Senior Judges of the Labour Chamber of the National Court are challenged, The section in which the party challenged is not included or the section which follows in numerical order to the one the party challenged belongs to.

f) When one or two Senior Judges of the Labour Chamber of the Higher Courts of Justice are challenged, the Chamber in a plenary meeting if it is not divided into sections or, otherwise, the section the challenged party is not a part of or the section which follows the section the party challenged forms part of in numerical order.

g) When the party challenged is a Judge of the Labour Court, the corresponding Labour Chamber of the corresponding High Court of Justice, at a plenary meeting, if it is not divided into sections or, otherwise, the First Section.»

3. Article 47.2:

“2. All the persons concerned can have access to the judgement book referred to in article 213 of the Law on Civil Procedure.»

4. Article 50.1:

“1. On the termination of the proceedings, the Judge can issue a decision viva voce, and this shall be consigned to the minutes with the content and requirements set out in the Civil Procedure Act . He can also restrict himself to the ruling, which shall be documented in the minutes through the witnessing of the Court Clerk, without prejudice to the subsequent drafting of the decision within the time limit and in the legally stipulated form.»

5. First paragraph of article 183:

«As regards the proceedings followed when the defendant has not appeared, the rules contained in Part V of Book II of the Civil Procedure Act shall apply, with the following specialities:»

6. Rule 3 of article 183:

«The time limit for applying for a hearing shall be three months from notification of the decision in the corresponding “Official Gazette” in the cases and conditions stipulated in article 501 of the Civil Procedure Act.»

7. Article 186:

«The appeals for reversal and for reconsideration shall be substantiated in accordance with the stipulations for the appeal for reversal in the Civil Procedure Act.»

8. Article 234:

«The appeal for judicial review stipulated in the Civil Procedure Act shall be applicable against any decision issued by the organisms in the labour jurisdictional order. The appeal shall be lodged before the Labour Chamber of the High Court, which shall have to decide on this in accordance with the provisions in the Civil Procedure Act although the deposit in order to appeal shall be the same amount as the one stated herein for appeals in cassation.»

9. Article 235.1:

“1. The definitive decisions shall be put into effect in the form laid down in the Civil Procedure Act for the enforcement of decisions, with the specialities stipulated herein.»

10. Article 261.2:

“2. If the assets embargoed are securities, these shall be sold in the form set out for this in the Civil Procedure Act.»

Twelve. Reform of the Criminal Procedure Act.

Articles 54, 56, 63, 68, 201 and 852 of the Criminal Procedure Act are modified, as promulgated by the Royal Decree of September 14, 1882, and these shall be worded in the following terms:

1. Article 54:

«As regards the reasons for abstention and challenging, these shall be regulated by the Organic Law on the Judiciary, and as concerns procedure, by the stipulations in the Civil Procedure Act.»

2. Article 56:

«The challenge must be proposed as soon as the reason on which this is grounded becomes known, otherwise, it shall not be admitted to processing. Specifically, challenges shall not be admitted in the following cases:

(i). When they are not proposed on appearing or intervening for the first time in the proceedings or in any of its phases if the reason for the challenge is known previous to the appearance.

(ii). When these are proposed when the proceedings have begun if the reason for the challenge is known previous to the procedural time when the challenge is proposed.»

3. Article 63:

«The incidents of the challenge shall be examined:

a) When the party challenged is the President or one or more of the Senior Judges of the Criminal Chamber of the High Court of Justice, of the Criminal Chamber of the Higher Courts of Justice, or of the Criminal Chamber of the National Court, a Senior Judge of the Chamber to which the party challenged belongs, designated by virtue of a rota established by seniority.

b) When the party challenged is the President or one or more Senior Judges of a Provincial Court, a Senior Judge of a Section other than the one to which the party challenged belongs, designated by virtue of a rota established by seniority. If there is only one Section, procedure shall be as set out in the second paragraph of article 107 of the Civil Procedure Act.

c) When all the Senior Judges of a Court of Justice are challenged, the judge responsible shall be the Senior Judge by seniority from among those who make up the corresponding Court on condition that he is not affected by the challenge, and if all the Senior Judges who make up the corresponding Court of Justice, a Senior Judge designated by drawing lots among those who make up the Courts of the same territorial scope belonging to the rest of the jurisdictional orders.

d) When a Central Criminal Court Judge or a Central Examining Magistrate, a Senior Judge of the Criminal Chamber of the National Court shall be designated by virtue of a rota established by order of seniority.

e) When the party challenged is an Examining Magistrate or a Criminal Court Judge, the judge responsible shall be a Senior Judge of the corresponding Provincial Court, designated by virtue of a rota established by order of seniority.

f) When the party challenged is a Justice of the Peace, the Judge responsible shall be the Examining Magistrate of the corresponding district or, if the district has several Examining Courts, the Judge responsible shall be the Judge holding the post designated by virtue of a rota established by order of seniority.»

4. Article 68:

«The following shall decide on the incidents regarding the challenge:

a) The court stipulated in article 61 of the Organic Law on the Judiciary when the party challenged is the President of the High Court or the President of the Criminal Chamber or two or more Senior Judges of this Chamber.

b) The Criminal Chamber of the High Court when one of the Senior Judges who form this Chamber is challenged.

c) The Chamber referred to in article 77 of the Organic Law on the Judiciary when the President of the High Court of Justice is challenged, the President of the Civil and Criminal Chamber of the High Court or the President of the Provincial Court in the Autonomous Community or two or more Senior Judges of a Chamber or a Section or a Provincial Court.

d) The Chamber referred to in article 69 of the Organic Law on the Judiciary, when the President of the National Court, the President of the Criminal Bench or more than two Senior Judges of a Section of this Bench.

e) The Criminal Bench of the National Court, when one or two Senior Judges are challenged.

f) The Civil and Criminal Bench of the High Courts of Justice when one of its Senior judges is challenged.

g) When the party challenged is a Senior Judge of a Provincial Court, a plenary meeting of the Provincial Court or, if this is composed of two or more Sections, the Section the challenged part does not belong to or the Section which follows the one the party challenged belongs to, in numerical order.

h) When a Central Judge is challenged, the Section of the Criminal bench of the National Court corresponding by rota by the Governing Chamber of this court, excluding the Section responsible for dealing with the appeals issued by the Court where the party challenged holds a post.

i) When the party challenged is a Criminal Court Judge or an Examining Magistrate, the Provincial Court or, if this is composed of two or more sections, the Second Section.

j) When the party challenged is a Justice of the Peace, the Examining Magistrate of the incident challenged shall decide.»

5. Article 201:

«All the days and times of the year shall be working times for the examination of criminal cases, with no need for a special authorisation.»

6. Article 852:

«in any case, the appeal in cassation can be lodged on the grounds of an infringement of a constitutional precept.»

Thirteen. Reform of the Act on Civil Liability and Motor Vehicle insurance.

Repealed

Fourteen. Reform of the Act Regulating Contentious-Administrative jurisdiction.

1. A sub-paragraph is added to the fifth paragraph of article 8 of Act 29/1998, of July 13, Regulating the Contentious-Administrative Jurisdiction, with the following wording:

«In addition, the authorisation or judicial ratification of the measures which the health care authorities consider to be urgent and necessary for public health shall correspond to the Contentious-Administrative Courts and imply the privation or restriction of freedom or of another fundamental right.»

2. Paragraph 3 of article 87 of Act 29/1998, of July 13, Regulating the Contentious-Administrative Jurisdiction, shall be worded in the following terms:

“3. In order to be able to prepare the appeal in cassation in the cases stipulated in the foregoing paragraphs, it is necessary to previously lodge the appeal for reconsideration.»

Fifteen. Reform of the Act on Free Legal Assistance.

Number 6 of article 6 of Act 1/1996, of January 10, on Free Legal Assistance, is modified and shall be worded in the following terms:

«6. Free expert assistance in the proceedings under the responsibility of technical personnel ascribed to the jurisdictional organisms, or, in their absence, under the responsibility of civil servants, technical organisms or services dependent on the Public Administration.

Exceptionally and due to the non-existence of technicians in the matter in question, when it is not possible to have the expert assistance of experts dependent on jurisdictional organisms or on the Public Administration, if the Judge or the Court considers it to be appropriate, in a decision with the grounds, this assistance shall be provided under the responsibility of experts designated in accordance with what is laid down in procedural laws from among the corresponding private technicians.»

Sixteen. Transitional rules regarding extraordinary appeals[500].

1. As long as the High Courts of Justice are not granted jurisdiction to deal with extraordinary appeals for an infringement of procedure, such appeals shall proceed in accordance with the provisions set forth in article 477 regarding decisions which are subject to appeals in cassation due to the reasons laid down in Article 469.

The following rules shall be followed regarding lodging and decision-making regarding extraordinary appeals for infringement of procedure:

(i). The Civil Chamber of the Supreme Court shall hold jurisdiction to deal with extraordinary appeals for infringement of procedure. However, in cases in which jurisdiction for the appeal in cassation corresponds to the Civil and Criminal Chamber of the High Courts of Justice, the decisions appealed against may also be challenged due to the reasons set forth in Article 469 herein.

(ii). Extraordinary appeals for infringement of procedure may only be lodged without making appeals in cassation against decisions subject

500 Amended by Article 4.38 of Act 37/2011 of 10 October

to appeals in cassation among those referred to in items (i) and (ii), paragraph 2, Article 477 herein.

(iii). Where a litigant intends to appeal against a decision due to an infringement of procedure and in cassation, both appeals must be lodged in the same document. The time limits set forth in Articles 479 and 482 shall apply to the lodging of such appeals and the forwarding of the proceedings, respectively.

(iv). When an appeal for infringement of procedure and an appeal in cassation are lodged against the same decision, the two shall be conducted in the same proceedings. When the appeals are submitted by different litigants, a joinder shall be formed.

(v). If an appeal for infringement of procedure and an appeal in cassation are jointly conducted, the Chamber shall first examine whether the decision appealed against is susceptible to an appeal in cassation and, should this not be the case, it shall dismiss the appeal for infringement of procedure.

Where the appeal for an infringement of procedure has been solely grounded on item (iii), paragraph 2 of Article 477, the Chamber shall decide whether or not the appeal in cassation should be given leave to proceed. Should it be deemed inadmissible, the appeal for infringement of procedure shall be dismissed without further ado. Only if the appeal in cassation is given leave to proceed, shall a decision be taken on giving the appeal for infringement of procedure leave to proceed.

(vi). Once the appeals referred to in the foregoing rule have been given leave to proceed, the extraordinary appeal for infringement of procedure shall be decided in the first place, and only when it is dismissed, shall the appeal in cassation be examined and decided upon. In such case, the dismissal of the appeal for infringement of procedure and the decision on the appeal in cassation shall be contained in one judgment.

(vii). Where an appeal is lodged against a decision for an infringement of procedure pursuant to reason (ii), paragraph 1, Article 469, should the Chamber uphold the appeal for this reason, it shall issue another judgment taking into account, as appropriate, what was alleged as the grounds for the appeal in cassation. The Chamber shall likewise resolve if it is alleged and deemed that article 24 of the Constitution has been infringed and that the infringement only affects the judgment.

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(viii). No appeals may be lodged against decisions issued to resolve extraordinary appeals for infringement of procedure and appeals in cassation.

2. As long as the Civil and Criminal Chambers of the High Courts of Justice lack the jurisdiction to deal with extraordinary appeals for infringement of procedure, Articles 466, 468, 472, as well as Articles 488 to 493 and paragraph 4, Article 476 shall not apply. The provisions set forth in the last subparagraph of paragraph 2, Article 476 shall not apply in cases where extraordinary appeals have been upheld for infringements of procedure grounded on reason (ii) of paragraph 1, Article 469 or on infringements of Article 24 of the Constitution which only affect the decision against which the appeal has been lodged.

The references to the High Courts of Justice contained in Article 472 shall be construed to mean the Chambers holding jurisdiction to deal with appeals in cassation.

Seventeen. Transitory regime as regards abstention, challenging, and nullity of proceedings and the clarification and correction of decisions.

Until the Organic Act on the Judiciary is not reformed as regards the matters cited below, articles 101 to 119 of this Act shall not apply, as regards abstention and challenging of Judges, Senior Judges and Court Clerks, nor paragraph 2 of the eleventh final provision, nor paragraphs 1, 2, 3 and 4 of the twelfth final provision. Articles 225 to 230 and 214 of this Act on the nullity of proceedings and the clarification and correction of decisions, respectively, shall not apply until the aforementioned Organic Act is reformed.

Eighteen. Bill on voluntary jurisdiction.

Within the time limit of one year counting from the date of entry into force of this Act, the Government shall send a bill on voluntary jurisdiction to the Parliament.

Nineteen. Insolvency Bill. Within a period of six months counting from the date of entry into force of this Act, the government shall forward an Insolvency Bill to the Government.

Twenty. Bill on international judicial co-operation in civil matters.

Within a time limit of six months counting from the date of entry into force of this Act, the Government shall forward a bill on international co-operation as regards civil matters to the Parliament.

Twenty-one. Measures to facilitate the application of Regulations *EC in Spain No. 805/2004 of the European Parliament and of the Council, of April 21, 2004, whereby a European executive entitlement for unchallenged credits is established.[501]

1. The judicial certification of a European executive entitlement shall be adopted separately and through a procedural court order, in the form stipulated in Annex I of Regulation (EC) No. 805&2004.

Competence for certifying a European executive entitlement corresponds to the same court which issued the decision.

The procedure for the rectification of errors in a European Executive entitlement stipulated in article 10.1.a) of regulation (EC) No. 805/2004 shall be decided in the form stipulated in the first three paragraphs of article 267 of Organic Act 6/1985, of July 1, on the Judiciary.

The procedure for the revocation of the issue of a certificate of a European executive entitlement referred to in article 10.1.b) of Regulation (EC) No.805/2004 shall be processed and decided on in accordance with what is stipulated for the appeal for reversal regulated in Act 1&2000, of January 7, on Civil Procedure regardless of the jurisdictional order to which the court belongs.

The refusal to issue a European executive entitlement certificate shall be adopted separately and through a procedural court order, and these may be challenged through an appeal for reversal.

2. In order to certify the judicial decisions which approve or ratify transactions as European executive entitlements of judicial decisions, the foregoing paragraph shall be applied, and shall be put into effect in the manner stipulated in Annex II of Regulations (EC) No. 805/2004.

3. The authorising notary, or the person who legally substitutes the notary or succeeds him as regards his registry, is responsible for the issue of the certificate stipulated in Article 25.1 and in Annex III of Regulation (EC) No. 805/2004. A record shall be made of this despatch through a note in the original or in the policy, and the original shall be filed and a copy circulated.

The notary whose protocol contains the certified European executive entitlement shall be responsible for issuing the certificate concerning its

[501] Provision added by Act 19/2006, of June 5

rectification due to material errors and the revocation stipulated in article 10.1 of Regulation (EC) No. 805/2004, as well as what is derived from the lack or limitation of executive power, as established in article 6.2 and in Annex IV of the same regulations.

The enforcement deriving from a judicial decision is excepted, when its certification depends on paragraph 1 of this additional provision.

In any case, the rectification, revocation lack or limitation of enforcement must be recorded in the original or in the policy.

The refusal of the notary to issue the certificates required my be challenged by the person concerned or before the Department of Registries and Notary Offices through appeals of complaint stipulated in notary legislation. An appeal, in a single instance, may be lodged against the decision of this non-directive organism before the first instance judge of the capital city of the province where the notary has his address, and this shall be resolved through oral proceedings.

4. The certification referred to in Annex V of Regulation (EC) No. 805/2004 shall be issued by the administrative or jurisdictional organism which issued the decision.

5. The territorial competence for the enforcement of resolutions, judicial transactions and certified public documents such as European executive entitlements shall correspond to the Court of First Instance of the address of the defendant or the place of enforcement.

6. The Government shall adopt the rules required for the implementation of this additional provision.

Twenty-second. Measures to facilitate the application in Spain of (EC) Council Regulation No 2201/2003, of 27 November 2003, concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.[502]

1. Judicial certification concerning judicial decisions regarding matrimonial matters and parental responsibility, provided for in article 39 of (EC) Regulation No. 2201/2003, shall be issued by the Clerk of the Court separately and through a legal measure, by filling in the corresponding form included in Annexes I and II of that regulation.

[502] Amended by final provision 3.19 of Law 15/2015 of 2 July.

2. Judicial certification concerning judicial decisions on visiting rights, provided for in paragraph 1 of article 41 of (EC) Regulation No. 2201/2003, shall be issued separately by the Judge through a procedural court order, by filling in the form included in Annex III of that regulation.

3. Judicial certification concerning judicial decisions on the reinstatement of minors, provided for in paragraph 1 of article 42 of (EC) Regulation No. 2201/2003, shall be issued separately by the Judge through a procedural court order, by filling in the form included in Annex IV of that regulation.

4. The procedure for the rectification of errors in the judicial certification, provided for in article 43.1 of (EC) Regulation No. 2001/2003, shall be resolved in the manner established in the first three paragraphs of article 267 of Organic Law 6/1985, of 1 July, on the Judiciary. No appeal shall be possible against the resolution on the clarification or rectification of the judicial certification referred to in the previous two paragraphs.

5. Refusal to issue the certification referred to in paragraphs 1, 2 and 3 of this article will be adopted separately, by decree in the case of paragraph 1 and by order in the case of paragraphs 2 and 3, which may be challenged by a direct appeal for judicial review in the case of paragraph 1 and by appeal for reversal procedures in the case of paragraphs 2 and 3.

6. The transfer referred to in article 11.6 of (EC) Regulation No 2201/2003 will include a copy of the judicial decision not to reinstate in accordance with article 13 of The Hague Convention of 25 October 1980, and a copy of the original recording of the hearing on media that is suitable for recording and reproducing sound and vision, in addition to such documents as the court deems fit to attach in each case as proving compliance with the demands of articles 10 and 11 of the Regulation.

7. The claim referred to in article 11.7 of (EC) Regulation No 2201/2003, will be substantiated in accordance with the procedure provided for in the current Civil Procedure Act for proceedings which exclusively deal with the guardianship and custody of minor children, although court jurisdiction to hear this will be decided in accordance with the provisions for the proceedings regulating measures concerning the reinstatement of minors in cases of international abduction.

Twenty-third. Measures to facilitate the application of Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure[503].

1. The Court of First Instance shall hold sole and exclusive jurisdiction to deal with the European order for payment procedure, as governed by Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006.

Territorial jurisdiction shall be determined in accordance with the provisions set forth in Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and, for matters not contemplated therein, in accordance with Spanish procedural legislation.

2. The claim for a European order for payment shall be filed through standard form A which appears in Annex I of Regulation (EC) No. 1896/2006, without the need for attaching any documents, which shall not be admitted, should they exist.

3. Once a claim for a European order for payment has been brought, the court clerk may, by means of a procedural order, request the claimant to complete or rectify his claim in the manner laid down in standard form B of Annex II of Regulation (EC) No. 1896/2006, except where the claim is clearly groundless or inadmissible in accordance with Article 9 of said Regulation, in which case the judge shall issue a ruling by means of a court order.

4. Should the requirements stipulated in Articles 2, 3, 4, 6 and 7 of Regulation (EC) No. 1896/2006 be met for only a part of the claim, the court clerk shall notify the judge thereof, who shall send an order to the claimant asking him or her to accept or reject a European order for payment of a specified amount, as stipulated in standard form C of Annex III and in Article 10 of the aforementioned Regulation.

The claimant shall be informed in the proposal that if he fails to reply or rejects it, the claim for a European order for payment shall be fully dismissed, without prejudice to the possibility of bringing a claim for the debt through the appropriate proceedings in accordance with national or EU procedural rules.

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503 Amended by Article 1.7 of Act 4/2011 of 24 Mar

The claimant shall respond by returning the standard form C sent to him within the specified time limit. Should the proposal for a European order for partial payment be accepted, a claim for the remaining initial amount owed may be conducted through the corresponding proceedings in accordance with national or EU procedural rules.

5. The dismissal of a claim for a European order for payment shall be adopted by means of an order in accordance with Article 11. The claimant shall furthermore be informed of the reasons for the dismissal in the manner stipulated in standard form D of Annex IV of Regulation (EC) No. 1896/2006. No appeal may be lodged against such order.

6. The decision to issue a European order for payment shall be adopted by means of a procedural order within the maximum time limit of thirty days from the date the claim is filed and as stipulated in standard form E of Annex V of Regulation (EC) No. 1896/2006, pursuant to the provisions set forth in Article 12 of the aforementioned Regulation.

The thirty-day time limit shall not include the time spent by the claimant to complete, rectify or amend the claim.

7. Pursuant to Article 16 of Regulation (EC) No. 1896/2006, the defendant may use the standard form F of Annex VI of the Regulation to file a statement of opposition to the claim within the time limit of thirty days from the date notice of the order is served.

The defendant shall be informed in the notice of the order that the calculation of time limits shall be governed by Regulation 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits, holidays included.

8. Should a statement of opposition to the claim be filed within the time limit set forth above, the court clerk shall give notice to the claimant that he must continue the matter at issue through the corresponding proceedings as stipulated in the Spanish procedural rules in the appropriate Court of First Instance, Commercial Court or Social Affairs Court, unless the claimant has expressly requested the termination of the procedure, in which case the procedure would come to an end.

In the event that a statement of opposition is not filed or the debt is not paid in due time, the court clerk shall bring the proceedings to an end by declaring the European order for payment enforceable by means of a procedural order and in the manner stipulated in standard form G of Annex

VII of Regulation (EC) No. 1896/2006 pursuant to the provisions set forth in Article 18 of the aforementioned Regulation.

The European order for payment shall be served on the defendant and duly certified by the court clerk, either on the original or on a copy thereof, recording such circumstance.

9. The jurisdiction to review a European order for payment shall be held by the jurisdictional body which has issued it. The procedure to review a European order for payment due to the causes stipulated in Article 20.1 of Regulation (EC) No. 1896/2006 shall be conducted and resolved according to the rescission of definitive judgments at the request of litigants who have failed to appear in court, as stipulated in Article 501 and related articles herein.

The review set forth in Article 20.2 of Regulation (EC) No. 1896/2006 shall be conducted by means of the application for dismissal of judicial actions set forth in Article 241 of Organic Act 6/1985 of 1 July on the Judiciary Branch.

10. Any notices served by the court for European small claims procedures and European orders for payment shall be performed in keeping with the provisions herein, provided they involve the means of communication stipulated in Regulation (EC) No. 1896/2006, namely by computerised or electronic means and, in their absence, by any other means which also allow a record of service of notice on the defendant to be kept.

11. Any procedural matters not stipulated in Regulation (EC) No. 1896/2006 on the sending of a European order for payment shall be governed by the provisions contained herein for the small claims procedure.

12. The originals of the standard forms contained in the annexes of Regulation (EC) No. 1896/2006 shall form part of the proceedings for both cases in which Spain is the state issuing the European order for payment, as well as for cases in which Spain is state where it is enforced. The necessary certified copies shall be issued for the appropriate purposes.

13. The jurisdiction to enforce a European order for payment in Spain which has become enforceable shall lie with the Court of First Instance of the defendant's place of residence.

The court shall also be responsible for dismissing enforcement of European orders for payment at the defendant's request, and for limiting the scope of enforcement, as well as posting guarantees and stays of the enforcement

procedure as stipulated in Articles 22 and 23 of Regulation (EC) No. 1896/2006.

14. Without prejudice to the rules in Regulation (EC) No. 1896/2006, the enforcement in Spain of European orders of payment issued by other Member States shall be governed by the provisions set forth herein.

The processing of a refusal to enforce European orders for payment, as well as the limitation of enforcement, stays and the posting of guarantees shall be carried out in accordance with the provisions set forth in Articles 556 and the following herein, and shall be decided in proceedings that are not subject to appeal.

15. Where a European order for payment has to be enforced in Spain, the claimant shall submit to the court an official translation of the order into Spanish or into the official language of the Autonomous Region in whose territory the judicial actions are taking place, which shall be certified as stipulated in Article 21 of Regulation (EC) No. 1896/2006.

Twenty-Fourth. Measures to facilitate the application in Spain of Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.[504]

1. The Court of First Instance or the Commercial Court shall solely and exclusively hold jurisdiction to deal with the European small claims procedure in the first instance, as governed by Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007.

Territorial jurisdiction shall be determined in accordance with the provisions set forth in Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and, for matters not contemplated therein, in accordance with Spanish procedural legislation.

2. The European small claims procedure shall be brought and conducted in the manner stipulated in Regulation (EC) No. 861/2007 and in keeping with the standard forms contained in its annexes.

Any procedural matters not stipulated in Regulation (EC) No. 861/2007 shall be governed by the provisions for oral trials contained herein.

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[504] Added by Article 1.8 of Act 4/2011 of 24 March.

The calculation of time limits shall be governed by Regulation 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits, without excluding holidays.

3. The questions referred to in paragraphs 3 and 4, Article 4 of Regulation (EC) No. 861/2007 shall be decided upon through a procedural order of the court clerk, except where they involve the dismissal of the claim, in which case the judge shall rule on them through a court order. In both cases, the claimant shall have ten days in which to state whatever he may deem appropriate regarding said article.

4. Should the defendant allege the procedure's inappropriateness due to the non-monetary claim exceeding the value set forth in Article 2(1) of Regulation (EC) No. 861/2007, the judge shall have thirty days, counted from the date on which notice is served to the claimant so he can make his pleas, in which to decide whether the claim should be conducted through this procedure or must be transformed into the appropriate procedure in accordance with Spanish procedural rules. No appeals may be lodged against such order, without prejudice to adducing these pleas in the appeal against the judgment issued in another procedure.

If a counterclaim is filed by the defendant and it exceeds the limit set forth in Article 2(1) of Regulation No. 861/2007, the judge shall decide by means of an order whether the matter should be conducted through the corresponding proceedings in accordance with Spanish procedural rules.

5. Any notices served by the court arising from the processing of a European small claims procedure shall be performed in keeping with the provisions herein, providing they involve the means of communication stipulated in Regulation (EC) No. 861/2007, namely by computerised or electronic means and, in their absence, by any other means which also allow a record of service of notice on the defendant to be kept.

6. Appeals may be lodged in accordance with this Act against any judgment which brings the European small claims procedure to an end.

7. The jurisdiction to enforce a judgment in Spain issued in another Member State of the European Union which brings a European small claims procedure to an end shall lie with the Court of First Instance of the defendant's place of residence.

The court shall also be responsible for refusing to enforce the judgment upon the defendant's application, as well as limiting the scope of enforcement,

the posting of guarantees and stays of the enforcement procedure as stipulated in Articles 22 and 23 of Regulation (EC) No. 861/2007.

8. The enforcement procedures in Spain of judgments issued in other Member States of the European Union which bring a European small claims procedure to an end shall be governed by the provisions contained herein.

The processing of a refusal to enforce judgments, as well as the limitation of enforcement, stays or the posting of guarantees shall be carried out in accordance with the stipulations in Articles 556 and the following herein, which shall under no circumstances may be subject to review with regard to the grounds, and shall be resolved through a court order not subject to appeal.

9. Where a judgment issued by another Member State of the European Union which brings a European small claims procedure to an end has to enforced in Spain, the claimant shall file before the competent court an official translation of a certification of the judgment into Spanish or into the official language of the Autonomous Region in whose territory the judicial actions are taking place, which shall be certified in accordance with paragraph 2, Article 21 of Regulation (EC) No. 861/2007.

10. The originals of the standard forms contained in the Annexes of Regulation (EC) No. 861/2007 shall be included in the records in the cases in which a Spanish court rules on the small claim proceedings and in the cases in which Spain is the State that enforces them. The necessary certified copies shall be issued for the appropriate purposes.

Twenty-Fifth Final Provision. *Measures to facilitate the application in Spain of (EU) Council and Parliament Regulation No 1215/2012, of 12 December 2012, concerning jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.*[505]

1. Rules on recognition of decisions of a European Union member State under (EU) Regulation No 1215/2012.

(i) Judgment included with the scope of application of (EU) Regulation No 1215/2012 and passed by a European Union member State will be recognised in Spain without the need for recourse to any procedure.

(ii) If refusal of recognition is invoked as an incidental matter before a judicial body, such body will have jurisdiction to hear it, following the procedure provided for in articles 388 et seq of this act, with the

[505] Amended by final provision 2 of Law 29/2015 of 30 July.

effectiveness of such recognition being limited to the decision in the main proceedings giving rise to it, without this preventing recognition of the judgment being decided on as the main matter in separate proceedings.

(iii) A party wishing to invoke a judgment in Spain passed in another member State must submit the documents provided for in article 37 of (EU) Regulation No 1215/2012, and the judicial body or authority before which it is invoked may request the translations or transcriptions provided for in paragraph 2 of that article.

(iv) The judicial body or authority before which a judgment passed in another member State is invoked may stay the proceedings on the grounds provided for in article 38 of (EU) Regulation No 1215/2012.

(v) At the request of any interested party recognition of the judgment will be refused on any of the grounds in article 45 of (EU) Regulation No 1215/2012 and in accordance with the procedure provided for in paragraph 4 of this final provision. The relevant Court of First Instance will have jurisdiction in accordance with articles 50 and 51 of this act.

(vi) The procedure provided for in paragraph 4 of this provision must also be followed where the applicant requests a declaration that the foreign judgment does not incur in the grounds for refusal of recognition contained in article 45 of the Regulation. The relevant Court of First Instance will have jurisdiction in accordance with articles 50 and 51 of this act.

2. Rules on execution of enforceable judgments of a European Union member State under (EU) Regulation No 1215/2012.

(i) Judgments passed in a Member State which are enforceable within it will also have that status in Spain without the need for a declaration of enforceability and will be enforced under the same terms as if they had been passed in Spain, in accordance with the provisions of articles 39 to 44 of (EU) Regulation No 1215/2012 and this provision.

Nevertheless, and without prejudice to the provisions of the second paragraph of article 2.a), of (EU) Regulation No 1215/2012, if it is a judgment ordering a provisional or precautionary measure, it will only be enforce in Spain if the court passing the judgment has certified that it has jurisdiction as to the substance of the matter.

(ii) For the purposes of enforcing an enforceable judgment, the applicant will provide the documents provided for in article 42.1 of (EU) Regulation No 1215/2012 or those provided for in article 42.2 of the

same Regulation if dealing with a judgment which orders a provisional or precautionary measure, along with the translation of the certificate provided for in article 42.3 of such Regulation, if requested by the competent judicial body. A translation of the judgment may only be required from the applicant if the proceedings cannot continue without it.

(iii) Enforcement of enforceable judgments in a Member State will be carried out in Spain, in all cases, in accordance with the provisions of this act.

(iv) All enforceable judgments in a Member State will have the power to apply the precautionary measures provided for in this act, in accordance with the proceedings provided for in it.

3. No proof of notification of the certificate and translation of the foreign judgment.

(i) For the purposes of applying article 43.1 of (EU) Regulation No 1215/2012, prior to the first enforcement, where the enforcer cannot prove that the certificate provided for in article 53 and the foreign judgment have been notified to the person against whom the enforcement is sought, one or the other or, as appropriate, both must be notified to the latter along with the order dispatching the enforcement.

(ii) For the purposes of applying 43.2 of (EU) Regulation No 1215/2012, the person against whom enforcement is sought will have a period of five days from notification of the dispatch of the enforcement to request translation of the foreign judgment, if they have not been previously notified or if a translation of such judgment was not attached to the enforcement order.

(iii) Until such translation is delivered the period provided for in article 556.1 of this act will be stayed, as will the time limit for the response provided for in the following paragraph, so that enforcement may be challenged. The judge will dismiss the enforcement if, within a time limit of one month, the person seeking enforcement does not provide such a translation.

(iv) This section will not apply to enforcement of precautionary measures in a judgment or where a person seeking enforcement requests precautionary measures in accordance with paragraph 2, rule (iv) of this provision.

4. Rules on refusal to enforce judgments of a European Union member State under (EU) Regulation No 1215/2012.

Without prejudice to the grounds for challenging enforcement provided for in this act, at the request of the person against whom it is sought, enforcement of an enforceable judgment will be refused where one or several of the reasons for refusal of recognition included in article 45 of (EU) Regulation No 1215/2012 occur, via an oral hearing, with the following particulars:

(i) The Court of First Instance hearing the enforcement will have jurisdiction.

(ii) The claim must be lodged in accordance with the provisions of article 437 of this act, as appropriate, within a period of ten days from the date the defendant was notified of the dispatch of the enforcement, accompanied by the documents referred to in article 47.3 of (EU) Regulation No 1215/2012 and any other justifying their claim and, as appropriate, will contain a proposal for the means of evidence that the claimant is interested in being taken.

(iii) The claimant may apply for the measures provided for in article 44.1 of (EU) Regulation No 1215/2012. Also at the request of the claimant, in the case of article 44.2 of that Regulation, suspend the proceedings without further delay.

(iv) The Clerk of the Court will send the claim to the defendant so that they may respond within a time limit of 10 days. The response, with documents justifying the challenge attached, must propose all the means of proof which they will avail of. This writ, and the documents attached to it, will be sent to the claimant.

(v) Once the claim has been responded to or the relevant time limit has ended, the Clerk of the Court will summon the parties to the hearing, if they request this in their writs of claim and response. If, in their writs, they did not request a hearing to be held, or where the sole proposed evidence is documentary and these have already been provided in the proceedings without being contested, or ratification is not necessary in the case of expert reports, the judge will pass an order, without further proceedings.

(vi) An appeal may be lodged against such an order. An extraordinary appeal due to breach of procedure and an appeal for judicial review, as appropriate, may be lodged against the judgment passed in the second instance under the terms provided for in this act. The judicial body hearing either of these appeals may stay proceedings if an ordinary appeal is lodged against the judgment in the Member State of origin or if the time limit for lodging it has not yet expired, in accordance with article 51 of (EU) Regulation No 1215/2012. For these purposes,

where the judgment was passed in Ireland, Cyprus or the United Kingdom, any appeal available in any of these Member States of origin will be considered to be an ordinary appeal.

5. Issue of the certificate.

(i) For the purposes of application of article 53 of (EU) Regulation No 1215/2012, issue of the certificate provided for in that precept may be applied for by an addition to the claim requesting its issue at the same time as the judgment. In all cases, the issue will be made separately and by procedural court order, using the form referred to in that article.

Where court settlements are concerned, the certificate will be issued in the same way, for the purposes of article 60 of (EU) Regulation No 1215/2012, using the form provided for it.

(ii) In the case of enforceable public documents, the form referred to in article 60 of (EU) Regulation No 1215/2012 will be issued by the attesting notary, or whoever legally replaces or succeeds them on their document register. Such issue will be recorded in a marginal note on the original or policy into which a certified copy will be included with the original certificate being the document in circulation.

6. Adaptation.

For the purposes of application of article 54 of (EU) Regulation No 1215/2012, the authority passing judgment on the recognition or enforcement of a foreign judgment will adapt it under the terms provided for in that article. Appeals provided for under procedural legislation may be lodged against the decision on the adaptation of the foreign measure or order depending on the type of judgment and proceedings in question.

7. Enforceability of public documents.

(i) Public documents which are enforceable in the Member State of origin will have the same force in Spain with the need for a declaration of enforceability. Their enforcement may only be refused in the case that they are manifestly contrary to public interest. The public document submitted must meet the requirements needed for it to be considered authentic in the Member State of origin.

(ii) The person against whom enforcement is sought may apply for the enforcement to be refused in accordance with the procedure provided for in paragraph 4 of this provision.

(iii) Enforcement of public documents issued in a Member State will be carried out in Spain, in all cases, in accordance with the provisions of this act in application of the rules of this provision.

8. Enforceability of court settlements.

Court settlements which are enforceable in the Member State of origin will be enforced in Spain under the same terms provided for public document in the previous section.

Twenty-Sixth Final Provision. *Measures to facilitate the application in Spain of (EU) Regulation No 650/2012 of the European Parliament and Council, of 4 July 2012, relating to jurisdiction, applicable law and recognition and enforcement of decisions and acceptance and enforcement of public documents in matters of succession mortis causa and the creation of a European Certificate of Succession.*[506]

1. Rules on enforcement and recognition of decisions of a European Union Member State under (EU) Regulation No 650/2012.

(i) Any interested party may request the enforceability in Spain of a decision included within the scope of application of (EU) Regulation No 650/2012 and passed in a European Union Member State which is enforceable in that State, in accordance with the procedure provided for in paragraphs 2 to 7 of this provision.

(ii) Decisions passed in a European Union Member States will be recognised in Spain without the need to resort to any proceedings. Nevertheless, if there is a challenge, any interested party seeking recognition as principal in a decision of this type may apply, by the same proceedings provided for in section 1, that the decision be recognised

(ii) If refusal of recognition is sought as an incidental matter before a judicial body, such body will have jurisdiction to hear it, following the procedure provided for in articles 388 et seq of this act, with the effectiveness of such recognition being limited to the decision in the main proceedings giving rise to it, without this preventing recognition of the judgment being decided on as the main matter in separate proceedings.

[506] Added by final provision 2 of Law 29/2015 of 30 July.

At any event, the judicial body before which recognition is applied for may stay proceedings if such decision is the subject of an ordinary appeal in the Member State of origin.

2. Jurisdiction.

Jurisdiction to hear the enforcement proceedings will correspond to the Courts of First Instance of the domicile of the party before whom recognition or enforcement is requested, or the place of enforcement where the decision must have effect.

3. Free legal aid.

(i) Free legal aid in this procedure will be in line with the general rules applicable in Spain.

(ii) Without prejudice to the provisions of the preceding paragraph, applicants who have obtained the benefit of free legal aid, in whole or in part, or an exemption from costs and expenses in the Member State of origin, will benefit, in these proceedings, from the most favourable legal aid or the widest possible exemption in accordance with the general rules applicable in Spain.

4. Procedure for declaring a decision enforceable.

(i) Application for a declaration of enforceability will be submitted by a claim which will be in line with the requirements of article 437 of this act and must have the following documents attached:

a) A true copy of the decision.

b) The attestation provided for in article 46.3.b) of (EU) Regulation No 650/2012.

(ii) If the attestation provided for in the preceding paragraph is not submitted, the judicial body may set a time limit for its submission, accept an equivalent document or dispense with them if it considers that it has sufficient information available.

The judicial body may also request a translation of the documents carried out by a person qualified to do translations in one of the Member States.

(iii) The applicant is not under the obligation to have a postal address in Spain or to be represented by a procurator or assisted by a lawyer.

(iv) The applicant may request the adoption of provisional or precautionary measures in accordance with the provisions of this act. The declaration of enforceability will include authorisation to take any precautionary measures.

(v) Once the formalities provided for in rules (i) and (ii) have been fulfilled, the judge will immediately pass an order declaring the enforceability of the judgment, without it being sent to the party against whom the declaration is applied for and without examining the grounds for non-recognition provided for in article 40 of (EU) Regulation No 650/2012.

If the decision subject to the declaration contains various claims and cannot be declared enforceable for all of them, the order will declare enforceability for those which are appropriate.

(vi) Notification to the party against whom the declaration was applied for will have the documents referred to in rules (i) and (ii) of this paragraph attached.

5. Appeals against the decision on the application for the declaration of enforceability.

(i) The decision on the application for the declaration of enforceability may be appealed by any of the parties within a period of thirty calendar days. If the party against whom the declaration was applied for lives outside Spain, they will have a period of sixty calendar days to lodge the appeal. This time limit may not be extended on the grounds of the distance to Spain from their residence.

The Provincial Courts will have jurisdiction to hear the appeal.

(ii) During the period of appeal against the declaration of enforceability, and until this is decided upon, only precautionary measures may be taken over the assets of the party against who the enforcement was applied for.

(iii) An extraordinary appeal due to breach of procedure and an appeal for judicial review, as appropriate, may be lodged against the judgment passed in the second instance under the terms provided for in this act.

6. Procedure for appeals against the decision on the application for the declaration of enforceability.

The appeal provided for in rule (i) of the preceding paragraph will be held through appeal channels, including the rules on procedural representation and technical defence, with the following particulars:

a) Without prejudice to the allegation of breach of procedural rules and guarantees in the first instance, the appeal may only be based on one or some of the grounds provided for in article 40 of (EU) Regulation No 650/2012. The appellant will attach the documents which they deem necessary to justify their claim to the writ of appeal and, as appropriate, it will contain the proposal for the evidence to be heard in their interest.

b) The Clerk of the Court will send the writ of appeal and the documents attached to it to the other parties, summoning them, within twenty calendar days, to submit writs of challenge or objection to which such documents will be attached as they deem fir and, if appropriate will contain the proposal for the evidence to be heard in their interest.

c) In the event that the party against whom the declaration of enforceability is applied for does not appear, if they habitually reside outside Spain, the provisions of article 16 of (EU) Regulation No 650/2012 will apply.

7. Stay of appeals.

The court at which any of the appeals provided for in paragraph 5 are lodged will stay proceedings, at the request of the party against whom the declaration of enforceability is applied for, if such enforceability has been stayed in the Member State of origin as an appeal has been lodged.

8. Enforceability of public documents.

Public documents which are enforceable in the Member State of origin will, at the request of any of the interested parties, be declared as enforceable in Spain in accordance with the procedure regulated in paragraphs 2 to 7 of this final provision, and the certificate provided for in paragraph 4.(i).b) must be submitted in accordance with the provisions of article 60.2 of (EU) Regulation No 650/2012.

The court at which any of the appeals provided for in paragraph 16 of this provision are lodged will solely dismiss or revoke the declaration of enforceability of a public document where it is manifestly contrary to public policy.

9. Enforceability of court settlements.

Court settlements which are enforceable in the Member State of origin will, at the request of any of the interested parties, be declared as enforceable in Spain in accordance with the procedure regulated in paragraphs 2 to 7 of this final provision, and the certificate provided for in paragraph 4.(i). b) must be submitted in accordance with the provisions of article 61.2 of (EU) Regulation No 650/2012.

The court at which any of the appeals provided for in paragraph 5 of this provision are lodged will solely dismiss or revoke the declaration of enforceability of a court settlement where it is manifestly contrary to public policy.

10. Issue of the attestation of a decision, public document or court settlement for the purposes of their enforceability in another Member State.

(i) For the purposes of applying article 46.3 of the Regulation, issue of the attestation provided for in that Regulation will be the responsibility of the judicial body which passed the decision and will be done separately by a procedural court order using the form provided for in that article.

The same will be done, for the purposes of applying article 61 of the Regulation, when dealing with a court settlement, using the form provided for in that article to issue the attestation.

(ii) In the case of public documents, the attestation referred to in article 60 of the Regulation will be issued by the attesting notary, or whoever legally replaces or succeeds them on their document register, using the form provided for in that article. Such issue will be recorded in a marginal note on the original into which a certified copy will be included with the original certificate being the document in circulation. If it is not possible to include it with the original, a record will be made, by a note, of the later act that it should be incorporated into.

11. Issue of the European Certificate of Succession by the judicial body.

(i) The issue of the European certificate of succession by a judicial body will be made separately and by a procedural court order, in the form provided for in article 67 of (EU) Regulation No 650/2012, upon application which may be submitted using the form provided for in article 65.2 of that Regulation.

(ii) The same court substantiating, or that has substantiated, the succession will have jurisdiction to issue a European certificate of succession judicially. A certified copy of the certificate will be issued and given to the applicant.

(iii) Any person who has the right to apply for a certificate may appeal the decisions passed by the relevant judicial body.

12. Rectification, modification or withdrawal of the European certificate of succession issued by a judicial body.

(i) The procedure for rectification of a European certificate of succession, as provided for in article 71.1 of (EU) Regulation No 650/2012 shall be decided in the form provided for in paragraphs 1 to 4 of article 267 of the Judiciary Act 6/1985, of 1 July.

(ii) The procedure for modification or withdrawal of the issue of a European certificate of succession as referred to in article 71.1 of (EU) Regulation No 650/2012 will be processed and decided on, in sole instance, in accordance with the provisions for an appeal for reversal regulated in this act.

(iii) In all cases, in accordance with article 71.3 of (EU) Regulation No 650/2012, the court will notify, without delay, any rectification, modification or withdrawal of the certificate to all the persons who received certified copies of the certificate by virtue of article 70.1 of that Regulation.

13. Refusal by a judicial body to issue the European certificate of succession.

The refusal to issue a European certificate of succession shall be adopted separately through an order and this may be challenged, in sole instance, via the procedures for an appeal for reversal.

14. Issue of the European Certificate of Succession by a notary.

(i) On application, the notary who declared succession or any of its elements, or whoever legally replaces or succeeds them on their document register, has jurisdiction to issue the certificate provided for in article 62 of (EU) Regulation No 650/2012 and for this purpose must use the form referred to in article 67 of that Regulation. The application for the issue of a certificate of succession may be submitted using the form provided for in article 65.2 of that Regulation.

(ii) Such issue of a European certificate of succession, which will considered to be a public document in accordance with article 17 of the Notaries Act of 28 May 1862, will be recorded with a note on the original of the deed substantiating the act or transaction into which the

original certificate is incorporated, with a certified copy being given to the applicant.

If it is not possible to include it with the original, a record will be made, by a note, of the later act that the original certificate should be incorporated into.

15. Rectification, modification or withdrawal of the European certificate of succession issued by a notary.

(i) In the event that a material error is observed, rectification, modification or withdrawal of the European certificate of succession provided for in article 71.1 of (EU) Regulation No 650/2012 will be the responsibility of the notary on whose document register it is to be found.

(ii) In all cases, in accordance with article 71.3 of (EU) Regulation No 650/2012, the notary will notify, without delay, any rectification, modification or withdrawal of the certificate to all the persons who received certified copies of the certificate by virtue of article 70.1 of that Regulation.

16. Appeal.

(i) Decisions passed by a notary in relation to a European certificate of succession may be appealed by whoever has legitimate interest in accordance with articles 63.1 and 65 of (EU) Regulation No 650/2012.

(ii) Refusal by a notary to rectify, modify, withdraw or issue a European certificate of succession may be appealed by whoever has legitimate interest in accordance with articles 71 and 73 paragraph 1, letter a) of (EU) Regulation No 650/2012.

(iii) The appeal, in sole instance, against the decisions referred to in rules (i) and (ii) of this paragraph may be lodged directly with the judge of First Instance in the notary's official place of residence and will follow the procedures for verbal hearings.

17. Effects of the appeal.

(i) If, as a result of the appeal provided for in the preceding paragraph, it is proven that the European certificate of succession does not reflect the facts, the relevant judicial body will order the issuing notary to rectify, modify or withdraw it according to the judicial decision passed.

(ii) If, as a result of the appeal, it is proven that the refusal to issue the European certificate of succession was unjustified, the relevant judicial body will issue the certificate or ensure that the issuing notary examines

the case once again and makes a decision in accordance with the judicial decision passed.

(iii) In all cases, a note of the rectification, modification or withdrawal carried out must be recorded on the original of the deed substantiating the act or transaction and on the deed recording the issue of the European certificate of succession, as must the appeal lodged and the judicial decision passed on it.

Twenty-seventh Final Provision. *Standard forms or procedural instruments governed by European Union rules.*[507]

The Public Administrations holding responsibility for the provision of the material resources placed at the service of the Justice Administration shall make the standard procedural forms contained in European Union rules available to jurisdictional bodies and the general public.

Twenty-Eighth Final Provision. [508]

Without content

Twenty-Ninth Final Provision. *Entry into force.*[509]

This Act shall enter into force in the year of its publication in the "Official State Gazette" (Boletín Oficial del Estado).

[507] Renumbered by final provision 2 of Law 29/2015 of 30 July.
Its previous number was final provision 25.

[508] Renumbered by final provision 2 of Law 29/2015 of 30 July.
Its previous number was final provision 26.

[509] Renumbered by final provision 2 of Law 29/2015 of 30 July.
Its previous number was final provision 27.

§ 2 ROYAL DECREE OF 3 FEBRUARY 1881, ENACTING THE CIVIL PROCEDURE ACT

(Gazettes Nos 36 to 53, from 5 to 22 February 1881; correction of errors in Gazettes Nos 53 and 64, of 23 February and 5 March)

CIVIL PROCEDURE ACT [1]

BOOK I
PROVISIONS COMMON TO CONTENTIOUS AND NON-CONTENTIOUS PROCEEDINGS

TITLE I

ON APPEARANCE IN COURT

....

Section 1 - Litigants and Legal Representatives

....

Article 4.

The provisions of the previous article notwithstanding, interested parties may represent themselves, but they may not use anyone other than a qualified court representative in towns where there are such:

1. In conciliation proceedings

....

5. In non-contentious proceedings.

....

Article 10.

Litigants shall be directed by an attorney who is legally qualified to practise in the Court that hears the case. No applications may be filed without the attorney's signature.

With the sole exception of the following:

1. Conciliation proceedings.

....
....

3. Non-contentious proceedings for a particular amount not exceeding 400,000 pesetas, as well as those which seek the adoption of urgent measures or measures that must be commenced within a peremptory term [2]

....
....

Article 11.

Both court representatives and attorneys may, either as representatives or assistants of the interested parties, attend conciliation proceedings and the hearings referred to as exceptions under number 2 of the second paragraph of the previous article, when the parties spontaneously wish them to[3].

In these cases, as in all those in which their participation is not mandatory, if there is an order to pay costs in favour of an individual who has used a court representative or attorney, the fees of neither the former nor the latter shall be included, unless the usual residence of the party being represented and defended is different from the place in which the hearing is conducted [4].

....
....

Article 63.

To determine jurisdiction in cases other than those expressly stated in the preceding articles, the following rules shall be followed:

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....

16. In court procedures on fostering or adoption, or in those related to functions of protection entrusted to the relevant public bodies, the Judge in the place where the public entity has its domicile shall have jurisdiction and, failing that, the Judge in the place where the adopter resides. In the court procedures referred to in articles 179 and 180 of the Civil Code, the Judge in the place where the adopter resides shall have jurisdiction [5].

17. For the appointment and awarding of guardianships, trusteeships of property and exemptions from these responsibilities, jurisdiction shall be that of the Judge in the place of residence of the father or mother whose death occasioned the appointment, and, failing that, the Judge in the place of residence of the minor or individual with disabilities, or the Judge in any place where they have property [6].

18. In appointing and awarding guardianships, jurisdiction over lawsuits shall be that of the Judge in the place of residence of the minors or incapacitated persons, or of the Judge in the place where they may need to appear in court.

19. In proceedings in which actions are brought relating to the handling of the guardianship, in exemptions from these responsibilities after their exercise has commenced, and in proceedings to remove guardians that are considered suspect, jurisdiction shall be that of the Judge in the place where the guardianship was administered initially or the Judge in the minor's place of residence.

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22. In procedures to convert wills, codicils or memoranda executed verbally, as well as documents that have not been witnessed by a notary public, into public deeds, and in those which have to be carried out to open closed wills and codicils, the Judge in the place where the respective documents were executed shall have jurisdiction [7].

23. In authorisations to sell the property of minors or incapacitated persons, the Judge in the place where the property is located, or in the place of residence of the property owner, shall have jurisdiction [8].

24. In the procedures pursuant to the Book I, Title VIII of the Civil Code, on absence, jurisdiction shall be that of the Judge in the last place in Spanish territory in which the absentee resided for one year, and failing that, the Judge in the place where the absentee last resided [9].

25. In inquiries for legal exemptions and in authorisations to appear in court when required by law, the Judge in the place of residence of the individual requesting them shall have jurisdiction.

26. In inquiries for perpetuation of testimony, jurisdiction shall be that of the Judge in the place in which the events have occurred or the place in which, albeit accidentally, the witnesses have to testify.

When these inquiries refer to the current state of immovable objects, the Judge in the place where these are located shall have jurisdiction.

27. In surveying and apportioning *foros* (emphyteutic rents) and possession of property through non-contentious proceedings, the Judge in the place where the greater part of the property lies shall have jurisdiction.

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BOOK II

ON CONTENTIOUS PROCEEDINGS

TITLE II

ON CONCILIATION PROCEEDINGS [10]

Article 460.

Before bringing a civil action, an attempt may be made to reach a settlement before the appropriate Clerk of the Court of First Instance or Justice of the Peace.

Conciliation requests shall not be admitted where filed in relation to:

1. Cases in which the State, the Autonomous Regions and other public authorities, corporations or institutions of a similar nature have an interest [11].

2. Cases in which minors and incapacitated persons have an interest in the free administration of their property.

3. Civil liability cases against Judges and Magistrates [12].

4. In general, those actions that are brought on matters that do not admit of either settlement or compromise [13].

Articles 461 and 462.

Repealed by Act 34/1984 of 6 August.

Article 463.

The Courts of First Instance or Magistrates' Courts in the defendant's place of residence resides shall be the only courts authorised to conduct conciliation proceedings. If the defendant is a legal person, the competent courts shall likewise be those in the place where the defendant is domiciled, provided that there is a delegation, branch or office that is open to the public, without prejudice to the proper jurisdiction that results in the case of subsequent litigation[14].

In towns where there is more than one Judge of First Instance, jurisdiction shall be divided between them [15].

Article 464.

If conflicts of jurisdiction arise [16] in relation to the Court or there is a recusal [17] of the Court Clerk or the Justice of the Peace before whom the conciliation proceedings are held, the appearance is held to have been attempted without further proceedings [18].

Article 465.

The party attempting conciliation shall present their application in writing, indicating the identifying particulars and circumstances of the claimant and the defendant and the address or addresses where they can be summoned, and clearly and precisely specifying the claim. The claimant may equally file their application for conciliation by completing standard forms, which the relevant court shall make available to them for the purpose.

The application shall be submitted with as many copies as were requested and one more [19].

Article 466.

On the day that the application for conciliation is submitted, or on the next working day, the Clerk of the Court of First Instance or the Justice of the Peace shall order the parties to be summoned, indicating the date and time that they must appear, with the intention of it being confirmed as soon as possible.

At least twenty-four hours must elapse between the summons and the appearance, though this period may be reduced if there is just cause for doing so.

Under no circumstances may the appearance be postponed for longer than eight days following submission of the application for conciliation [20].

Article 467.

The Court Clerk shall notify the defendant or defendants of the summons, in accordance with the general provisions for notifications in the Civil Procedure Act. However, instead of a copy of the summons, the defendant or defendants shall be given one of the copies of the application that the claimant has submitted, on which the Clerk shall make a note of the Court of First Instance or Magistrates' Court at which the conciliation hearing is to be held and the date, time and place of the appearance. The summoned party shall sign the original application, which shall subsequently be filed, to acknowledge receipt of the copy; this may be done by a witness, at the request of the defendant, if they do not know how or are unable to sign [21].

Article 468.

Parties that are absent from the town in which the conciliation is requested shall be called by means of an official letter addressed to the Court of First Instance or Magistrates' Court in their place of residence.

The official letter shall be accompanied by the application or applications submitted by the claimant, which must be delivered to the defendants.

The Clerk of the Court of First Instance or Magistrates' Court of the town where the defendants reside shall ensure, under their responsibility, that the summons is carried out in the manner indicated in the preceding articles, on the first working day after that on which the official letter is received, and shall return the letter on the day of the summons, or on the following day at the latest. This letter shall be filed with the application under the terms indicated in the preceding article [22].

Article 469.

The claimants and defendants are obliged to appear on the date and at the time indicated. If any party does not do so and does not show just cause for not attending, the proceeding shall be deemed to have been attempted without effect, and the absentee shall be ordered to pay costs.

Article 470.

Repealed by Act 34/1984 of 6 August.

Article 471.

Conciliation proceedings shall be conducted in the following manner:

The claimant shall be begin by setting out their claim and stating the grounds on which they base it.

The defendant shall respond as they consider appropriate and may also produce any documents on which they base their objections.

After the response, the parties may challenge and counter-challenge, if they wish.

If there is no agreement between them, the Court Clerk or Justice of the Peace shall endeavour to mediate.

If they cannot achieve this, the hearing shall be deemed to have concluded without agreement.

If the parties do reach an agreement, the Court Clerk shall issue a decree or the Justice of the Peace shall issue an order approving it and also staying the proceedings [23].

Article 472.

The conciliation hearing shall be recorded succinctly in a book kept by the Court Clerk. This record shall be signed by all those attending; and, in the case of those that do not know how or are not able to sign, at their request, a witness shall do so on their behalf.

The written record stating the agreement reached at the conciliation hearing shall be signed by all those in attendance [24].

Article 473.

In the book referred to in the preceding article, it shall be officially recorded, undersigned by the Judge and those in attendance, that the conciliation hearing not attended by the defendants is deemed to have been attempted.

If there are several defendants and one of them attends, the hearing shall be held with that individual and it shall be deemed to have been attempted without effect with regard to the others [25].

Article 474.

The interested party or parties that request it shall be given certification of the official record of the conciliation hearing or, in the event that any or all of the defendants do not appear, of it having been deemed attempted without effect.

Article 475.

The costs occasioned by the conciliation proceedings shall be met by the party that requested it; those of certifications by those that request them.

Article 476.

For the purposes envisaged under Article 517. 2. 9. of the Civil Procedure Act, the judgment approving the agreement by the parties shall be duly implemented.

In terms of issues regarding the jurisdiction of the Court, the agreement between the parties at the conciliation hearing shall be put into effect by the same Court that conducted the hearing.

In all other cases, the Court that would have heard the claim shall have jurisdiction with regard to enforcement [26].

Article 477.

Annulment proceedings may be issued against what is agreed in the conciliation hearing on the same grounds as those that invalidate contracts.

The claim issuing such proceedings must be brought before the competent Judge within fifteen days following the hearing and it shall be conducted according to the declaratory judgment action corresponding to the amount involved [27].

Article 478.

Repealed by Act 34/1984 of 6 August.

Article 479.

The presentation and subsequent admission of the request for conciliation shall interrupt prescription, both acquisitive and extinctive, under the terms and with the effects laid down by law, from the moment of said presentation [28].

Article 480.

Justices of the Peace shall send half-yearly accounts of the conciliation hearings concluded to the Judges of First Instance of their respective judicial districts, to be filed there [29].

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TITLE VIII

ON ENFORCING JUDGMENTS

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Section 2. On judgments handed down by foreign courts [30]

Article 951.

In Spain, final judgments issued in foreign countries shall have the force established by the respective treaties [31].

Article 952.

If there are no special treaties with the nation in which they are issued, they shall have the same force as is given in that nation to final judgments handed down in Spain.

Article 953.

If the final judgment is issued by a nation in which there is no legal precedent for compliance with those handed down by Spanish courts, it shall have no force in Spain.

Article 954.

If they are not covered by any of the cases described in the preceding three articles, final judgments shall have force in Spain if they combine the following circumstances:

1. The final judgment must have been issued as a consequence of an action *in personam* being brought.

2. It must not have been entered in default.

3. The obligation that the judgment is intended to enforce must be lawful in Spain.

4. The judgment document must meet the necessary requirements in the nation in which it was issued to be considered authentic, as well as those required by Spanish law for it to be considered authentic in Spain.

Article 955.

Without prejudice to the provisions of the treaties and other international standards, jurisdiction to hear requests for the recognition and enforcement of foreign judgments and other judicial decisions, as well as foreign mediation agreements, falls to the Courts of First Instance in the place of residence or domicile of the party that is the subject of the request for recognition or enforcement, or the place of residence or domicile of the person to whom the effects of such requests refer; subsidiarily, territorial jurisdiction shall be determined by the place of enforcement or where such judgments and rulings must take effect.

In accordance with the criteria indicated in the preceding paragraph, it shall fall to the Commercial Courts to hear requests for the recognition and enforcement of foreign judgments and other judicial decisions that deal with matters within their jurisdiction.

Jurisdiction to recognise foreign arbitration awards or decisions falls, in accordance with the criteria set forth in the first paragraph of this article, to the civil and criminal divisions of the High Courts of Justice, without the possibility of a subsequent appeal against their decision. Jurisdiction for the enforcement of foreign arbitration awards or decisions falls to the Courts of First Instance, in accordance with the same criteria [32].

Article 956.

On translation of the final judgment as prescribed by law, after hearing, for a period of nine days, the party against whom it is directed and the Prosecutor, the Court shall declare whether or not the judgment must be complied with.

It shall be possible to appeal against this ruling [33].

Article 957.

To summon the party that must be heard, according to the preceding article, an attestation shall be issued to the Provincial Court in the territory where they reside.

The party must appear in court within a period of 30 days.

Once this period has elapsed, the Court shall continue to hear the proceedings, even if the summoned party has not appeared in Court.

Article 958.

If compliance with the judgment is rejected, it shall be returned to party that presented it.

If it is granted, the ruling shall be communicated by certification to the Provincial Court, so it can issue the relevant order to the Judge of First Instance of the judicial district in which the party sentenced in the judgment is domiciled, or of the district in which it must be enforced, so that the provisions of the judgment may be put into effect, using the means of enforcement established in the preceding section [34].

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TITLE IX

ON INTESTATE SUCCESSION

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Section 2. On the declaration of intestate successors [35]

Article 977.

Once the essential measures for securing the property have been taken, as set forth in the preceding section, and once, without prejudice to the further step of making of an inventory, separate proceedings shall begin to declare the intestate successors.

Article 978.

This declaration may also be made at the request of the interested parties, without these proceedings taking place beforehand, in those cases in which prevention of the intestate succession is neither necessary nor requested.

Article 979.

The declaration that certain individuals, if they are descendants, relatives in the ascending line or the spouse of the deceased, are the only intestate successors shall be obtained by means of an attested deed executed in accordance with notarial legislation by a notary qualified to practise in the place in which the deceased last resided in Spain and to whom the required testimonial and documentary evidence shall be given [36].

Article 980.

Other intestate successors may obtain the declaration by judicial means, duly providing evidence of the death of the person whose succession is at issue and their relationship with them and, with the certification of the General Register of Last Wills and Testaments and with the testimony of witnesses, that said person died without leaving a will and that they, or that they along with those that they designate, are the sole heirs.

To bring this claim they shall not need to use a court representative, but they shall need to use a lawyer when the value of the estate is greater than 400,000 pesetas.

This proceeding shall be carried out in the presence of the Public Prosecution Service, who shall subsequently be passed the file for six days to make their decision. If they find the justification to be incomplete, the interested parties shall be given a hearing to remedy the deficiencies.

When the Public Prosecution Service requests it or the Judge deems it necessary, the presented documents shall also be compared against their originals [37].

Article 981.

Once the formalities referred to in Article 980 and, where appropriate, Article 984 have been carried out by the Court Clerk, then the Judge, at the Clerk's behest, shall issue an order declaring the intestate successors, if they deem it appropriate, or declining to do so, reserving the right of those that claimed it to an ordinary hearing. This order shall be appealable for both review and suspension of execution [38].

Articles 982 and 983.

No content on account of Act 10/1992 of 30 April.

Article 984.

If, in the opinion of the Public Prosecution Service or the Judge, there are well-founded grounds to believe that there may be other relatives that are as close or closer, the Judge shall order notices to be put up in public places in the location of the court and in the towns where the deceased lived and died, announcing that they have died intestate, along with the names of those that are claiming the inheritance and their relationship to the deceased, and calling on those who believe themselves to be equally or more entitled to bring their claim before the Court within thirty days.

The Judge shall be able to extend this period for as long as they deem necessary, when, owing to where the deceased was from or to other circumstances, it is presumed that there could be relatives outside Spanish territory.

The public notices shall be placed in the "Official Gazette" of the province or Autonomous Region where the case is being handled. The public notices shall also be placed in one of the most widely read newspapers in the province, at the Judge's discretion.

They shall also be placed in the national Official State Gazette if, in the Judge’s opinion, the circumstances of the case require it [39].

Article 985 to 995.

No content on account of Act 10/1992 of 30 April.

Article 996.

Once the judicial decision declaring the successors is final, the involvement of the Public Prosecution Service in these cases shall cease and all the remaining matters, or matters that may be brought, shall be heard and conducted with the successor or successors that have been recognised by the decision.

Article 997.

Those who believe themselves to be entitled to the inheritance but who do not make their presence known to the Court during the public-notice period may do so before the announcement of the meeting, enclosing the documents supporting their right, though under no circumstances may the procedure be reversed.

Those that present themselves after the meeting has been announced shall be not be accepted; but their right to pursue the matter in ordinary proceedings against those who were declared the successors shall remain intact.

Article 998.

If no candidate for the inheritance comes forward, or if none of those that come forward is recognised to be entitled to it, a third call shall be issued through public notices, for a period of two months, in the manner indicated for the preceding calls, and containing a warning that the inheritance shall be considered unclaimed if no one requests it.

Article 999.

Once the period of the third call has elapsed without anyone coming forward, or if those that come forward claiming the inheritance are found not to be entitled to it, the inheritance shall be considered unclaimed and, at the behest of the Public Prosecution Service, it shall be disposed of as the law dictates [40].

Article 1000.

In the case of the preceding article, the assets, along with all books and papers in relation to them, shall be handed over to the State.

With regard to other papers, the Judge hearing the matter for the Public Prosecution Service, shall order those that could be of some interest to be kept, with the remainder being deemed useless. Those that must be kept shall be filed with the records of the intestacy proceedings, in a closed and sealed folder. A note of its contents shall be placed on the cover, signed by the Judge, the Public Prosecutor and the Court Clerk [41].

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TITLE XII

ON BANKRUPTCY PROCEEDINGS [42]

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TITLE XIII

ON THE ORDER OF PROCEDURE IN BANKRUPTCIES [43]

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BOOK III
NON-CONTENTIOUS PROCEEDINGS [44]
PART I

TITLE I

GENERAL PROVISIONS

Article 1811.

All those proceedings in which the involvement of a Judge is necessary, or requested without being insisted upon, and in which no matter is being brought between known and particular parties, shall be considered non-contentious proceedings.

Article 1812.

For non-contentious proceedings, all days and times count as working days, without exception.

Article 1813.

If the party bringing the proceedings asks for some other person to be heard, or some other person that has a legitimate interest in the proceedings requests it, or the Judge deems it appropriate, the hearing shall be granted, with the proceedings being highlighted in the office of the Court Clerk for a short time, to be decided by the Judge according to the circumstances of the case.

Article 1814.

In those cases in which a hearing is appropriate, the party that has brought the proceedings may also be heard, in the manner indicated in the preceding article.

Article 1815.

When the application filed affects the public interest, a hearing must be held with the Public Prosecution Service; and likewise when it refers to a person or thing the defence or protection of which is incumbent upon that body.

The Public Prosecution Service shall issue their decision in writing, for which purpose they shall be handed the file relating to the case.

Article 1816.

The documents presented and the justifications offered shall be accepted without the need for an application or any other formality.

Article 1817.

If the application filed is opposed by any party that has an interest in the matter, the proceedings shall become contentious, without altering the situation of the interested parties and whatever the object of the proceedings was at the time that they were issued, and they shall be subject to the procedures established for the relevant hearing, according to the amount involved [45].

Article 1818.

The Judge may change or amend issued rulings, without being subject to the terms and forms established for contentious proceedings.

Rulings that have definitive force and against which no appeal has been lodged are not included in this provision.

Article 1819.

The party that issued the proceedings shall always be allowed to appeal for both review and suspension of execution.

Article 1820.

Appeals lodged by those who have come to the proceedings, either called by the Judge or to oppose the application that provided the grounds for the case, shall only be admitted but without suspension of review of sentence.

Article 1821.

The appeals referred to in the preceding articles shall be conducted in line with the procedures established for those concerning incidental issues [46].

Article 1822.

No content on account of Act 10/1992 of 30 April.

Article 1823.

Non-contentious proceedings may not be joined with any contentious proceedings.

Article 1824.

The provisions contained in the preceding articles are applicable to non-contentious proceedings, special mention of which is made in the following titles, so long as they do not contradict what is set forth with regard to each kind of proceedings.

TITLE II [47]

ON FOSTERING AND ADOPTION

Section 1. Common rules

Article 1825.

The procedures regulated by this title shall all be carried out with the involvement of the Public Prosecution Service. Interested parties may act under the direction of an attorney.

Article 1826.

The Judge may order as many formalities as they deem appropriate to be carried out to ensure that the adoption, fosterage or termination thereof, are beneficial for the minor.

All procedures shall be carried out with the appropriate discretion, in particular to avoid the birth family learning the identity of the adoptive family.

The ruling that brings the proceedings to an end may only be appealed.

Article 1827.

In the event of opposition from an interested party, the provisions of Article 1817 shall not apply, except in the event that parents summoned only to attend the hearing appear claiming that their consent is necessary, in which case the proceedings shall be interrupted and the objection shall be resolved before the same Judge through fast-track proceedings [48].

Section 2. On fostering

Article 1828.

Fostering arrangements, when requiring a judicial decision, shall be brought by the Public Prosecution Service or by the relevant public entity [49].

Once consent has been obtained from the public entity, if it did not issue the proceedings, and from the persons receiving the minor and from the minor themselves, if they are twelve or more, the Judge shall hear the parents, if they have not been deprived of parental authority or had it suspended, or the guardian, if appropriate, and the minor, if they are twelve or more and have sufficient judgement. The Judge shall then issue an

order within a period of five days, deciding what is appropriate in the interests of the minor.

When it has not been possible to learn the domicile or whereabouts of the parents or guardians, or if these do not appear when summoned, the procedure shall be dispensed with and the Judge may approve the fosterage.

Proceedings for the judicial termination of the fosterage may be issued by operation of law or at the request of the minor, their legal representative, the public entity, the Public Prosecution Service, or the foster parents.

The Judge may approve the termination of the fosterage after hearing the public entity, the minor, their legal representative and the foster parents.

The order that approves the fostering arrangement or its termination shall be appealable but without suspension of review of sentence [50].

Section 3. On adoption

Article 1829.

In the adoption proposal submitted to the Judge by the public entity, the following shall be expressly stated:

a) The personal, family and social conditions and the resources of the chosen adopter or adopters [51] and their relations with the adoptee, detailing the reasons that justify the exclusion of other interested parties.

b) Where appropriate, the last known address of the spouse of the prospective adoptive parent, when they have to give their consent, and of the parents or guardians of the adoptee.

c) If both sides have formalised their consent before the public entity or in a notarised document. The consent may be revoked if the body is notified of the revocation before the proposal is presented to the Court.

In circumstances in which a prior proposal by the public entity is not required pursuant to the provisions of Article 176 of the Civil Code [52], the application submitted to the Judge by the adoptive parent shall expressly state the information contained in the preceding articles, insofar as they are applicable, and the argument and evidence to demonstrate that the

adoptee is subject to one or more the circumstances required under this Article.

The documents referred to in the preceding sections, reports from the collaborating body, if any, and as many reports and documents as are deemed appropriate, shall be submitted with the proposal.

Article 1830.

Consent to the adoption, which must be given by the spouse of the adoptive parent [53] and the parents of the adoptee, must either be formalised prior to the proposal, before the relevant entity, or in a public document, or by appearing before the Judge.

If, when the adoption proposal or application is presented, more than six months have passed since the consent was given, it shall need to be renewed before the Judge.

In those adoptions that require a prior proposal, at no point shall the consent of the parents be allowed to refer to specific adoptive parents.

Article 1831.

If the address of those that must be summoned does not appear in the adoption proposal or application, the Judge, in a period of no more than thirty days from when the document is presented, shall take the appropriate steps to find out the address.

In the summons to the parents, the circumstances shall be specified in which their simple attendance is sufficient. If the parents of the adoptee or the spouse of the adoptive parent do not respond to the first summons, they shall be summoned again after fifteen calendar days have elapsed from the date on which they should have attended Court.

Where learning the address or whereabouts of one or more of those that must be summoned is not possible, or they do not appear when summons, the procedure shall be dispensed with and the approved adoption shall be valid, with the right granted to the parents under Article 180 of the Civil Code remaining intact, where appropriate.

The order approving the adoption shall be appealable for both review and suspension of execution [54].

Article 1832.

The judicial procedures referred to in Articles 179 and 180 of the Civil Code shall be carried out according to the relevant ordinary declaratory action.

In the course of the procedure, the Judge shall take the appropriate measures to protect the person and property of adopted minor or incapacitated person.

TITLE III

ON THE APPOINTMENT OF GUARDIANS AND AWARD OF SUCH POSITIONS

Section 1. On the appointment of guardians [55]

Article 1833.

Once the appointment of the guardian has be authorised, done in testamentary disposition by the mother or father of the minor, the Judge shall order that the position be awarded without demanding sureties form the guardian, if they have been exempted from providing them.

Article 1834.

Any person that has made the minor their heir, leaving them a significant legacy or bequest, shall also be ordered to award the position of guardian to the person appointed; but the exemption from sureties, where appropriate, shall only be extended to the property that makes up the inheritance or legacy.

Article 1835.

The provisions of the two preceding articles notwithstanding, when well-founded reasons present themselves, which the Judge shall appraise in view of the particular circumstances of the case, the guardian appointed by the father or mother, or by some other person who has left the minor a significant bequest or legacy, may be required to file a surety bond.

Article 1836.

If no guardian has been appointed by the father, the mother or some other person who has made the minor their heir or left them a significant bequest,

the Judge shall designate the relative with whom this responsibility lies as prescribed by law.

Article 1837.

The designate person shall be awarded the position, subject to their acceptance and, where appropriate, the provision of a surety bond.

Article 1838.

In the absence of a relative to designate, of if there is no relative that meets the requirements prescribed by law, a record of which shall be made in the case file, the Judge shall name a trustworthy individual to perform the role.

Article 1839.

If there is any objection to the appointment, it shall be discussed and resolved through procedures for incidental matters, the party bringing the objection and the appointed guardian, with the Public Prosecution Service representing the interests of the minor.

While the hearing is being conducted, the custody of the minor and the administration of their estate shall be the responsibility of the guardian-elect, with such guarantees as appear sufficient to the Judge.

Article 1840.

If the chosen guardian objects to accepting the position, the Public Prosecution Service shall be heard; if the Public Prosecution Service agrees, the Judge shall appoint a new guardian.

If the Public Prosecution Service does not agree, the objection shall be discussed and resolved through procedures for incidental matters, observing the provisions of the preceding article, second paragraph.

Section 2. On the appointment of guardians for property [56]

Article 1841.

Upon approval of the appointment of the guardian, done in testamentary disposition by the minor's mother or father, or by some other unrelated person who has made the minor their heir or left them a significant bequest, the Judge shall approve the award of the position.

In the same ruling, the Judge shall order the filing or exemption from filing a surety bond, as the case may be, in the manner envisaged for guardians under Articles 1833, 1834 and 1835.

Article 1842.

The minor may object to the guardian appointed by any person that, being neither their father nor their mother, has made them their heir or left them a significant bequest.

If the minor lodges such an objection, the Judge shall give a hearing to the Public Prosecution Service in the manner stated under Article 1815; if the minor's objection is upheld, the Judge shall refuse to award the position to the individual in question, ordering the appointment of someone else, with an official warning that they shall be appointed by operation of law for the property that makes up the legacy or bequest.

Article 1843.

In the event that any question persists regarding any of the particulars indicated in the preceding articles, it shall be dealt with in procedures for incidental matters, with the minor being represented in the matter, in the first instance, by their guardian, if they have one; then, by the person that has been their guardian for legal proceedings; and, in the absence of either of these, by the Public Prosecutor of the Court.

Article 1844.

If no guardian has been appointed by the father, mother or person that has made the minor their heir or left them a significant bequest, the appointment shall be the responsibility of the minor themselves.

Article 1845.

The guardian must be appointed in the presence of the Judge, approved at the behest of the minor.

Article 1846.

If the appointed person does not fulfil the necessary conditions to perform the role, the Judge may refuse to award them the position, inviting the minor to appoint someone else in their place.

Section 3. On the appointment of exemplary guardians [57]

Article 1847.

The competent Judge, learning that someone has been declared, in a final judgment, to be incapable of administering their property, shall appoint an exemplary guardian for them, heading the file with testimony from the judgment.

Article 1848.

When incapacity as a result of dementia is not declared in a final judgment, it shall be summarily approved in a pre-hearing and an interim exemplary guardian shall be appointed, reserving any right that the parties may have in the relevant proceedings.

Article 1849.

The appointment of the exemplary guardian must go to the following individuals, in the order stated, if they have the necessary capacity to perform the role: father, wife, children, mother, grandparents and siblings of the incapacitated person.

Article 1850.

If there are various children or siblings, males shall be given preference over females and the eldest individuals shall be given preference over the youngest.

If there are both paternal and maternal grandparents, males shall also be given preference over females; and, in the event that they are of the same sex, those on the father's side shall be given preference over those on the mother's side.

Article 1851.

If there are none of the individuals stated in the preceding article, or if they are not fit for the guardianship, the Judge may appoint someone they

deem more suitable to perform the role, preferring, if they have the necessary capacity, that this be a relative or friend of the incapacitated person or of their parents.

Section 4. On the appointment of guardians *ad litem* [58]

Article 1852.

Individuals under 25 years old that are subject to parental authority shall be represented in court by the individuals that exercise that authority over them.

Those that are not subject to parental authority shall be represented by guardians [59].

Article 1853.

In the event that the minor subject to parental authority cannot be represented in court by their parents or guardian, a guardian shall be appointed for litigation purposes.

This shall also be the case if the minor or incapacitated person has no appointed guardian.

Article 1854.

The Judge is responsible for appointing the guardian ad litem for those under 14 and 12 years old, depending on their sex, and for legally incapacitated persons [60].

Article 1855.

The Judge shall appoint a close relative of the minor, if there is one, as the guardian ad litem; failing that, they shall appoint a person close to them or to their parents; and if there are no such individuals, or they do not have the necessary legal capacity, the Judge shall appoint someone they trust and who has the necessary aptitude.

Article 1856.

Individuals under 25 years old, but older than 14 and 12, depending on their respective sexes, may designate the person that they think advisable to be their guardian ad litem, provided that they have the necessary legal aptitude to represent them in court. The designation shall be carried out in the presence of the Judge.

Article 1857.

The Judge may refuse to award the guardianship if the person proposed by the minor does not have the necessary legal aptitude, in which case they shall invite the minor to propose someone else who does, with an official warning that if they do not do so, the guardian shall be appointed for them by operation of law.

Article 1858.

If any question persists regarding the award of the position, it shall be dealt with in procedures for incidental matters, with the Public Prosecution Service representing the minor.

Article 1859.

Once the guardian *ad litem* has been appointed, they shall be awarded the position in the ordinary way.

Article 1860.

The guardian ad litem shall cease to represent the minor or incapacitated person after a guardian of property or exemplary guardian has been appointed for them, or the incapacity has disappeared.

Section 5. On awarding the position of guardian

Article 1861.

Once the guardian of property or exemplary guardian has been appointed, if the value of the estate of the minor or incapacitated person is known, the Judge shall issue an order for the appointed guardian and the Public Prosecution Service to be heard regarding whether the guardian should have access to the income from the estate for maintenance or whether a specific amount should be indicated for that purpose.

If the value of the estate of the minor or incapacitated person is not known, it shall be sufficient, for the purposes of this article, for the appointed guardian to submit a simple inventory of the minor's estate, drawn up with a summons from the Public Prosecution Service and the attendance of two of the minor's closest relatives, one from each side; and if there are no such relatives, two well-established neighbours designated by the Judge [61].

Article 1862.

In view of what the guardian and the Public Prosecution Service set out, the Judge shall issue the appropriate order setting the maintenance allowance, if they opt for this means, in which case he shall also determine the percentage that has to be paid to the guardian for performing their role [62].

Article 1863.

The order referred to in the preceding article shall be enforced without prejudice to the recourse of appeal, which shall be admitted but without suspension of review of sentence.

Article 1864.

The provisions of the preceding articles shall only be applicable in the event that the person who has named the minor as their heir has not stipulated some other arrangement.

Article 1865.

If the appointed guardian has not be exempted from the obligation of filing a surety bond, they shall be summoned to provide the surety that the Judge deems necessary to guarantee the value of the moveable property and the income or product of the immovable property that make up the estate of the minor or incapacitated person [63].

Article 1866.

All kinds of surety shall be admissible, with the exception of personal surety.

Article 1867.

The surety shall be approved, subject to a hearing with the Public Prosecution Service.

Depending on the circumstances, the approval order shall stipulate:

1. Registration with the land registry of the real property comprising the surety, complying with the provisions of the Mortgages Act and its Regulations [64].

2. The deposit of the amounts or effects that make up the surety bond.

3. Any other formality that the Judge deems advisable for the surety bond to be effective and to preserve the property of the minor or incapacitated individual.

Article 1868.

Once all the agreed formalities have been carried out and the guardian has officially undertaken, in the presence of the Judge, to carry out the duties of his position, in accordance with the law, the Judge shall award the guardianship.

The order awarding the guardianship shall grant the guardian the power to represent the minor or incapacitated individual as prescribed by law, and to take care of their person and property; it shall also stipulate that the testimony corresponding to the order be placed on the court record.

Article 1869.

If the surety bond becomes insufficient, the Judge, on his own initiative or at the behest of any individual, may order it to be increased to the amount that, in their considered opinion, is necessary to ensure the administration is effective, with the formalities indicated in the preceding articles being observed.

Article 1870.

Once the guardianship has been awarded, the estate of the minor or incapacitated person shall be handed over to the guardian, by inventory, which, if it has not already been done, shall be added to the case file, at the foot of which shall appear the receipt of the expressly stated guardian.

The deeds and documents that refer to the property shall also be handed over with the same formality.

Article 1871.

Guardians *ad litem*, appointed in accordance with the provisions of this Act, shall be awarded the position once they have officially fulfilled the obligation stated under Article 1868, without requiring them to provide surety.

Article 1872.

If the guardian requests it, tenants, tenant farmers, lessees and other relevant individuals shall be requested to recognise them in their capacity as guardian.

Section 6. Provisions common to the preceding sections

Article 1873.

Any questions arising from the provisions set forth under this title, and which must be resolved by adversarial proceedings, in accordance with the procedure, shall be handled in the manner established for incidental issues [65].

Article 1874.

When the income from the minor's estate does not exceed the amount established under Article 15 of these rules, granting the right to obtain free justice administration, the preliminary guardianship pr1oceedings shall be done on *papel de pobres* (paper that does not require the levying of duties) and without charging fees [66].

For this purpose, the claim of poverty shall first be made, without prejudice to the fact that if the Judge thinks it advisable to make an urgent decision, they may of course do so, on their own initiative or at the behest of the minor's representative of or the Public Prosecution Service.

Article 1875.

No content on account of Act 10/1992 of 30 April.

Article 1876.

Within the first eight days of each year, the Judges shall examine the register, request the necessary reports and approve, as the case may be, the following [67]:

1. The replacement of guardians that have died.

2. That accounts are submitted by the guardians that have to do so.

3. The deposit, in the relevant establishment, of the surplus income or returns from the property of minors or incapacitated individuals.

4. The taxation of existing funds, which does not require a special application.

5. Other rulings needed to remedy or avoid abuses in the management of the guardianship.

Article 1877.

The Public Prosecution Service shall always be given a hearing regarding the accounts that the guardian submits in the discharge of their duties.

Article 1878.

If neither the minor nor the Public Prosecution Service raises any objection to the accounts, they shall be approved, but without prejudice to the minor's legal right to claim for any grievance that may have suffered in said accounts.

Article 1879.

Guardians, whether guardians of property or *ad litem*, may not be removed as a result of non-contentious proceedings, even when it is at the request of the minors.

For guardians to be dismissed after the position has been awarded, they must be heard and defeated in court.

TITLE IV

PROVISIONAL MEASURES IN CONNECTION WITH INDIVIDUALS [68]

[..
....]

Section 2. Measures relating to the return of minors in the event of their international abduction [69]

Article 1901.

In seeking the restitution of a minor that has been illegally removed or retained, where an international convention is applicable, the procedure shall be as envisaged in this section.

Article 1902.

The Judge of First Instance within whose judicial district the illegally removed or retained minor is found, shall have jurisdiction.

The procedure may be initiated by the person, institution or organisation that has been awarded custody of the minor, the Spanish central authority responsible for compliance with the obligations imposed by the relevant convention, or the person appointed by said authority to represent them.

Proceedings shall be carried out with the involvement of the Public Prosecution Service and the interested parties may act under the direction of an attorney.

The procedure shall have preferential status and must be completed within a period of six weeks from the date on which the restitution of the minor was requested before the Judge.

Article 1903.

At the request of whoever initiates the procedure or of the Public Prosecution Service, the Judge may adopt the provisional measure on the custody of the minor envisaged in the following section, and adopt any other security measures deemed appropriate.

Article 1904.

Once the proceedings have been issued by means of the application accompanied by the documentation required by the relevant international convention, the Judge shall issue an order, within 24 hours, in which the person who has abducted or is retaining the minor is summoned, with the due legal warnings, to appear before the court with the minor, on the date given, which shall be no more than three days from the date of the order, and declare:

a) That they agree to the voluntary restitution of the minor to the person, institution or organisation that has the right of custody; or, alternatively,

b) That they oppose restitution owing to the grounds established in the relevant convention, the text of which shall accompany the summons.

Article 1905.

Should the summoned individual fail to appear, the Judge shall then decide on the procedure for their default, summoning the interested parties and the Public Prosecution Service to appear in Court within a period of no more than five days from that date, and shall order the provisional measures that they deem appropriate in relation to the minor.

The applicant and the Public Prosecution Service shall be heard in the Court appearance and, where appropriate and separately, the minor shall be heard regarding their return. The Judge shall decide in a court order, within two days from the date of the appearance, whether or not the restitution of the minor is appropriate, taking into account the interests of the minor and the terms of the relevant convention.

Article 1906.

If the summoned individual appears and agrees to return the minor voluntarily, it shall be placed on record and the Judge shall issue an order concluding the proceedings and returning the minor to the person, institution or organisation that has the right of custody, as well as taking the appropriate steps as regards costs and expenses.

Article 1907.

If, at the first appearance, the summoned individual lodges an objection to the restitution of the minor on the grounds established in the relevant convention, the provisions of Article 1817 shall not apply and the objection shall be resolved before the same Judge according to the procedures for fast-track proceedings. To this end:

a) All interested parties and the Public Prosecution Service shall be called to appear at the same time, to set out what they consider legitimate and, where appropriate, to give evidence, at a subsequent appearance, which shall be held in accordance with the provisions of Article 730 and those concordant with it, within a non-extendable period of five days from the first appearance [70].

Furthermore, after the first appearance, where appropriate, the Judge shall hear the minor separately with regard to their return and may obtain such reports as he deems relevant.

Article 1908.

Once the appearance has taken place and, where appropriate, the relevant evidence has been heard within the six days that follow, the Judge shall issue an order within the three following days, deciding, in the interests of the minor and under the terms of the convention, if their return is appropriate or not. Recourse to appeal against this order shall only be possible without suspension of review of sentence. Appeals must be resolved within a non-extendable period of twenty days.

Article 1909.

If the Judge rules on the return of the minor, the order shall direct the person that removed or retained the minor to pay the costs of the proceedings, as well as any expenses that the applicant has incurred, including travel expenses and those occasioned by returning the minor to their usual country of residence prior to abduction. This shall be carried out according to the procedures envisaged under Article 928 and those concordant with it [71].

In other cases, the costs of the procedure shall be declared by operation of law.

Section 3. Provisional measures in connection with children [72]

Article 1910.

To order provisional measures in the cases referred to under Article 1880,2 number 4, the following shall be required:

1. It must be requested in writing or verbally by the interested party, or if they cannot do so, by some other person on their behalf, before the Judge of First Instance in the place where the applicant is domiciled. This must always be confirmed in the Judge's presence, provided that they have the capacity to do so.

2. The Judge must establish the certainty of the facts, either with the information provided by the interested party, or with the information he himself has been able to obtain [73].

Article 1911.

The provisions of the preceding article notwithstanding, Judges may order a provisional measure on custody of the minor without the interested party having filed an application, when they are satisfied that it is impossible for the interested party to do so [74].

Article 1912.

If the Judge deems it appropriate to adopt the provisional measure, they shall designate the person (or institution) that must take custody of the minor [75].

Article 1913.

The handover of clothes and bedding shall be done according to the provisions of Article 1907 [76].

Article 1914.

Once the provisional measure has been established, the court shall appoint a guardian *ad litem* [77].

Article 1915.

Once appointed, the guardian shall be handed the record of the proceedings, so that at the relevant hearing they can set out and ask for whatever is required in defence of their ward [78].

Article 1916.

In the same order in which custody of an individual is decided in accordance with the provisions of this section, the Judge shall indicate the amount that they reasonably think necessary for provisional maintenance, taking into account the capital of the individual or of the party that has to provide maintenance, which shall be paid monthly in advance.

Claims that may be lodged regarding provisional maintenance, once these measures have been adopted and while they are in effect, shall be dealt with in the manner indicated in Title XVIII, Book II of this Act [79].

Article 1917.

To secure the payment of the maintenance, the Judge may approve the measures referred to under Article 1892, at all times [80].

Article 1918.

In the third and fourth cases of Article 1880, maintenance shall be paid to the person responsible for the custody of the children [81].

TITLE V

ON SUPPLEMENTING THE CONSENT OF PARENTS, GRANDPARENTS OR GUARDIANS TO ENTER INTO MARRIAGE

Articles 1919 *to 1942.*

No content on account of Act 10/1992 of 30 April.

TITLE VI

ON CONVERTING A WILL OR CODICIL MADE VERBALLY INTO A PUBLIC DEED

Article 1943.

At the behest of a legitimate party, a will made verbally may be converted into a public deed [82].

Article 1944.

For the purposes of the preceding article, a legitimate party is understood to be:

1. Any party having an interest in the will.

2. Any party that has been left anything by the testator in the will.

3. Any party that may represent any of parties that fall into above categories, without power of attorney, in accordance with the law.

Article 1945.

If when the verbal will was executed, a note was made of the testator's provisions, said note or memorandum shall be submitted with the application; the names of the witnesses that must be examined shall be expressly stated, along with that of the notary, if he attended the making of the will and for whatever reason did not convert it into a public deed; the legitimate interest of the party issuing the proceedings shall also be stated.

Article 1946.

The Judge shall issue a ruling directing the witnesses and, where appropriate, the notary to appear on the date and at the time indicated,

officially warning them that they shall be fined if they fail to attend and of any other sanctions for disobedience.

Article 1947.

If any of those due for examination do not attend the hearing, without giving just cause for failing to do so, the Judge shall adjourn it; he shall indicate the date and time on which it has to take place; he shall order the fine to be levied and shall warn the disobedient party of more severe sanctions in the event of a repeat offence.

Article 1948.

When a witness does not appear on account of being ill or prevented from doing so, the interested party may ask the Court to relocate to the home of the ill person to receive their statement, immediately after the other witnesses have been examined.

When a witness is absent from the judicial district, they may request to be examined by means of a letter of request addressed to the Judge of the town in which they currently reside.

Article 1949.

The witnesses and the notary, if any, shall be examined separately and in such a way that they have no knowledge of what has been stated by those that precede them.The Court Clerk shall attest that he knows the witnesses.

If the Clerk does not know them, he shall require the presentation of two witnesses that do know them.

Article 1950.

If it is not publicly known, the capacity of the notary, if present when the will was made, must also be proved.

Article 1951.

It shall be the responsibility of the Judge to ensure that the age of the witnesses and their residence when the will was made are expressly stated in their statements.

Article 1952.

When the will of the testator has been recorded in some private certificate or document, this shall be made clear to the witnesses so that they can say whether it is the same as that which was read to them and whether they recognise their respective signatures, if they provided them.

Article 1953.

If it is clear and conclusive from the witnesses' statements:

1. That the testator had the serious and deliberate intention of making their last will and testament.

2. That the witnesses and, where appropriate, the notary simultaneously heard all the provisions intended to be taken as the last will and testament, from the mouth of the testator, either stated verbally or by reading a note or memorandum containing them, or giving it to another to read.

3. That there were as many witnesses as the law requires, according to the circumstances of the place and the time at which the will was made, and that they satisfy the requirements for being witnesses to a will.

The Judge shall declare the outcome of these statements to be a will, without prejudice to any third party, and shall order the file to be formally registered.

Article 1954.

When there are discrepancies in the witnesses' statements, the Judge shall approve the content on which they all agree as a will.

If the last will and testament has been recorded in a certificate that was presented or written at the time the will was made, the outcome thereof shall be considered a will, provided that all the witnesses agree that it is the same document that was written or presented at the time, even if some of them do not remember certain provisions.

Article 1955.

It shall be formally registered with the notary of the district's administrative centre; and if there is more than one, with the one that the Judge designates.

TITLE VII

ON THE OPENING OF CLOSED WILLS AND THE FORMAL REGISTRATION OF TESTAMENTARY MEMORANDA

Article 1956.

Any party that has a closed will in their power must present it to the appropriate Judge, as soon as they learn of the death of the testator [83].

Article 1957.

Any party that is aware of the will having been made and being in the power of a third party may also request that it be presented.

If the individual making the request is not a family member of the deceased, they shall swear that they are not acting out of malice, but rather believing that they may have an interest in the will for any reason.

Article 1958.

The Court Clerk shall examine the file containing the will there and then and shall attach an official record of its condition, meticulously describing the grounds, if there are any, for suspecting that it has been opened or altered, amended or scratched in any way.

This record shall also be signed by the individual presenting the will, or, if they do not know how to or do not want to, first by a witness of their choosing and second by two witnesses chosen by the Court Clerk [84].

Article 1959.

Immediately afterwards, the Court Clerk shall give an account to the Judge, who, once the death of the testator has been proved, shall approve the summons of the authorising notary and the attesting witnesses for the following day, or sooner if possible.

Article 1960.

When the witnesses appear, they shall be shown the sealed file to examine it and declare under oath whether they recognise the legitimacy of the signature and seal that appear on it with their name, and whether they find it in the same condition as when they signed it.

If any of the witnesses does not know how to sign and another did so on their behalf, both shall be examined, with the individual that signed being required to recognise their signature.

Article 1961.

The witnesses shall be examined in sequence, and asked about their age on the day the will was made [85].

Article 1962.

If one or more of the witnesses has died or is absent, the others shall be asked whether they saw the absentee place their signature and seal on the will, and two other individuals that are familiar with the signature and seal of the deceased or absent witness shall be asked about their similarity to those on the file.

If the latter cannot take place, the witness shall be corroborated in the ordinary way [86].

Article 1963.

In the event that the notary that authorised the execution of the will is deceased, the Judge, assisted by two expert witnesses appointed exclusively at his behest, shall compare the signature, stamp and seal on the file or folder with those appearing on the copy that should exist in the special register of closed wills, to which end the Judge shall travel to the place where it is located or, if that is not possible, shall delegate the appropriate person to do so.

If the execution took place prior to the Notaries Act, the comparison shall be made with other signatures and stamps known beyond any doubt to be of the same notary.

Article 1964.

When the notary and all the witnesses have died, proceedings shall be opened on the circumstances, on when they died, the public opinion of them and whether they were in the town when the will was made [87].

Article 1965.

Relatives of the testator who may be presumed to have some interest, may attend the opening of the file and reading of the will if they consider it

expedient, without being allowed to object to the proceedings for any reason, even if they present another, subsequent will.

Article 1966.

Once the indicated formalities have been carried out and, as a result of them, the identity of the folder has been established and that the will was executed with respect for the procedures prescribed by law, the Judge shall open it and read to himself the testamentary disposition that it contains.

The opening shall be adjourned when, in the same folder or in an open codicil, the testator has directed that it must not be opened until a certain time, in which case the Judge shall adjourn the proceedings and order the formalities carried out and the folder to be kept on file at court, until the time designated by the testator.

Article 1967.

Once the reading of the will and codicil has been verified by the Judge, they shall hand it to the Court Clerk to read aloud, unless in contains an instruction from the testator that one or more of the clauses must be withheld or kept secret until a certain time, in which case the reading shall be limited to the remaining clauses of the testamentary disposition [88].

Article 1968.

Once the will has been read, the Judge shall issue an order for the will to be formally registered, with all the original formalities of the opening, in the records of the notary that authorised its execution and for a copy of said order to be given to the individual that presented it, as a receipt, if they request it.

Article 1969.

Any party that has a testamentary memorandum in their possession must present it to the competent Judge as soon as they learn of the death of the testator, requesting that it be formally registered and stating the reason for it being in their possession. Along with the text, they shall present a document to provide evidence of the death and shall produce an irrefutable copy of the will, in which its existence and the marks that it must bear to be considered legitimate shall be indicated.

If these documents are not presented, the Judge shall order them to be added to the court records [89].

Article 1970.

The Court Clerk shall draw up a sufficiently detailed record of the condition of the memorandum and of the circumstances by which it may be deemed to be identical to that indicated in the will.

The party presenting the memorandum shall sign this record; and if they do not know how or do not want to sign, it shall be done according to the provisions of Article 1958, second paragraph.

The Court Clerk shall immediately draw up attestation of the clause or clauses of the presented will that refer to the memorandum, returning it to the presenting party, who shall sign to show that they have received it.

Article 1971.

The Judge shall order the reading of the memorandum and the comparison of its marks with those expressly stated in the will, setting the date and time that these formalities must take place. Parties with an interest in the will may attend the reading, to which end they shall be informed of the date and time set, with the fair warning that their failure to attend shall not prevent the act from taking place, nor shall it be a reason for declaring it invalid, whatever the justification is given.

Article 1972.

If the memorandum is contained in a sealed file, the Judge shall open it and read it in secret; and if they do not find a stipulation by the testator that orders certain clauses not to be revealed until a given date or time, they shall hand it to the Court Clerk to read aloud.

If it does contain such a stipulation, the clauses that it refers to shall not be read out and it shall not be possible to give attestation of them, with the memorandum being sealed and filed until the date or time specified by the testator.

Article 1973.

Immediately afterwards, an inquiry and examination shall be carried out regarding the marks required in the will for the memorandum to be considered legitimate, as well as those contained in the memorandum.

An appropriate record shall be made of this formality, which the Judge and the other interested parties in attendance shall sign.

Article 1974.

Should the proceedings establish that the memorandum meets the conditions required by the testator to be considered authentic, an order shall be issued for it to be formally registered, without prejudice to the right of the interested parties to challenge it in the relevant proceedings.

Article 1975.

Formal registration shall take place in the records of the notary that certified the will, together with the latter. If this arrangement is not possible, the notary shall place a marginal note in the record of the will, stating the existence of the memorandum, along with the book and page where it is registered.

Article 1976.

When the testator refers to a memorandum produced in their own handwriting, or only signed by them, without mentioning any other special mark to identify it, if it is presented accompanied by the documents described under Article 1969, the Judge shall order that it must be recognised by three witnesses that know the testator's handwriting perfectly and may also designate relatives that have not been favoured by the memorandum to do so.

The witnesses or relatives shall declare, under oath, that they harbour no reasonable doubt that the document in question was written by the testator and, if it is only signed, that the signature is theirs [90].

Article 1977.

Moreover, if the Judge thinks it advisable, assisted by two expert witnesses, they may compare the handwriting, signature and seal of the memorandum with others that are irrefutably those of the testator that appear on any public document or in any registry office.

Article 1978.

If the memorandum is established to be authentic, the Judge shall order it to be formally registered in the manner set forth under Article 1974.

Article 1979.

When the memorandum is presented before the conclusion of formalities to convert a will made verbally into a deed, or to open the will if it is sealed,

the memorandum shall be included in said proceedings and the stated measures for formal registration shall be carried out [91].

TITLE VIII

ON INQUIRIES FOR LEGAL EXEMPTIONS

Article 1980.

Inquiries seeking legal exemption may not be received, except pursuant to a royal order passed to the Judge by their immediate superior [92].

Article 1981.

Once the royal order has been received by the Court, it shall be carried out, with the person that obtained it being ordered to provide the relevant information on the facts stated in their application or about those indicated in the royal order.

Article 1982.

If, during the proceedings, the interested party asks for the justification to be extended to include other facts that they did not know when they signed the application, or that they think are of interest, the Judge may grant it, if he deems them significant.

Article 1983.

These inquiries shall be received in the presence of the Public Prosecution Service. Those individuals that have a known and legitimate interest in the matter shall also be summoned, provided that the royal order requires it or the appellant requests it [93].

Article 1984.

The Court Clerk shall certify that he knows the witnesses. If the Clerk does not know them, two other witnesses shall be required to answer for knowing each of them, and to sign the statements of those to whom this applies.

Article 1985.

If it has been ordered that the inquiry be carried out in the presence of some person, they shall be heard, if summoned, to request the handover of the file.

Witnesses and documents that may be presented regarding the facts that are the subject of the inquiry shall also be admitted.

Article 1986.

When a summoned party does not appear, once the designated period of time has elapsed, the proceedings shall continue with only the involvement of the Public Prosecution Service, unless the summoned party is a minor or incapacitated person, in which case it is essential for them to be heard, and therefore their lawful representative must be compelled to propose, within the period of time indicated by the Judge, whatever suits the interests of the minor or incapacitated person.

Article 1987.

Should any party appear during an ordered proceeding without being summoned, objecting to the exemption for which the proceeding is being received, they shall be heard if they have a known and legitimate interest in opposing it.

Article 1988.

The attendance of the Public Prosecution Service shall be essential for comparing and making a certified true copy of the documents.

If it is only necessary to make a certified true copy of part of the document, or the copy that must be compared is incomplete, the Public Prosecution Service shall advise, in the same proceedings, whether or not there is any difference in the omitted part that alters or contradicts the attested part.

Article 1989.

Once the formalities agreed at the request of one of the parties, or ordered in the royal order, have been carried out, the file shall be handed over to the Public Prosecution Service to give their opinion in writing.

Article 1990.

If the Public Prosecution Service finds that it has not been proved that the witnesses are known in the manner stated under Article 1984, or any other notable defect, they shall ask for it to be rectified. They may also ask for the execution of the formalities that they deem necessary for the correct evaluation of the facts on which the request for grace is based, and for the

summons of individuals having a legitimate interest in objecting to it being granted, if these have not been duly summoned, but should have been in accordance with the provisions of Article 1983.

Article 1991.

If the Public Prosecution Service finds the preliminary proceedings to be complete, they shall issue an opinion on the merits of the case.

Article 1992.

Once the Public Prosecution Service has been heard, the Judge shall issue his opinion, which he shall send with the case file to the higher court in the customary manner.

Article 1993.

The Governing Chamber shall hear the Public Prosecution Service and, once any defects in the proceedings have been rectified, shall approve the report that must be referred to the Government, which shall be sent the original case file with a certified copy of the Public Prosecution Service's opinion. If any Magistrate disagrees with the majority, he may issue his opinion separately, which shall be included in the enquiry.

TITLE IX

ON AUTHORISATION TO APPEAR IN COURT [94]

Article 1994.

Non-emancipated children shall require authorisation to appear in court, when not permitted to do so by law or by the father or mother who has parental authority.

Article 1995.

The authorisation may only be granted when the non-emancipated minor, either if they are the defendant or if they could be greatly harmed by not bringing the action, finds themselves in one of the following situations:

1. The parents are absent, their whereabouts unknown, without there being sufficient reason to believe that they shall return soon.

2. The father and mother refuse to represent their child in court.

Article 1996.

In these proceedings the Public Prosecution Service shall always be heard.

Article 1997.

The order granting the authorisation to a non-emancipated child shall also require them to be provided with a guardian *ad litem*.

Article 1998.

The child shall not need authorisation to litigate with their father or mother.

Article 1999.

All the issues raised by the authorisation of non-emancipated minors shall be dealt with in procedures for incidental matters.

Article 2000.

Until a final judgment is handed down, the authorisation shall be effective for all purposes.

Article 2001.

The effects of the authorisation shall cease as soon as the father or mother offer to appear in court on behalf of the child.

TITLE X

ON INQUIRIES FOR PERPETUATION OF TESTIMONY

Article 2002.

Judges shall allow and hear proceedings that are brought before them, as long as they do not refer to facts that may result in injury to a particular individual [95].

Article 2003.

No inquiry of this kind shall be allowed without first hearing the Public Prosecution Service.

Article 2004.

Once the inquiry has been admitted, the witnesses produced by the appellant shall be examined, in the presence of the Public Prosecution Service, pursuant to the facts stated in their application.

The Court Clerk shall testify that he knows the witnesses.

If the Clerk does not know them, he shall require the presentation of two witnesses that do know them.

Article 2005.

Once the inquiry has been carried out, the file shall be passed to the Public Prosecution Service. If the Public Prosecution Service finds that mistakes have been made or that the witnesses do not have the qualities required by law or that their statements could result in injury to a particular individual, they shall propose the measures they deem appropriate in each of these cases.

Article 2006.

If the Public Prosecution Service requests that a legal measure be carried out and the Judge considers it appropriate, he shall issue an order that it be implemented, and once completed shall return the record of the proceedings to the Public Prosecution Service. If the Public Prosecution Service believes that the inquiry could result in injury to a particular individual and the Judge finds their opinion to be well-founded, he shall issue an order refusing its approval.

Article 2007.

If the Public Prosecution Service approves the inquiry and the Judge finds it appropriate, he shall issue an order approving it, as appropriate under the law. Additionally, if it refers to facts of recognised importance, he shall direct that it be formally registered in the records of the Court Clerk, if the latter is also a notary, or if not, in the records of another notary practising in the main town of the judicial district, to be chosen by the interested party if there is more than one.

If the facts to which the inquiry refers are not of recognised importance, the Judge shall direct that it be filed in the office of the Court Clerk.

Article 2008.

The same order shall also direct that evidence of the inquiry be given to the person that brought it, if they ask for it, and to any other party that

requests it to challenge it in the relevant hearing, if it could cause them injury.

Article 2009.

If, before the inquiry is approved, any party raises an objection to it on the grounds that it could cause them injury, the Judge shall order that the non-contentious proceedings be stayed, reserving the right of the parties to deal with the matter in the relevant hearing.

Article 2010.

Possessory information for recording a right *in rem* over immovable property shall be carried out subject to the rules set forth in the Mortgages Act, its Regulations and other current provisions [96].

TITLE XI

ON THE DISPOSAL OF PROPERTY BELONGING TO MINORS AND INCAPACITATED PERSONS AND SETTLEMENT REGARDING THEIR RIGHTS

Article 2011.

A court order shall be required to alienate or encumber the property of minors or incapacitated persons in the circumstances set forth in the Civil Code [97].

Article 2012.

To order the disposal or encumbrance, the following shall be required:

1. It must be requested by:

a) The father or mother that have parental authority over the minor. If the child is over twelve years old, they shall also sign the request.

b) The father or mother that have extended parental authority over an incapacitated child, who may or may not give their consent, according to the provisions of the judgment declaring their incapacity.

c) The guardian of the minor. If the minor is over twelve years old, they must also be heard.

d) The guardian of an incapacitated person, if the judgment declaring their incapacity so permits it.

e) An individual subject to guardianship, when they have not been forbidden to do so or when they do so with the consent of their guardian.

2. The reason for the disposal or encumbrance, and the purpose for which the sum obtained shall be used, must be expressly stated.

3. The need for or usefulness of the disposal must be justified.

4. The Public Prosecution Service must be heard [98].

Article 2013.

When witnesses are required for the justification referred to under number 3 of the preceding article, there must be at least three of them, with the Court Clerk certifying to knowing them. If the Clerk does not know them, he shall require the presentation of two witnesses that do know them.

The justification shall be carried out in the presence of the Public Prosecution Service [99].

Article 2014.

Once the justification has been given and the mandatory hearings have been conducted, the Judge, without further formalities, shall issue an order either granting or refusing the requested authorisation.

This order shall be appealable for both review and suspension of execution [100].

Article 2015.

The authorisation shall always be granted on the condition that the sale must be carried out at public auction and subsequent to valuation when dealing with rights of all kinds, except the right of pre-emptive subscription to shares, immovable property, commercial or industrial establishments, precious objects and securities that are not listed on the stock exchange.

Sales made by the father or mother having parental authority are exempt from this rule. To carry out such a sale, they need only to have previously obtained a court order, with the Public Prosecution Service and the other individuals designated under Article 205 of the Mortgages Act having been heard [101].

Article 2016.

The appointment of experts for the valuation shall always be done by the Judge and the appointed experts may not be challenged. Neither may a third expert be challenged, if it has been necessary to appoint one on account of the first two having disagreed.

Article 2017.

Once the valuation has been carried out, the Judge shall order that the auction be advertised for a period of thirty days, stating the date, time and place that it must be held and requiring public notices to be put up in the customary places and also, if the Judge thinks it advisable, placing them in an official newspaper.

Article 2018.

No bid shall be accepted that does not cover the value given to the property.

Article 2019.

If there is no acceptable bid, the guardian or, where appropriate, the incapacitated person with the assistance of their guardian, may commence any of the following courses of action:

1. That the sale be considered withdrawn and the proceedings be stayed.

2. That an extrajudicial sale be authorised for the price and with the conditions used in the auction.

3. That a second auction be announced with the price reduced by 20 per cent.

In the event that they opt for the second course of action, if within one year of the first auction being held they are unable to make the extrajudicial sale, they may request that another auction be advertised with the indicated reduction in price [102].

Article 2020.

The auction shall be held with the same formalities as the first.

If there is no suitable bidder at the second auction, the Judge shall authorise the guardian to make an extrajudicial sale for the price indicated at that auction.

Article 2021.

When the sale is requested to pay debts or to meet some other need, at the request of the guardian or, where appropriate, the incapacitated person with the assistance of their guardian, a third auction may be held with the price reduced by a further 20 per cent on that indicated in the second auction.

If there is no acceptable bid at the third auction, an extrajudicial sale for the price indicated at that auction may be authorised [103].

Article 2022.

The shares mentioned under the second point of Article 2011 [104] shall always be disposed of using a stockbroker or agent appointed by the Judge, and for the officially quoted price.

If they are not listed on the stock exchange, they shall be sold subject to the formalities established in the preceding articles for the sale of property.

Article 2023.

Once the sale has been made, the Judge shall have responsibility for making sure that the sum obtained is used for the purpose indicated when authorisation was requested.

Article 2024.

Provided that it is used for the relevant purpose, the sum shall be handed over to the incapacitated person, if they are authorised to receive it, or to their guardian if they are exempt from filing a surety bond or if the surety they have provided is sufficient to answer for it.

In any case, it shall be deposited in the public establishment in which payments into court must be made [105].

Article 2025.

Authorisation for renouncing inheritances or legacies or for reaching a settlement regarding the rights of minors or incapacitated persons shall be requested by the same people as for the sale of property.

In the document in which it is requested, the cause and purpose of the settlement shall be expressly stated, along with the uncertainties and difficulties of the business and the reasons for which they consider it useful and advisable, and it shall be accompanied by the document in which the basis for the settlement has been drawn up.

The documents and background information needed to be able to form an accurate opinion on the matter shall be produced along with the request [106].

Article 2026.

If there are proceedings pending regarding the settleable right, the request shall be entered into the record for those proceedings.

Article 2027.

If it is necessary or advisable, in order to demonstrate the need for the settlement, to justify some right or the execution of certain formalities, the Judge shall approve them and they shall be put into effect in the presence of the Public Prosecution Service.

Article 2028.

On completion of the proceedings described in the preceding articles, the Public Prosecution Service shall set out the measures it considers advisable.

Article 2029.

Once they have been returned by the Public Prosecution Service, the Judge shall issue an order granting or refusing authorisation for the settlement, as they deem advisable in the interests of the minor or incapacitated person.

If the Judge grants it, he shall approve or modify the submitted basis, ordering attestation, along with the necessary inserts, to be given to the guardian for the relevant use.

These proceedings shall be appealable for both review and suspension of execution.

Article 2030.

To mortgage or encumber immovable property, or to terminate rights *in rem* belonging to minors or incapacitated persons, the same formalities shall be observed as are established for selling, with the exception of the auction.

TITLE XII

ON ABSENTEES [107]

Article 2031.

All the proceedings arising from Book I, Title VIII of the Civil Code are of a non-contentious nature and the Judges that hear them are fully authorised to adopt, on their own initiative and with the involvement of the Public Prosecution Service, as many measures of inquiry and investigation as they see fit, as well as any protection measures they deem useful for the absentee [108].

Article 2032.

Both the applications and any objections that are brought shall be resolved following the procedures for fast-track proceedings, by an order which shall admit of the recourse of appeal, to be conducted before the relevant high court, in accordance with the provisions of Book II, Title VI, section 3 of the Civil Procedure Act, but without a judicial report being drawn up [109].

Article 2033.

In cases in which a person has disappeared, if the appointment of an advocate is requested by an interested party, once the requirements stipulated by Article 181 [110] have been confirmed in a summary proceeding, the Court shall appoint the spouse of the disappeared party, if there is one and they are not legally separated, as advocate; failing that, the oldest of their legitimate children shall be appointed, with males taking preference over females, and if there are no legitimate children, the closest, youngest relative in the ascending line shall be appointed, with males likewise being preferred to females.

If the absentee does not have a spouse, children or relatives in the ascending line, the court may appoint an advocate for them, this being incumbent on the eldest of their siblings, with males being preferred, and, failing that, a relative or friend that the Court deems suitable and worthy of the appointment. Any action that the advocate carries out shall require the

prior authorisation of the Court and, once carried out, they must given an account of the action for the Court's approval.

However, the Judge, taking the circumstances of cases and the individuals into consideration, may waive or alter the preceding obligation [111].

Article 2034.

If a father that has disappeared has children who are minors, parental authority shall pass to the mother, unless the Court finds that serious reasons exist for not granting this request [112].

Article 2035.

If the individual that has disappeared is a widow with children who are minors, the Court, at the behest of any relative or the Public Prosecution Service, shall provide them with a guardian, who shall act on their own behalf without needing a protutor or family council, judicial consent replacing the authorisations that would correspond to such a council in the relevant cases [113].

Article 2036.

The wife of an individual that has disappeared shall have to obtain the Court's consent for all actions requiring marital authorisation under the Civil Code.

If it sees fit, the Court may grant the wife judicial consent of a general nature, taking into account the circumstances of the person and the case [114].

Article 2037.

Once appointed and before commencing the discharge of his duties, the advocate must carry out a judicial inventory, with the involvement of the Public Prosecution Service, of the moveable and immovable property of the disappeared person. However, they may be specially authorised by the Court to carry out any particular action where delay could result in serious injury, even if the inventory has not been completed [115].

Article 2038.

The legal declaration of absence, referred to in Articles 182 to 184 of the Civil Code, with the consequent appointment of a representative for the

absentee, shall be sought by an interested party or by the Public Prosecution Service, providing the necessary evidence to confirm that all the requirements stipulated by the Civil Code for such a declaration have been met.

The Judge may also decide to hear as much other evidence as he sees fit, in order to ascertain of whether or not the declaration is legitimate.

It is an essential requirement for the declaration that the commencement of proceedings is made public by means of two public notices, which shall be published at an interval of fifteen days in the Official State Gazette, in a widely read newspaper in Madrid and in another in the capital of the province in which the absentee had their last residence or, failing that, their last domicile. Furthermore, it shall be advertised twice on national radio, with the same interval of fifteen days. The Court may also decide on other means to publicise the matter even more, if it sees fit.

Once the evidence deemed necessary has been heard and the periods of the public notices and announcements have elapsed, the Court, where appropriate as a result of the proceedings, shall issue an order declaring the individual absent for legal purposes, which shall be appealable but without suspension of review of sentence [116].

Article 2039.

In the order declaring absence for legal purposes, the Judge shall appoint a representative for the absentee in accordance with the provisions of Article 184 of the Civil Code.

The appointment may be challenged, with such challenge being handled in a fast-track procedure, without it being necessary to appeal against the declaration of absence [117].

Article 2040.

If, prior to the commencement of the procedure to declare the absence of an individual for legal purposes, the measures included under Articles 2033, 2034, 2035 and 2036 have been adopted, they shall remain in effect while the declaration is made, unless the Court, at the request of an interested party or the Public Prosecution Service, deems it advisable to modify them.

If they have not been adopted, the Judge may agree to them provisionally, as long as the absence proceedings remain incomplete [118].

Article 2041.

The order declaring the absence of the individual shall stipulate that parental authority for children of the absentee passes to their mother, or it shall order that a guardian be appointed for them in accordance with the Civil Code, in keeping with the case at issue.

The Court may also grant the wife of the absentee consent of a general nature for all actions which, according to the Civil Code, require her to have the authorisation of her husband [119].

If the court does not grant her such general consent in view of the circumstances of the individual and of the case, the wife of the absentee shall have to request the Court's consent in as many cases as necessary [120].

Article 2042.

The declaration of death referred to under Articles 193 and 194 of the Civil Code do not require a prior legal declaration of absence. It may be requested either by interested parties or by the Public Prosecution Service, providing all evidence supporting the requirements described under said articles.

The Judge, on his own initiative, shall ask to hear as much evidence as he sees fit and shall always order the publication of public notices, making the existence of the proceedings known, at an interval of fifteen days, in the Official State Gazette, in a widely read newspaper in Madrid, in another newspaper in the capital of the province in which the absentee had their last residence or, failing that their last domicile, and also on national radio.

Once the evidence has been heard and the proceedings publicised as stated, the Judge shall issue an order declaring the death, if it has been confirmed that all the requirements stipulated for their respective cases by Articles 193 and 194 of the Civil Code have been met [121].

Article 2043.

In the event that the person declared absent or dead appears, once fully identified and once evidence has been heard, if proposed by the Public Prosecution Service or the parties, their pertinence having been declared by the Court, the declaration of absence or death shall be declared null and void.

If they do not appear, but there is news of their supposed existence in a known location, the presumed interested party shall be notified of the order declaring them absent for legal purposes or presumed dead, summoning them to provide proof of their identity. Regardless of whether they provide it, the Judge, with the involvement of the Public Prosecution Service and the parties, once the evidence that the latter propose and that is required by operation of law has been heard, shall issue the appropriate ruling.

The order setting aside the legal declaration of absence or declaration of death implies the immediate application of Article 197 of the Civil Code [122].

Without prejudice to the provisions of this article, the Public Prosecution Service or any party that deems themselves to have been injured may, within a non-extendable period of three months, challenge the order in the relevant declaratory action [123].

Article 2044.

If the death of the missing person is proven during the course of the proceedings referred to in Articles 2033, 2034 and 2035, or while the procedure for the legal declaration of absence or declaration of death is being carried out, the proceedings shall be stayed and the judgments that may have been handed down during said proceedings shall have no subsequent effect [124].

Article 2045.

The inventory of movable property and description of immovable property referred to under Article 185 point 1 of the Civil Code must be carried out judicially with the involvement of the Public Prosecution Service.

Once the inventory has been carried out, the representative of the absentee shall be provided with certification to show that they are representing them [125].

Article 2046.

If the representative is the spouse, a child or a relative in the ascending line, they shall have extensive powers to administer property, without needing to submit accounts, and shall only require court authorisation for transfers and encumbrances, unless the Judge finds there to be unusual circumstances that make it advisable to impose a limitation.

If the representative is some other person, the Judge shall indicate the kind of surety that must be provided, as well as the value of it, and shall instruct them to submit accounts to the Court every six months. If, on examination of these accounts with the involvement of the Public Prosecution Service, the Judge decides that it is not appropriate to approve them, the representative may be removed from their post and someone else appointed to replace them, without prejudice to any liabilities that they may have incurred.

In the case referred to in the preceding paragraph, the Judge, on appointing the representative, shall set the maximum amount they can spend in lawfully carrying out the administration of the property without needing judicial consent, taking into account the size of the estate, the nature of the assets and the conventions for their effective protection [126].

Article 2047.

For the purposes of Article 198 of the Civil Code, the Court shall send the Central Register of Absentees all the evidence necessary for what is stipulated in that article to be recorded [127].

TITLE XIII

ON NON-CONTENTIOUS JUDICIAL AUCTIONS

Article 2048.

Any party requesting a judicial auction must prove the following, producing the appropriate documents:

1. They have legal capacity for the contract they propose to enter into.

2. They are able to dispose of the item or object in the intended manner by means of the auction.

Article 2049.

The schedule of conditions according to which the auction must be held shall be submitted with the document requesting it.

Article 2050.

Once the points given in Article 2048 have been confirmed, the Judge shall agree to the announcement of the auction, in the manner and under

the conditions proposed by the party requesting it; he shall indicate the date and time that it is to be held; he shall order public notices to be put up in the customary places and in the town in which the property is located or the contract has to be made, and that they be published in the newspapers designated by the petitioner.

In the public notices it shall be expressly stated that the schedule of conditions and title deeds may be viewed in the Court Clerk's office for the information of those interested in taking part in the auction.

Article 2051.

If an admissible proposition is presented, being in accordance with the schedule of conditions, the Judge shall allow it, as well as those made subsequently improving the bid. Once the proceedings are over, the sale shall be awarded to the only or best bidder, unless the party that requested the auction has expressly reserved the right to approve it, in which case they shall be allowed to see the file so that they can request what suits them within three days.

They shall be informed in the same way in the event that a bidder offers to accept the sale modifying one of the conditions.

Article 2052.

If the party that issued the proceedings accepts the proposition referred to in the second paragraph of the preceding article, an order shall be issued considering the sale concluded in favour of the individual that made the proposition, and ordering it to be put into effect.

If they do not accept it, they shall declare whether they approve the sale or want a new auction to be held under the same conditions, or whatever conditions they think it appropriate, or whether they relinquish their intention.

Article 2053.

When a new auction must be held, the announcements shall advise that any bids made must be accepted, provided that they meet the minimum time set by the individual that instigated the auction.

Article 2054.

If there is no bidder at the second auction, the interested party shall be free to do what they think advisable, without being able to hold a third

auction until one year has elapsed, after which they may request the issue of new proceedings with the same aim.

Article 2055.

Any issues that are raised in the course of the auction shall be dealt with in procedures for incidental matters [128].

TITLE XIV

ON JUDICIAL POSSESSION IN CASES IN WHICH A PROVISIONAL ACQUISITION ORDER IS NOT APPROPRIATE

Article 2056.

For judicial possession to be ordered for a property or properties that have not been acquired by hereditary title, the party that hopes to obtain it shall request it from the Judge, enclosing [129]:

1. The deed on which they base their claim, registered with the Land Registry.

2. A certificate issued by the individual in charge of said office, showing that on that date the applicant has the capacity to request the possession of the property or properties included in the title deed they have presented.

Article 2057.

The Judge shall examine the title deed presented and if he finds it to be sufficient shall issue an order granting the possession, without prejudice to a third party with a greater right.

Article 2058.

The possession shall be granted by a court official, assisted by the Court Clerk, at any of the properties at issue, on behalf of the others.

Article 2059.

The party obtaining possession may designate the tenants, tenant farmers or administrators that the Court Clerk must summon, so that they be recognised as the holder.

This official shall draw up a report of the possession proceedings and the requirements that have been verified.

Article 2060.

If the party obtaining possession requests it, he shall be given attestation of the order granting it to him and of the formalities carried out to comply with it.

The deed that they presented shall be returned to them in all cases, with a note and receipt remaining in the court record.

TITLE XV

ON THE SURVEY AND MARKING OF BOUNDARIES

Article 2061.

The survey and marking of the boundaries of a plot of land may be requested not only by its owner, but also by any party that has a right *in rem* to its use and enjoyment.

The claim shall state whether the survey has to be carried out for the whole perimeter of the plot or only on a part that borders on a particular estate; and it shall state the names and residences of the individuals that must be summoned in proceedings or that these particulars are unknown [130].

Article 2062.

The Judge shall indicate the date and time on which proceedings must commence, with sufficient advance notice for all the interested parties, who shall be legally summoned beforehand, to be able to attend.

Unknown parties whose residence is unknown shall be summoned by means of public notices, which shall be put up in the customary places in the main town of the judicial district in which the property is located, and the judicial district in which the individual being summoned recently resided [131].

Article 2063.

If the Judge is not able to attend the survey, they shall delegate the Municipal Judge within whose jurisdiction the property is located.

Article 2064.

The survey, or the marking of boundaries if that has also been requested, shall not be cancelled due to the failure of any of the adjacent owners to attend. They shall retain their right to bring the appropriate declaratory action for any possession or ownership that they believe themselves to have been deprived of by virtue of the survey.

Article 2065.

Both the individual that requested the survey and the others attending the proceedings may produce the title deeds to their properties and make the claims that they deem appropriate, on their own behalf or through a representative that they appoint for this purpose.

Where requested by one or more of the interested parties, expert witnesses, appointed by them or chosen by the Judge, that know the plot of land and can provide information needed for the survey, may also attend the proceedings [132].

Article 2066.

Once the boundary survey and marking, if any, has been carried out, a record shall be issued, separately from the proceedings, stating all the circumstances revealing the line dividing the properties, the markers placed or ordered to be placed, their direction and distance one from another and any important issues that have arisen and their resolution. The record shall be signed by those in attendance.

Article 2067.

In the event that it is not possible to conclude the proceedings in one day, they shall be suspended and continued on the next possible day, which shall be reported in the record.

Article 2068.

The interested parties shall receive as many copies of the record as they request, and it shall be formally registered at the office of the Court Clerk who authorised it, if he is a Notary; otherwise in that of the town or notarial district where the demarcated property is located. If there are several notaries, one shall be assigned by the Judge.

Article 2069.

The Court Clerk shall make a record in the case file stating that the boundary survey and marking has taken effect, stating the notary's office where the document was formally registered, and the notary shall sign for receipt in the same record.

Article 2070.

Should the owner of any adjacent property object to the boundary survey prior to its commencement, the survey of the part of the property adjacent to that of the opposing party shall be dismissed, with the parties reserving their right so that they may exercise it in the corresponding declaratory action.

This shall also be the case in the event of an objection made during the proceeding itself; if the interested parties are unable to reach an agreement on the point of dispute at this time.

In both cases, the boundary survey may continue for the remainder of the property, if so requested by the person that issued the proceedings and if no objection is forthcoming from the other adjacent property owners.

TITLE XVI

ON SURVEYING AND APPORTIONMENT OF FOROS (EMPHYTEUTIC RENTS) [133]

Section 1. On Surveying

Article 2071.

Both the legal owner and any beneficial owners, may request the surveying of properties that may be subject to payment of *foros*[134].

Article 2072.

The survey application shall be accompanied by [135]:

1. Any public or private documents that may lead to the designation of the properties comprising the levy.

2. A list of the properties, which shall state their location, approximate size, their boundaries, the special name by which they are known in

the district (if any), and the names of their legal and beneficial owners. It shall also state what is paid for each one as rent or levy, indicating whether this is paid in money, fruits, in other kinds or in services.

By means of secondary petition, an expert shall be appointed who must verify the operation on behalf of the person presenting it, and it shall be accompanied by as many copies on ordinary paper as there are persons who must be summoned.

Article 2073.

Once the application has been submitted, the Judge shall summon all the interested parties in the customary manner, handing over the copies mentioned in the preceding article, so that within a period of twenty days, or more if necessitated by the distances, the number of properties or beneficial owners, they shall appear on the date and at the time indicated to declare whether or not they agree to the survey being performed. They shall be advised that they shall be considered to be in agreement if they do not appear in person or through a representative.

There shall be a period of at least six days between the last summons and the hearing.

Article 2074.

When one of the interested parties is unidentified, or his or her domicile is unknown, a notice shall be published in the “Official Gazette” of the province, and shall also be put up in the customary place or places, calling him or her to appear within the double term indicated for those present.

Article 2075.

If those present or absent do not appear within the established period, the proceedings shall continue, without them being summoned a second time.

Article 2076.

On the day of the hearing, should any of those persons summoned declare their disagreement with the performance of the survey, the Judge shall require them to indicate clearly and accurately the reasons for their disagreement, with the warning that they shall otherwise be deemed in agreement. He shall also require those declaring themselves to be in

agreement to say whether they agree with the expert appointed by the party requesting the survey, or to appoint another on their behalf.

All the parties may submit the documents they deem appropriate to resolving their respective claims as effectively as possible.

Article 2077.

When those objecting to the survey base their opposition on not acknowledging that the person who receives the rent as the legal owner, or on properties subject to emphyteusis, the provisions of Article 2080 shall apply.

When their objection is based on the fact that not all the properties subject to emphyteusis are included on the list mentioned under Article 2072, point 2, the Judge shall request that they designate the others that should be included in the survey, stating their owners' names; and he shall ask the person who issued the proceedings to declare whether he extends his claim to the newly designated properties.

Article 2078.

In the event that all the interested parties agree in appointing a single expert, even though he or she may be different to the one designated by the person who issued the proceedings, the Judge shall agree to the appointment of the former.

If those summoned for the performance of the survey were the beneficial owners and they were not in agreement on the appointment of the expert, the expert shall be considered the one chosen by the majority, and in the event of a tie, it shall be decided by tossing a coin.

Article 2079.

On the day following the hearing, the Judge shall issue an order declaring those who have thus declared themselves, those who have not given clear and accurate explanations for their disagreement, and those who did not attend the hearing, to be in agreement with the performance of the survey. He shall, furthermore, order the appointed expert or experts to proceed with the survey operation.

Article 2080.

As regards those who may have objected for any of the reasons set forth in Article 2077, paragraph 1, the Judge shall rule, in the same order, that

the proceedings are considered stayed, reserving the right of the legal owner and the beneficial owners who have given their consent to exercise it in the corresponding hearing, according to the size of the claim.

As regards those included in paragraph 2 of the same article, if the person who had requested the survey had extended it to the properties designated by those opposing the survey, the Judge shall agree a new appearance between the latter and the owners of the former. If the survey was not extended, the proceedings as regards said opposing persons shall be deemed concluded and all those interested parties shall retain their right to be exercised in the corresponding declaratory action.

Article 2081.

The order referred to in the two preceding articles shall appealable but without suspension of review of sentence.

Article 2082.

The summons for the second hearing and the holding thereof shall be subject to the rules established for the first hearing.

Those in attendance who have not appointed an expert, may agree to the one appointed by the others or appoint another one themselves.

Article 2083.

Once the experts have performed the survey of the properties, they shall issue it on ordinary paper with their signatures. The Judge shall order that it be added to the case file and displayed in the Court Clerk’s office for the period he deems appropriate by virtue of the number of properties and of owners, this being not less than 15 days and not more than 30 and without demanding rights.

Article 2084.

When two experts have been appointed and they do not reach an agreement, the Judge shall select a third randomly to resolve the dispute.

The third expert shall randomly selected taking the provisions of Article 616 into account [136].

Article 2085.

Within the term established in Article 2083, those in disagreement with the survey performed by the experts may appear before the Judge and state the grounds for their disagreement. The corresponding record shall be issued.

Article 2086.

Once the period for examining the contents of the case file has elapsed, if none of the interested parties has declared their disagreement as per the preceding article, the Judge shall issue an order approving the survey and declaring that the designated properties as included in the emphyteusis.

If, by virtue of the provisions of Article 2080, the proceedings have been considered closed for some of those who were not in agreement with the survey, the Judge shall make said statement, notwithstanding the outcomes of the proceedings that may be brought due to those challenges.

Article 2087.

Where one of the interested parties has made use of the right granted under Article 2085, if his or her objection were based on the fact that the expert or experts had included a property not appearing on the list accompanying the survey request, or in the addition made pursuant to Article 2077, paragraph 2, in the emphyteusis, the Judge shall examine the background and shall issue the approval order within three days; if the fact was proven correct, however, he shall separate the property or properties that have given rise to the claim, reserving the rights of the corresponding holder to exercise them in the relevant proceedings, according to the size of the claim.

Article 2088.

If the objection were based on a bigger area of the property subject to emphyteusis than should be the case, because the property subject to emphyteutic rent is part of a larger property belonging to the same owner, or it were based on any other founded reason, the Judge shall summon the interested parties and the experts to appear before him; he shall attempt to clarify the facts, accepting such pertinent supporting documents as are put forward, and in the case of not being able to reconcile the interested parties when issuing the order approving the survey, he shall issue a fair ruling on that claim, ordering the liable party to pay the costs of the hearing.

When duly summoned, those who do not attend in person or through a representative cannot appeal against the ruling issued by the Judge by virtue of the provisions of the previous paragraph.

Article 2089.

The order approving the survey shall be appealable for both review and suspension of execution, with the limitation stated in the preceding article.

Article 2090.

When the order approving the survey is final, certification shall be provided to the person who issued the proceedings and always to the legal owner of the property.

This certification shall include the properties comprising the emphyteusis and the names of the legal owner and the beneficial owners that possess them.

Any of the other interested parties may request certification at their expense.

Article 2091.

If those requesting the survey were the beneficial owners of the property, and the legal owner were to declare at the hearing referred to in Article 2076 that he does not agree that the survey be performed, the Judge shall deem the proceedings closed, reserving the rights of those so wishing to exercise them in the corresponding hearing, depending on the size of the claim.

He shall hand down the same judgment when the survey is requested by the legal owner, if the beneficial owners are not in agreement.

Section 2. On Apportionment

Article 2092.

When the apportionment of a ground rent is requested between the various properties subject to emphyteusis, the provisions contained in Articles 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082 and 2084 concerning survey proceedings shall be applicable; but bearing in mind that the documents that are submitted, if any, must refer to the emphyteutic rent paid.

If a survey has been previously performed on the properties, the original, or at least the certification of the approval order, comprising the points listed under Article 2090, shall also be submitted.

Article 2093.

The provisions of Article 2083 shall also be applicable to this type of proceedings; but with the modification that the operation to be performed by the experts shall be the appraisal of the properties subject to emphyteusis and the subsequent apportionment of the ground rent paid on said properties.

Article 2094.

Following the apportionment operation submitted by the experts as per Article 2083, within the term set forth therein, those who believe themselves to be injured parties as a result of either the appraisal or by the apportionment of the ground rent, may appear before the Judge for the purposes set forth under Article 2085.

Article 2095.

Once said term has elapsed and no objection is forthcoming, the Judge shall issue an order approving the apportionment and naming the tenant with the largest share as the person responsible for collecting the ground rents. If two or more pay equal parts, it shall be decided by tossing a coin.

The following exceptions apply:

1. When all beneficial owners agree to appoint a rent collector from among their number, if this person agrees and the legal owner has no objection.

2. When a clause in the deed governing the emphyteusis expressly states that the appointment shall be made in some other way, in which case the stipulations of this document shall be observed.

Article 2096.

In the event of an objection being raised as per Article 2094, the Judge shall call all interested parties and experts to hear all the parties and shall accept the pertinent supporting documents put forward, issuing the corresponding record for these proceedings.

Article 2097.

Within the three days following the hearing, the Judge shall issue an order deciding whether to uphold the objection, in which case he shall order that the operation be rectified and state the terms in which this should be done, otherwise he shall approve the apportionment, also appointing the rent collector in the manner indicated under Article 2095.

Those not attending the hearing shall be deemed in agreement and they shall not be entitled to appeal against what has been agreed.

Article 2098.

If it is ruled that the apportionment does not require rectification, the party whose unfounded claim gave rise to the hearing shall be liable for the costs thereof. If the rectification is sustained, the expert or experts shall be liable for the costs incurred in the hearing.

Article 2099.

An appeal may be lodged against the order approving the apportionment, under the terms set forth in Article 2089 for the survey.

Article 2100.

When a survey and apportionment have been requested at the same time, the Judge, when approving the survey, shall order the expert or experts who performed it to proceed with the apportionment, after the case has been heard in accordance with the procedures laid out in Article 2094 et seq.

Article 2101.

Certification of the order approving the apportionment shall be given to the legal owner of the property and to the rent collector.

This certification shall comprise the properties subject to emphyteusis, the ground rent paid on these, the share assigned to each one and the names of the beneficial owners who must pay it.

Any other interested party requesting said certification shall be granted it at their own expense.

Section 3. On provisions common to the two preceding sections

Article 2102.

The first notification of the survey and apportionment proceedings shall be sent in person or by means of a writ, as per the stipulations of Articles 262 et seq. of this Act [137]. To hear subsequent proceedings, the interested parties may appoint another person to appear in the presence of the Judge, provided that he or she is domiciled in the main town of the judicial district.

Article 2103.

Any appeal lodged in this type of procedure, other than the cases expressly designated in this title, shall be accepted but without suspension of review of sentence, and shall be dealt with according to procedures for incidental issues.

Appeals lodged in accordance with the provisions of Articles 2081, 2089 and 2099 shall be heard in the same way.

Article 2104.

When the legal ownership of a property is divided between two or more persons, each and all of them shall be entitled to exercise the rights referred to under this title.

Article 2105.

For the purposes of the provisions contained in this title, the beneficial owner shall be understood as the person in possession of the property subject to emphyteusis, while it is not duly accredited that another person is the same.

Article 2106.

Both the legal owner and the beneficial owners, may exercise the right they hold to request surveyance and apportionment of ground rents, provided that more than ten years have elapsed since said actions were last undertaken.

Owners of either type may request surveyance and apportionment, even through said period may not have elapsed. In this case, the costs incurred shall be at the expense of the requesting party, unless they are the outcome of

rectifications which need to be made as a result of judgments handed down declaring a property subject to emphyteusis, owing to the reservations referred to in Article 2087, in which case the costs shall be determined as appropriate.

Article 2107.

For cases other than those envisaged in the preceding article, and those in which, due to an appeal being lodged, second instance costs should be imposed on whoever is liable by law, the costs resulting from surveyance and apportionment proceedings shall be paid by the beneficial owners, in the same proportion they pay the emphyteutic rent.

From this the costs referred to in Articles 2088 and 2098 shall be excepted, and met solely by the person on whom they have been imposed.

Article 2108.

All those involved in these proceedings whose fees are indicated by tariffs, shall collect them in full provided that the capital value of the emphyteutic rent is more than 1,000 pesetas; they shall receive half, if this were between 250 and 1,000 pesetas, and a quarter if not more than 250 pesetas.

PART TWO

NON-CONTENTIOUS PROCEEDINGS IN TRADE BUSINESS

TITLE ONE

GENERAL PROVISIONS

Article 2109.

Procedures for the recording of facts that may be interest to those who issue proceedings regarding the same in trading businesses, shall be brought before Courts of First Instance.

Article 2110.

The provisions of the previous article notwithstanding, the same procedures described therein can be heard before Municipal Courts of towns which are not the administrative centres of judicial districts, or before Spanish

Consulates in foreign nations, when so required by the urgency of the business, or the circumstance of existing evidence, or the merchandise or securities, or when the events have taken place in the place or the judicial district of the respective Courts or Consulates.

In this case, the Municipal Judge or Consul called upon in the procedure shall issue a ruling in which he records the existing circumstance that empowers him to investigate the business [138].

Article 2111.

If the procedures referred to in the previous two articles are instigated in Spanish territory, they shall be governed by the provisions set forth in the Commercial Code or in this Act, in each case.

When the no special rules have been laid down for the events in question, the procedure shall be subject to the following rules, in addition to the applicable general provisions from the first part of this book:

1. When the proceedings may be detrimental to third persons, the latter must be summoned so they may, if they wish, attend the proceedings, notwithstanding the fact that any persons believing themselves to have an interest in the matter at issue may attend.

The Judge shall reject outright any claim by any person who clearly has no interest in the business.

2. In cases in which legal measures may affect the public interest, or persons who, present or absent, have special protection under the law, or who are as yet unknown, the Public Prosecution Service shall be summoned in administrative centres, and the Municipal Public Prosecutors in other towns.

3. Court Clerks in Courts of First Instance and Municipal Courts shall certify the identity of the persons claiming the intervention of the respective Judges and of the witnesses in proceedings that may be conducted.

When not known to them, the identities of these persons shall be verified by documents or by persons who do know them. In the absence of any means of identifying a person's identity, this shall be reported in proceedings.

4. The intervention of summoned third persons, that of the Public Prosecution Service or of the Municipal Public Prosecutors, if applicable,

shall be limited to learning the identity of those involved in the proceedings and their legal capacity to act in their respective roles therein. For these purposes, they shall receive the evidence attained before any court ruling is handed down, so that they may make any statement they deem appropriate. Any claim made other than in cases concerning the identity and the legal capacity of the persons involved, shall only give rise to their rights being reserved so that they may exercise them where and how they deem it appropriate.

5. If the claims made by third persons, the Public Prosecution Service or Municipal Public Prosecutors were in regard to correctable errors, the Judge shall make the appropriate ruling to complete the legal measures as fully as possible.

6. The Judge shall, in view of all the foregoing proceedings, issue an order with the appropriate decision and shall order the legal actions be dismissed, providing the interested parties with certification of the part they have requested.

7. When, by virtue of the provisions of Article 2110, the legal measures have been carried out before a Municipal Judge, conducted in their most special and urgent part, said Judge shall remit them to the Judge of First Instance and the latter shall conclude them in the appropriate manner, implementing the provisions of the previous rule.

Article 2112.

Appeals lodged by those who issued the proceedings, shall be admitted for both review and suspension of execution; those lodged by other persons involved therein, shall be admitted without suspension of review of sentence.

Article 2113.

When an appeal is lodged and admitted, the orders shall be sent within two days, subject to the summons of the interested parties for a term of eight days if before a Court of First Instance, or of ten days if before a Provincial Court.

Article 2114.

In appeals against rulings issued by Municipal Judges, once the orders have been received by the Court of First Instance, if the appellant appears before the term of summons, the Judge shall order all interested parties to appear before him within three days. A hearing

shall be held and the statements of the interested parties shall be duly recorded. The Judge shall issue the appropriate judgment within three days following the hearing.

Appeals before the Provincial Courts shall carried out according to the procedures for incidental matters. [139].

Article 2115.

If the appellant does not appear within the term of summons, the provisions of Articles 840 et seq. shall be implemented [140].

Article 2116.

No appeal may be lodged against judgments issued in the second instance, notwithstanding the rights of the interested parties which are reserved for them to exercise in the corresponding proceedings, depending on the size of the claim.

Article 2117.

Surveys and appraisals shall be performed by duly qualified experts, provided that these are available in the place where the actions are conducted, and in their absence by skilled technicians.

An exception applied in the event that the interested party at whose request the surveys or appraisals are made, requests, at his own expense, that they be performed by qualified experts.

In the event that the two experts disagree and a third is required to resolve the dispute, the third expert shall be selected at random and in accordance with the provisions of Article 616 [141].

Article 2118.

When Spanish Consuls act in non-contentious proceedings pursuant to the provisions of Article 2110, they shall do so, insofar as possible, in compliance with the provisions of this Act.

TITLE II

DEPOSIT AND EXAMINATION OF TRADE ITEMS

Article 2119.

If, by virtue of the provisions of Articles 121, 122, 218, 222, 365, 674, 745, 777, 781 and 988 of the Commercial Code or due to any other similar cause, it were necessary to deposit trade items, the person wishing to do so must request it in writing to the Judge, giving a detailed list of the items whose deposit he is requesting and designating the person who shall be the depository. The person designated as such shall be a registered trader, if available in the town, and if not, a taxpayer deemed by the Judge of sufficient entity to guarantee the value of the deposit and the local conditions.

The evaluation of the guarantees offered by the depository designated by the person requesting the deposit shall, in any event, remain at the Judge's discretion; and if he deems another appointment should be made, he shall do so in accordance with the provisions of this article [142].

Article 2120.

If the deposit is requested due to the contingency provided for in Article 777 of the aforementioned Code [143], the requester shall also apply for an expert examination of the vessel, and shall provide information regarding whether there are any other vessels to be chartered in the ports within a distance of 160 kilometres.

This point may also be supported by documents.

Article 2121.

The Court Clerk shall record the constitution of the deposit, including the number and status of the items deposited; in the event of there being any difference with the list of items provided the request document, he shall report the details of this difference.

Article 2122.

If the Court Clerk and the depository are in disagreement regarding the quantity or quality of the items listed by the person requesting the deposit, and the latter does not agree to a rectification, in the case of a difference in quantity, the Court

Clerk shall make a thorough tally of the items in the presence of the depositor and the depository; if the difference were in the quality, the Judge shall appoint an expert to classify them, all of which shall be recorded appropriately.

This expert should be drawn from among the Professional Brokers Association, if available, or otherwise, from among the traders registered for the kind of commercial instrument in question, and no peremptory challenge shall be admitted.

Article 2123.

Should the situation envisaged in the previous article occur, the Judge shall provide for the temporary custody and safekeeping of the items to be deposited.

Article 2124.

When it is appropriate for the Judge to order the sale of some of the deposited items to cover the cost of their receipt and safekeeping, this sale shall be by public auction, after their prior valuation by an expert appointed by their owner, if present, or by the Public Prosecution Service if they are absent, and another expert appointed by the Judge. The auction shall be announced eight to fifteen days in advance, by public notices that shall be posted on the Court notice board, and which may be published in the "Official Gazette" of the province and in local newspapers, at the Judge's discretion, according to value of said items.

If the owner of said items is present and in agreement with the Judge appointing only one expert, this shall be the case. If the owner opts to name an expert who is not in agreement with the expert appointed by the Judge, a third expert shall be appointed at random [144].

Article 2125.

If there is no bidder at the auction, or the bids do not cover two thirds of the valuation figure, a second auction shall be held and if necessary a third, and within a like period, with a 20% reduction in each amount that had been the rate for the previous auction.

Article 2126.

In the event of the doubts and responses referred to in Article 218 of the Code [145], if the interested parties do not reach an agreement on

the appointment of the experts, they shall apply to the Judge to designate them. This done, the experts shall issue their reports and if they do not agree, the Judge shall appoint a third at random.

If, despite the expert examination, the interested parties do not accept their differences, the deposit ordered in said Article shall proceed to take place.

Article 2127.

When a record is required indicating the state, quality and quantity of the merchandise received or of the packages containing them, in accordance with the provisions of Articles 219, 362 and 370 paragraph 2 of the Code, and other similar cases, the interested party shall apply to the Judge to order express measures in those circumstances, and if necessary to appoint an expert to examine the merchandise or packages [146].

If the interested parties agree to each appoint an expert, they shall request this, and in the event of a dispute, a third expert shall be appointed at random.

TITLE III

ON THE PROVISIONAL SEIZURE AND DEPOSIT OF THE VALUE OF A BILL OF EXCHANGE

Articles 2128 to 2130.

No content on account of Act 10/1992 of 30 April.

TITLE IV

ON THE CLASSIFICATION OF AVERAGES, SETTLEMENT OF THE GENERAL AVERAGE AND CONTRIBUTION THERETO

Article 2131.

When it is necessary to make the justification, mentioned under Article 945 of the Code, of the losses and expenses that make up the general average, the Captain of the vessel, within 24 hours of having reached the port of discharge, as stated under Article 670 of said Code, shall submit the note of protest to the Judge, making a short list of everything that happened during the voyage with reference to the ship's log, and he shall apply for the license to open hatches, designating for these purposes the adjuster who has to be present thereat.

Said note shall accompany the protests proceedings which may have been requested at any other port, and the ship's log. [147].

Article 2132.

Once the aforementioned note of protest has been submitted, the Judge, if possible that same day, summoning and hearing all interested parties or their consignees, shall take as many statements from the crew and passengers as he deems necessary about the facts reported by the Captain. Once his inquiries are complete, he shall grant the license to open hatches.

This proceeding shall be carried as out as per the provisions of Article 2171.

Article 2133.

Once the hatches have been opened and the state of the cargo has been confirmed, in order to be able to proceed with the classification, inspection and settlement of the averages and their amount, the Judge shall order the Captain of the vessel, the interested parties or their consignees, to appoint their adjusters within 24 hours; indicating that if they do not do so, they shall be appointed by operation of law.

The Captain shall appoint an adjuster for each kind of merchandise that shall be inspected; another shall be appointed by the interested parties or consignees and the Judge shall select a third one at random, in the event of disagreement between the first two.

Article 2134.

The adjusters having been appointed or designated by operation of law, as applicable, they shall accept and swear to discharge their duties in the manner established under Article 947 of the Code, and the Judge shall give them a short deadline to submit their report.[148].

Article 2135.

The adjusters shall classify the averages, listing with the utmost possible accuracy [149].

1. The simple or individual averages.

2. The gross or common averages.

Article 2136.

When the experts submit their report, this shall be displayed in the Court Clerk's office for a period of three days, within which time the interested parties may, by appearing before the Court Clerk, indicate any reason they may have for not being in agreement [150].

Article 2137.

If there be any person in disagreement with the adjusters' findings, the day following the deadline set in the previous article, the Judge shall summons the interested parties to an immediate hearing. In this hearing he shall receive their justifications through inquiry, and the corresponding record shall be issued [151].

Article 2138.

On the second day, the Judge shall issue an order approving the appropriate decision.

This ruling shall be appealable but without suspension of review of sentence.

Article 2139.

When the interested parties have given their agreement to the adjusters' report concerning the settlement of the average, or an order has been issued as per the preceding article, the Judge shall order the same adjusters to make the calculation and settlement of the gross or common averages[152].

Article 2140.

To make this calculation, the experts shall draw up four statements:

1. Of the damages and expenses considered common averages or mass of averages.

2. Of the items subject to the contribution of the common averages, or taxable mass.

3. Of the distribution of the taxable mass among the items subject to the contribution.

4. Of the effective contributions and effective reimbursements.

Article 2141.

Both in the case of the previous article and in that of Article 2134, if the adjusters do not undertake their remit by the set deadline, the Judge shall press them to do so.

Article 2142.

When the adjusters have submitted the four statements cited in Article 2140, these shall be displayed in the Court Clerk's office for a period of six days, for the purposes expressed in Articles 2136 et seq.

Article 2143.

If all the interested parties are in agreement, the Judge shall approve the apportionment. In the case of having called a hearing as per Article 2137, within three days the Judge shall issue an order approving the apportionment as submitted by the adjusters, or with such modifications as he deems fair.

This order shall be appealable for both review and suspension of execution [153].

Article 2144.

When the Captain of the vessel does not comply with the duty imposed on him by Article 962 of the Code, regarding implementation of the apportionment, the owners of the averaged items may apply to the Judge to oblige him to do so [154].

Article 2145.

In the event that the owners of the averaged items file a claim as per the preceding, the Judge shall summon the Captain to implement the apportionment within a given deadline, warning him that he shall be liable for negligence or default.

Article 2146.

When the contributors do not effect settlement of their respective portion by the third day, if, after approval of the apportionment, the Captain were

to use the right he is granted under Article 963 of the Code [155], a public auction of the necessary salvaged items shall take place at the Captain's request in order to effect this settlement.

This auction shall be held in the manner set forth under Articles 2124 and 2125.

TITLE V

ON THE UNLOADING, ABANDONMENT AND AUDIT OF TRADE ITEMS AND ON THE CARGO BOND

Article 2147.

If the Captain of a vessel obliged to dock at a port believed it appropriate to unload and subsequently load the cargo for the best conservation of all or part of it, and he did not have or could not receive the consent of the consignors, he shall apply to the Judge in writing, or in person if the case is very urgent, to obtain the authorisation required under Article 775 of the Code [156].

Article 2148.

To obtain said authorisation, the Captain shall request that the cargo be inspected by experts; one shall be appointed by him and the Public Prosecution Service shall appoint the other on behalf of the absent consignors. If these experts are in disagreement, the Judge shall select a third at random [157].

Article 2149.

The Judge shall order that the inspection be carried out, and if the experts' report deems it necessary for the cargo to be unloaded, he shall rule to this effect.

Article 2150.

The ship's Captain shall receive a certified copy of the proceedings.

Article 2151.

When in general freight charters, one of the consignors intends to unload his goods and the other consignors wish to exercise their right under Article 765 of the Code, they shall go before the Judge and request him to take

charge of the items intended to be unloaded, and they shall record its value at the invoice price [158].

Article 2152.

If the intention referred to in the preceding article conforms to legal requirements, the Judge shall uphold it, ordering the owner of the items to be summoned to receive the amount consigned.

In the event that the owner of the items does not wish to receive the amount thereof, it shall be made available to him per the provisions of Article 2129, reserving his right to bring proceedings against the appropriate party in the appropriate manner.

Article 2153.

To carry out the unloading due to an unscheduled stop as referred to in Article 974 of the Code, the Captain of the vessel shall request that the vessel and the cargo be inspected by experts, in order for them to declare that putting into port was essential for the necessary repairs be made to the vessel, or to avoid damage and averaging in the cargo. [159].

The experts shall be appointed in the manner described under Article 2148.

Article 2154.

If the experts find in favour of unloading, the Judge shall rule that this be carried out, providing the necessary means for the preservation of the cargo.

Article 2155.

In the event that the Captain of the vessel makes the averaging statement referred to in Article 976 of the Code, and once the merchandise has been inspected by the adjusters, as per Article 977, if the latter are of the opinion, in the interest of the absent consignor, that the merchandise should be sold, then the sale shall be carried out in accordance with the following title [160].

Article 2156.

In the event of abandonment, for payment of freight charges referred to in Article 790 of the Code, if the charterer were in disagreement, the consignors shall apply to the Judge to proceed, with the involvement of the

former, to weigh or measure vessels containing the liquids that are to be abandoned [161].

Article 2157.

Once the weighing or measurement ordered by the Judge has been performed, if the vessels have lost more than half of their contents, the Judge shall order they be turned over to the charterer.

Article 2158.

To authorise the intervention mentioned in Article 794 of the Code, the Captain of the vessel may submit the request in writing, and the Judge shall apply it in the way that causes the least possible damage [162].

Article 2159.

When the bond of the value of the cargo is required, in keeping with the provisions of Article 805 of the Code, the Captain shall apply to Judge for such, his writ including the documentation in which said value is calculated [163].

Article 2160.

In view of the writ and documents presented, the Judge shall rule whether the bond is appropriate or not, and if so he shall establish it for the amount and in the form claimed by the Captain of the vessel.

If in cash, it shall be deposited immediately in the manner set forth under Article 2129.

TITLE VI

ON THE DISPOSAL AND SEIZURE OF TRADE ITEMS IN EMERGENCIES AND ON THE REPAIR OF SHIPS

Article 2161.

In the cases provided for under Articles 151, 593, 608, 614, 644, 653, 798, 825, 978, 979, 985, 990 and 991 of the Code, the following rules shall be observed [164]:

One. Provided that in compliance with the provisions of Articles 151, 978 and 979 of the Code, it is necessary to sell trade items that have been averaged or whose alteration requires their urgent disposal, the broker responsible for them or the Captain of the vessel carrying them, shall apply for this to the Judge, expressing the number and class of items that have to be sold. The request shall also be accompanied by [165] a statement signed by the Captain of the vessel, showing the cash on hand and giving information on the steps he has taken to find someone to grant a bottomry loan for the required sum, and the negative outcome thereof.

Two. Once the application has been submitted, notwithstanding the provision of the information mentioned in the preceding rule, the Judge shall appoint an expert to inspect the goods on that same day or the following day at the latest.

Three. Once the expert has issued his statement concerned the state of the goods, whether it is necessary to sell them, and once any applicable proceeding has been carried out, the Judge shall order their appraisal and sale by public auction, taking the necessary measures to advertise it as widely as possible, bearing in mind not only the value of the items, but also the urgency of the sale, depending on their state of conservation.

Four. The sale of items resulting from a shipwreck shall, depending on the case, be governed by the procedures laid out in the previous rules. The Judge who has ordered that they be deposited, shall order their sale by operation of law, where appropriate.

Five. When the amount resulting from the sale does not have to be used immediately, it shall be deposited in the manner described under Article 2129, at the disposal of the appropriate party, minus the sum of the all costs.

Six. To justify the need to sell a vessel that has been found unseaworthy while en route, and which cannot be repaired to continue its journey, its Captain or Master shall apply to the Judge for it to be examined by experts. The request document shall be accompanied by the audit report or boarding inspection report, referred to in Article 648 of the Code [166], and the Ship's Log, so that the Court Clerk can issue certification thereof during proceedings.

The experts shall be appointed in accordance with the provisions of Article 2148, and if the experts' report supports both points, the Judge shall rule in favour of the sale, following the formalities set forth under Article 608 of

said Code. The sum resulting from the auction, minus all costs, shall be deposited as in the case described in the preceding rule.

Seven. In all the cases referred to in the previous rules, when there is no bidder at the first auction, or the bids placed do not cover two thirds of the appraisal value, a second or successive auctions shall be readvertised, with a 20% decrease each time.

Eight. When a vessel requires repair and one or more of the shareholders does not agree to it or does not supply the necessary funds, the party that regards it as essential shall apply to the Judge for experts to inspect the vessel.

Once it has been inspected by those appointed by the claimant and the opposing party, and a third inspector if the first two cannot reach an agreement, if the repair is deemed necessary, the Judge shall require the party who has not provided the funds to do so within eight days, subject to the warning that if not so doing he shall be deprived of his part, his co-shareholders paying him in consideration the appraisal value the vessel had before being repaired.

This appraisal value shall be determined by the same experts who inspected the vessel; and the sum established, if the co-owner of the vessel did not wish to receive it, shall be deposited and available to him in the manner described in the preceding rules, and without prejudice to his right to bring proceedings in the appropriate hearing, depending on the size of the claim.

Nine. According to the provisions of Articles 644 and 826 of the Code [167], when a Captain of a vessel requires judicial consent to take out a bottomry loan, he shall apply for it by drafting a report or presenting documents justifying the urgency and his inability to find funds by the means listed in the first of the aforementioned articles. Furthermore, he shall petition the Judge to appoint an expert to inspect the vessel and determine the sum required for repairs, renovation and provisioning.

In view of the expert's statement, the Judge shall order announcements to be published, which shall be displayed in the customary places and published in the "Official Gazette" of the province and in the local "Announcements Publication", if there is one, which shall succinctly indicate the aim of the ship's Captain and the amount the expert has determined.

Once the Judge has granted authorisation for the loan to be taken out, if despite this loan the Captain were unable to find the required amount, he may request the sale of part of the cargo to cover the deficiency.

The sale shall be preceded by an appraisal of the experts appointed in accordance with the provisions of Article 2148, and by a public auction announced and held as per the formalities ordered in the previous rules.

Ten. In the event that a ship's Captain believes himself to have been obliged to demand that those holding personal provisions hand them over for the common consumption of all on board, and the owners of said supplies did not agree that such a need existed or with the price that the Captain was willing to pay for them, one or both parties may issue judicial proceedings at the first port of refuge, in order to state the facts.

Once proceedings have been issued, the Judge shall hear the interested parties in a single hearing and if no agreement is forthcoming concerning the price that the Captain should pay for the provisions, the proceedings shall be concluded, and the owners shall reserve the right to bring the appropriate legal action in contentious proceedings.

If the interest of the litigant in question does not exceed 250 pesetas, fast-track proceedings shall apply; if the amount exceeds said figure, it shall be subject to procedures for incidental matters [168].

Eleven. If the charterer wishes to exercise the right he is granted under Article 798 of the Code [169], he shall request that the Judge require the consignee to immediately pay the amount owed to him for freight charges, and if he does not do so, that the judicial sale of the necessary part of the cargo proceed at public auction, and by the means set forth in the preceding rules.

If the consignee does not settle the payment when required to do so, the Judge shall order that the necessary part of the cargo, as designated by the experts appointed by the interested parties (and the third expert selected randomly by the Judge in the event of no agreement being reached), be placed in deposit.

If, once the sale is made, the resultant sum does not cover the amount owed, said deposit and subsequent sales may be extended at the charterer's request and subject to the same formalities.

In the event that the consignee objects, the sale price shall be deposited in the establishment intended for this purpose, until it is decided in the corresponding hearing whether payment is appropriate or not.

The claim shall be submitted within a period of 20 days, the hearing taking place in accordance with the provisions for incidental matters. Once this term has elapsed and the claim has not been filed, by operation of law the Judge shall lift the deposit and hand over the amount owed to the charterer.

TITLE VII

ON OTHER TRADING ACTS REQUIRING URGENT COURT ACTION

Article 2162.

In the case referred to under Article 307 of the Code, the partners who believe that the person responsible for administering and running the firm is misusing their authority and they wish to appoint a co-administrator, they shall apply in writing to the Judge, requesting that he receive information on the case, and that once said misuse has been proven, that the person they designate be appointed co-administrator [170].

The aforementioned document shall be accompanied by a duplicate, which shall be served on the managing partner together with the summons.

Article 2163.

The managing partner can, in the same proceedings, present the counter-information he sees fit and present the documents that testify to his good business management.

Article 2164.

Having received the information, the Judge shall hear the interested parties in a hearing, and according to the outcome of these proceedings he shall issue a ruling to appoint or refuse the appointment of a co-administrator.

Article 2165.

If such an appointment is approved, the Judge shall rule in favour of the person designated by the partners who had so requested.

If the managing partner puts forward well-founded reasons for objecting to the person proposed, the interested parties shall be summoned to a new hearing, and if no agreement is reached therein, another person shall be appointed by the same partners.

Article 2166.

Any partner wishing to exercise the right granted to them by Articles 308 and 310 of the Code, or those of a similar nature arising from the contact or company regulations, where the administrator does not consent to this, may apply to the Judge in writing and the latter shall order that the company books and documents he wishes to examine be displayed in proceedings.

If the managing partner resists the exhibition of said documents in any way, the Judge shall take the necessary measures to oblige him to comply. [171].

Article 2167.

When any shareholder in the ownership of a ship wishes to exercise the pre-emptive right referred to in Article 612 of the Code, or attempts to prevent it as per the provisions of Article 613, he shall only be required to petition the seller or his co-shareholders within the legal term, by means of a notarial certificate, consigning the sale price to the Notary's possession in the first case [172].

Article 2168.

In any of the cases provided for under Articles 751, 752, 753, 754, 760 and 761 of the Code, whatever the complaint brought before the Judge, after a summary investigation, he shall hand down the appropriate judgment, ordering the Captain of the vessel and the other necessary persons to comply. [173].

Article 2169.

If, to avoid being held accountable in the event of an accident, the Captain of the vessel wishes to open the hatches to verify the cargo had been correctly loaded, he shall apply for judicial consent to do and he shall appoint an expert who shall attend said act.

Article 2170.

Once the application has been submitted, the Judge shall summon the consignors and consignees, if in the same town, and if not, the Public

Prosecution Service, to appoint another expert. Once the experts have been appointed, the requested consent shall be granted.

Article 2171.

The hatches shall be opened before the Court Clerk, the experts and the ship's Captain; consignors and consignees may also attend. Once the cargo has been inspected by the experts, the corresponding record shall be drawn up and signed by all those present.

If the experts are not in agreement, the Judge shall randomly select a third.

Article 2172.

Once the procedures are concluded, the Captain shall be handed original documents in the event that he needs to use them in another port.

Article 2173.

In cases in which the ship's Captain has to state the causes of the averaging, emergency docking, shipwreck or any other event for which he may be held liable for not acting in line with the Code of Commerce, he shall apply to the Judge in writing, asking him to take statements from the passengers and crew on the veracity of the facts he has laid out.

Said application shall be accompanied by the ship's log.

Article 2174.

In his hearing, the Judge shall receive the information provided and order that the part of the log testifying to the event and its causes be copied and officially certified, subsequently returning the original proceedings to the Captain.

TITLE VIII

ON THE APPOINTMENT OF ARBITRATORS AND EXPERTS IN INSURANCE CONTRACTS

Articles 2175 to 2181.

No content on account of Act 10/1992 of 30 April.

FINAL PROVISION

Article 2182.

All Acts, Royal Decrees, Regulations, Orders and Jurisdictions in which Civil Procedure rules have been issued are hereby revoked.

The civil procedure rules set forth in the Mortgages Act and other special laws are exempt from this provision.

[1] This paragraph covers the precepts of the Act of 1881, expressly declared in force by Act 1/2000 of 7 January on Civil Procedure, for as long as the stipulations of its single revocation provision are met.

[2] Section worded in accordance with Act 10/1992 of 30 April on Urgent Procedural Reform Measures.

[3] Paragraph worded in accordance with Act 10/1992 of 30 April.

[4] This paragraph is worded in accordance with Act 78/1961 of 23 December ("Official State Gazette" No 309, of 27 December).

As stated by the single revocation provision 1.2 of Act 1/2000 of 7 January on Civil Procedure, this article shall only be valid (until the regulation on this matter comes into force through the Voluntary Jurisdiction Act) with regard to conciliation proceedings.

[5] Rule worded according to Article 6 of Act 21/1987 of 11 November ("Official State Gazette" No 275 of 17 July) amending certain articles of the Civil Code and of the Civil Procedure Act.

[6] See Articles 239, 240 and 249 of the Civil Code.

[7] See Article 712 of the Civil Code.

[8] See Article 166 of the Civil Code, transcribed in the note to Article 2011.

[9] This rule is worded in accordance with the Act of 30 December 1939 ("Official State Gazette" No 6, of 6 January 1940).

[10] As set forth in single revocation provision 1.2 of Act 1/2000 of 7 January on Civil Procedure, this title shall only be valid until the regulation on this matter comes into force through the Voluntary Jurisdiction Act.

[11] Article 120 of Act 30/1992 of 26 November ("Official State Gazette" No 285, of 27 November; correction of errors in Official State Gazettes Nos 311, dated 28 December, and 23, of 27 January 1993, on the Judicial Regime of the Public Administration and Common Administrative Procedure, sets forth:

> "Article 120. Nature.-1. Prior to exercising actions grounded in private or labour law against any public administration, claims must have been filed through an administrative process, except for cases in which said requirement is exempted by a disposition with the force of law.
>
> 2. Such claims shall be processed and a ruling issued according to the regulations contained in this title and those that are applicable in each case, and in their absence by the general rules of this Act."

[12] On the civil liability of Judges and Magistrates, see Articles 411 to 413, inclusive, of Organic Act 6/1985 of 1 July, on the Judiciary.

[13] Article worded in accordance with Act 34/1984 of 6 August, except paragraph 1 which is worded in accordance with Act 13/2009 of 3 November ("Official State Gazette" No 266 of 4 November), on the reform of procedural legislation for the implementation of the new Judicial Office.

[14] Paragraph worded in accordance with Act 13/2009 of 3 November ("Official State Gazette" No 266 of 4 November), on the reform of procedural legislation for the implementation of the new Judicial Office.

[15] Paragraph worded in accordance with Act 34/1984 of 6 August, except the expression "First Instance" which was introduced by Act 10/1992 of 30 April.

With regard to the jurisdiction of the Civil Law Courts, see Article 22 of the Organic Act on the Judiciary (§ 3).

On the allocation of matters between Courts, see Article 167 of the Organic Act on the Judiciary (§ 3).

[16] See Articles 51 and 52 of the Organic Act on the Judiciary, which appears as paragraph 3.

[17] Articles 217 to 228 of the Organic Act on the Judiciary (§ 3).

[18] Article worded in accordance with Act 13/2009 of 3 of November ("Official State Gazette" No 266 of 4 November), on the reform of procedural legislation for the implementation of the new Court Office.

[19] Article worded in accordance with Act 13/2009 of 3 November, on the reform of procedural legislation for the implementation of the new Judicial Office.

[20] Article worded in accordance with Act 13/2009 of 3 November ("Official State Gazette" No 266 of 4 November).

[21] Article worded in accordance with Act 13/2009 of 3 November on the reform of procedural legislation for the implementation of the new Judicial Office.

[22] Article worded in accordance with Act 13/2009 of 3 November ("Official State Gazette" No 266 of 4 November).

[23] Article worded in accordance with Act 13/2009 of 3 November, on the reform of procedural legislation for the implementation of the new Judicial Office.

[24] Paragraph added in accordance with Act 13/2009 of 3 November ("Official State Gazette" No 266 of 4 November).

[25] Act 10/1992 of 30 April, has deleted the expression "Municipal" which appeared before "Judge".

[26] Article worded in accordance with Act 13/2009 of 3 of November ("Official State Gazette" No 266 of 4 November), on the reform of procedural legislation for the implementation of the new Judicial Office.

[27] Article worded in accordance with Act 34/1984 of 6 April.

[28] Article worded in accordance with Act 34/1984 of 6 April.

See Articles 1945, 1947 and 1973 of the Civil Code, and Article 944 of the Commercial Code.

[29] Article worded in accordance with Act 34/1984 of 6 August; Act 10/1992 of 30 April, has deleted the expression “District” which appeared before “Judges”.

[30] As set forth in single revocation provision 1.3 of Act 1/2000 of 7 January on Civil Procedure, Articles 951 to 958 shall only be valid while the International Cooperation (Civil Matters) Act is in force.

For international jurisdictional co-operation, see Articles 276 to 278 of the Organic Act on the Judiciary (§ 3).

[31] See the Lugano Convention of 16 September 1988, ratified by Instrument of 9 August 1994 (“Official State Gazette” No 251 of 20 October; correction of errors in “Official State Gazette” No 8 of 10 January 1995), and Council Regulation (EC) No 44/2001, of 22 December 2000 (“Official Journal of the European Community” No 12 of 16 January 2001; correction of errors in “Official Journal of the European Community” Nos 307 of 24 November 2001 and 176 of 5 July 2002), which was amended in various places by Regulation (EC) No 2201/2003 of 27 November (“Official Journal of the European Community” No 367 of 14 December), concerning legal jurisdiction and the enforcement of judicial decisions on civil and commercial matters.

[32] Article worded in accordance with Act 11/2011 of 20 May (“Official State Gazette” No 121 of 21 May), reforming Act 60/2003 of 23 December, on Arbitration and regulation of institutional arbitration in the General Central Government Administration.

[33] Article worded in accordance with Act 13/2009 of 3 November (“Official State Gazette” No 266 of 4 November).

[34] Paragraph revoked by Organic Act 19/2003 of 23 December (“Official State Gazette” No 309 of 26 December), amending Organic Act 6/1985 of 1 July, on the Judiciary.

[35] As set forth in single revocation provision 1.2. of Act 1/2000 of 7 January, on Civil Procedure, this section shall only be valid until the regulation on this matter comes into force through the Voluntary Jurisdiction Act.

[36] Article worded in accordance with Act 10/1992 of 30 November (“Official State Gazette” No 108 of 5 November), on Urgent Procedural Reform Measures.

Article 209 bis of the Notarial Regulations, introduced by Royal Decree 1368/1992 of 13 November and amended by Royal Decree 45/2007 of 19 January, sets forth:

> "In proceedings of public knowledge referred to under Article 979 of the Civil Procedure Act, the following rules shall be observed:
>
> 1. The competent authorising notary shall be any that has legal capacity to act in the town where the deceased had his last domicile in Spain. For these purposes, said domicile shall be preferably accredited by the deceased's National Identity Card (DNI), other means of proof notwithstanding.
>
> If the deceased was never domiciled in Spain, the competent notary shall be the one corresponding to the place of death. If the place of death is outside Spain, the corresponding notary shall be the one in the place where the deceased had the majority of his property or bank accounts.
>
> 2. Any person with a legitimate interest is authorised to file the initial petition.
>
> 3. Once a competent notary has been petitioned, the jurisdiction of the others shall be excluded. The petitioned notary shall inform the Dean's Office of the respective Notaries Society, on the same day the petition is received, of the commencement of the proceedings, specifying the name of the deceased and other identification details indicated in Appendix 2, Article 4 of the Notarial Regulations, in order for said commencement to be recorded in the Private Register of the Dean's Office and in the General Register of Last Wills and Testaments, in accordance with the provisions of Appendix 2, Articles 12 and 13.
>
> If, having received a notification, others are received regarding the succession of the same deceased person, the Dean, or the Registrar if the notaries belong to different Societies, shall immediately notify the notaries who have begun proceedings in the second or other places, to suspend said proceedings.
>
> The notary cannot issue any type of copies of the deed until at least 20 working days have elapsed after the Dean's Office has been notified.
>
> 4. The interested party must ascertain the veracity of the positive and negative facts on which the proceedings are grounded and accredit these with documents:

a) The opening of intestate succession through the presentation of a death certificate and a certificate from the General Register of Last Wills and Testaments in relation to the deceased and, if applicable, an authentic document whereby it is proven beyond all doubt that despite the will or inheritance contract, "intestate" succession or the final decision declaring the establishment of heirs invalid, is sustained.

b) The relationship of the persons that the claimant designates as heirs of the deceased.

The family record book of the deceased, or certificates from the Civil Registry accrediting marriage or kinship must be presented. The presented documents or testimony thereof shall be included in the deed.

5. The deed must include the statements of at least two witnesses who attest to their awareness of the positive or negative facts through science or through common knowledge, evidence of which is required. Said witnesses may be relatives of the deceased, either by blood or by marriage, when they do not have a direct interest in the statement. The evidence requested by the claimant shall also be required, together with others that may be deemed appropriate, particularly those intended to accredit nationality and legal residence and, if required, the applicable foreign law.

6. Once the aforementioned formalities have been carried out and the period stipulated in rule 3 has elapsed, the notary shall issue his overall finding regarding whether the facts on which the declaration of heirs is grounded are accredited by common knowledge.

If so, he shall declare the relatives of the deceased to be "intestate" heirs, provided that they are all those in the declaration corresponding to the Notary. The declaration shall state the identity of each one and the rights to which they entitled by law in the inheritance."

[37] Article worded in accordance with Act 10/1992 of 30 April.

[38] This article is worded in accordance with Act 10/1992 of 30 April.

[39] Article worded in accordance with Act 10/1992 of 30 April.

[40] See Articles 956 to 958 of the Civil Code, Articles 20 and 21 of Act 33/2003 of 3 November ("Official State Gazette" No 264 of 4 November), on the Assets of Public Administrations, and Articles 4 to 15 of Royal

Decree 1373/2009 of 28 August ("Official State Gazette" No 226 of 18 September), approving the Regulations of the aforementioned Act.

[41] Article 3 of Act 15/1989 of 29 May ("Official State Gazette" No 130 of 1 June), on amendments of certain articles of this Act, states:

> "In Articles 101, 128, 975, 980, 989, 990, 992, 994, 999, 1000, 1004, 1028, 1031, 1059, 1060, 1065, 1113 to 1116, 1120, 1296 to 1298, 1305, 1383 to 1385, 1388, 1815, 1828 to 1830, 1839, 1840, 1842, 1843, 1858, 1861, 1867, 1874, 1877, 1878, 1920, 1983, 1986, 1988 to 1992, 2003 to 2007, 2027 to 2029 and 2111 of the Civil Procedure Act, the expression "prosecutor" is replaced by "Public Prosecution Service"."

[42] As set forth in single revocation provision 1.1 of Act 1/2000 of 7 January on Civil Procedure, this title was revoked by the entry into force of Act 22/2003 of 9 July, on Bankruptcy.

[43] As set forth in single revocation provision 1.1 of Act 1/2000 of 7 January, on Civil Procedure, this title was revoked by the entry into force of Act 22/2003 of 9 July, on Bankruptcy.

[44] As set forth in single revocation provision 1.1 of Act 1/2000 of 7 January, on Civil Procedure, this title shall be valid until the entry into force of the Voluntary Jurisdiction Act

[45] See Articles 2070, 2080, 2091, 2111 and 2168 of this Act and single revocation provision 1.1, paragraph 4 of Act 1/2000 of 7 January.

[46] Articles 387 et seq. of Act 1/2000 of 7 January.

[47] The heading and articles of this title are worded in accordance with Act 21/1987 of 11 November ("Official State Gazette" No 275 of 17 November).

[48] Article revoked by Act 1/2000 of 7 January, on Civil Procedure.

[49] The public entities mentioned in this article are national, regional or local organisations which, in compliance with the law, are responsible for the protection of minors within their geographical scope, as per the first additional provision of Act 21/1987 of 11 November ("Official State Gazette" No 275 of 17 November).

[50] See Article 173 of the Civil Code, worded in accordance with Organic Act 1/1996 of 15 January.

[51] Article 175.1 of the Civil Code requires that the adoptive parent be over 25 years of age. In adoption by both spouses, it is sufficient that one of them has reached said age.

The adoptive parent has to be at least fourteen years older than the adoptee.

[52] Article 176 of the Civil Code, in accordance with the wording given by Organic Act 1/1996 of 15 January, specifies:

> "1. The adoption shall be constituted by judicial resolution, which shall take into account always the interests of the prospective adoptee and the suitability of the prospective adoptive parent or parents for the exercise of parental authority.
>
> 2. To initiate the adoption proceedings, a prior proposal of the public entity shall be required in favour of the prospective adoptive parent or parents who have been declared suitable to exercise parental authority by the public entity. The declaration of suitability may be prior to the proposal.
>
> Notwithstanding the foregoing, no proposal shall be required when the prospective adoptee meets any of the following circumstances:
>
> > 1. Being an orphan and a relative of the prospective adoptive parent in the third degree by consanguinity or affinity.
> >
> > 2. Being a child of the consort of the prospective adoptive parent.
> >
> > 3. Having been under a measure of a pre-adoptive foster care for more than one year, or having been under guardianship for the same time.
> >
> > 4. Being of legal age or an emancipated minor.
>
> 3. In the first three cases of the preceding section, the adoption may be constituted even if the prospective adoptive parent should have deceased, if the latter should already have given his consent before the Judge. In this case, the judicial resolution shall have retroactive effect to the date of such consent."

[53] The capacity of spouses to adopt a minor simultaneously shall also be applicable to a man and a woman who form a stable couple in a loving relationship, similar to that of a married couple, in accordance with

the third additional disposition of Act 21/1987 of 11 November ("Official State Gazette" No 275 of 17 November).

[54] Article 180 of the Civil Code, in accordance with the wording given in Act 21/1987 of 11 November ("Official State Gazette" No 275 of 17 November), stipulates that:

> "1. Adoption is irrevocable.
>
> 2. The Judge shall resolve the termination of adoption at the request of the father or the mother who, without fault on their part, should not have taken part in the proceedings under the terms expressed in Article 177. It shall also be necessary that the claim be filed within two years following the adoption, and that the requested termination does not cause serious harm to the minor.
>
> 3. Termination of the adoption shall not be a cause of loss of nationality or legal residence acquired, nor shall it affect assets previously acquired.
>
> 4. Determination of the kinship corresponding to the adoptee by birth shall not affect adoption.

[55] See Articles 234 and 258 of the Civil Code.

[56] See Articles 286 and 297 of the Civil Code.

[57] See Articles 199 to 201, 222 and 291 of the Civil Code.

[58] Article 163 of the Civil Code, worded in accordance with Organic Act 1/1996 of 15 January, stipulates that:

> "Whenever, in any affair, the father's and mother's interest should be opposed to that of their non-emancipated children, a guardian ad litem shall be appointed to represent said children in court and out of court. This appointment shall also take place when the parents' interest is opposed to that of the underage emancipated child whose capacity they are required to supplement.
>
> If the conflict of interest should exist only in respect of one of the parents, the other shall be entitled to represent the minor or supplement his capacity by operation of law and without the need for a specific appointment."

See Articles 299 to 302 of the Civil Code on the guardian ad litem of minors and incapacitated persons.

[59] Article 12 of the Spanish Constitution of 27 December 1978 (“Official State Gazette” No 311 of 29 December), sets forth that Spanish citizens are legally of age at eighteen.

Also see Article 315 of the Civil Code.

[60] See Article 63.18 of this Act.

[61] See Articles 262 to 264, 269.1 and 270 to 275 of the Civil Code.

[62] See Article 274 of the Civil Code.

[63] See Articles 261 and 262 of the Civil Code.

[64] See Articles 168.4 and 192 of the Mortgages Act of 8 February 1946, and Articles 268 and 269 of its Regulations of 14 February 1947.

[65] Articles 387 et seq. of Act 1/2000 of 7 January (§ 1).

[66] See the Act and Regulations on Free Legal Aid, which are included in paragraphs 5 and 6 herein.

[67] See Articles 269.4, 270 and 279 to 285 of the Civil Code.

[68] Articles 1880 to 1900 have been expressly revoked by Act 1/2000, on Civil Procedure.

[69] The name and articles of this Section are worded in accordance with Organic Act 1/1996 of 15 January (“Official State Gazette” No 15 of 17 January), on Legal Protection of Minors, partially amending the Civil Code and of the Civil Procedure Act.

[70] Currently Articles 443 et seq. of Act 1/2000 of 7 January (§ 1).

[71] Currently Articles 712 et seq. of Act 1/2000 of 7 January (§ 1).

[72] Organic Act 1/1996 of 15 January, and its nineteenth final provision, section 1, stipulates that: “Articles 1910 to 1918 of the Civil Procedure Act shall become part of Book III, Title IV, section 3, entitled “Provisional measures concerning the family children”.”

[73] Article worded in accordance with the Act of 24 April 1958.

Bear in mind that Article 1880 has been expressly revoked by Act 1/2000, on Civil Procedure (§ 1).

Article 170 of the Civil Code, worded in accordance with Act 11/1981 of 13 November ("Official State Gazette" No 119 of 19 November), stipulates that:

> "The father or the mother may be deprived in whole or in part of their authority pursuant to a judgment on grounds of the breach of the duties inherent thereto, or issued in criminal or matrimonial proceedings.
>
> The Courts may, for the benefit and in the interest of the child, agree to the recovery of parental authority when the cause which motivated the deprivation should have ceased."

[74] This article is worded in accordance with the Act of 24 April 1958 ("Official State Gazette" No 99 of 25 April).

[75] Article worded in accordance with the Act of 24 April 1958.

[76] This article is worded in accordance with the Act of 24 April 1958.

[77] Article worded in accordance with the Act of 24 April 1958.

[78] This article is worded in accordance with the Act of 24 April 1958.

[79] Article worded in accordance with the Act of 24 April ("Official State Gazette" No 99 of 25 April). Bear in mind that Book II, Title XVIII of the Civil Procedure Act of 1881 has been revoked under the single revocation provision of Act 1/2000 of 7 January (§ 1). The provisions of Articles 250.1.8, 266.2, 269.2, 439.5 and 455.3 of said Act are now applicable.

[80] This article is worded in accordance with the Act of 24 April 1958 ("Official State Gazette" No 99 of 25 April).

[81] Article worded in accordance with the Act of 24 April 1958 ("Official State Gazette" No 99 of 25 April).

[82] Articles 700 to 705 of the Civil Code stipulate the following:

Article 700. If the testator should be in imminent danger of death, the will may be executed before five suitable witnesses, without the need for a notary.

Article 701. In the event of an epidemic, the will may also be executed without the intervention of a notary, before three witnesses older than sixteen.

Article 702. the cases of the two preceding articles, the will shall be written down, if possible; if not, the will shall be valid even if the witnesses do not know how to write.

Article 703. Wills made in accordance with the provisions of the three preceding articles shall be ineffective if two months should elapse from the time when the testator is no longer in danger of death, or the epidemic has ceased.

Where the testator should die within such period, the will shall also be ineffective if, within three months following the death, the interested parties do not appear before the competent Court to convert it to a public deed, irrespective of whether it was executed in writing, or orally.

Article 704. Wills made without the authorisation of a notary shall be ineffective if not converted to a public deed and formally registered as provided in the Civil Procedural Act.

Article 705. Upon an open will's being declared null and void as a result of not observing the procedures set forth for each specific case, the notary who authorised it shall be liable for any damages incurred, if the fault should result from his malice, or from his inexcusable negligence or ignorance.

Also see Articles 716, 718, 722 and 727 of the Code.

[83] Articles 711 to 715 of the Civil Code state the following:

Article 711. The testator may keep the closed will in his possession, entrust it to the care of a trusted person, or consign it in the possession of the authorising notary, to be kept in his files.

In this last case, the notary shall give the testator a receipt and shall enter in his ordinary files, in the margin or below the copy of the deed of execution, that the will is in his possession. If the testator should subsequently withdraw it, he shall sign a receipt below such note.

Article 712. The notary or the person who holds a closed will in his possession must submit it to the competent Judge when he becomes aware of the death of the testator.

If he should fail to do so within ten days, he shall be liable for any damages resulting from his negligence.

Article 713. A person who, by wilful misconduct, should fail to submit the closed will in his possession within the period provided in the second paragraph of the preceding article, as well as the liability provided therein, shall lose any right to the inheritance, if he should have any as intestate heir or as testamentary heir or legatee.

This same penalty shall be incurred by any person who by wilful misconduct should remove the closed will from the testator's domicile or that of the person in whose custody or deposit it has been left, and any person who hides it, breaks it or otherwise renders it useless, without prejudice to any applicable criminal liability.

Article 714. The provisions of the Civil Procedure Act shall be observed for the opening and formal registration of the closed will.

Article 715. A closed will shall be null and void if the formalities set forth in this section should not have been observed in its execution; and the notary who authorises it shall be liable for any damages incurred, should it be proved that the fault resulted from his malice, inexcusable negligence or ignorance. However, it shall be valid as a holographic will if it should be entirely written and signed by the testator and if it should meet the remaining conditions inherent to this kind of will.

Also see Articles 689 to 693, 704 and 718 of said Code.

[84] See Article 713 of the Civil Code, which is transcribed in the note to Article 1956 of this Act.

[85] Articles 681 to 693 of the Civil Code.

[86] See Articles 1984 and 2004 of this Act.

[87] See Articles 209 and 210 of the Notarial Regulations of 2 June 1944.

[88] Article 672 of the Civil Code sets forth the following:

"Any disposition made by the testator relating to the appointment of an heir, bequests or legacies, with reference to private instruments or papers which after his death should appear within or outside his domicile, shall be null and void if such instruments or papers do not meet the requirements provided for holographic wills."

[89] See Article 672 of the Civil Code, transcribed in the note to Article 1967.

Also see Article 1976 of this Act.

[90] See Article 672 of the Civil Code, transcribed in the note to Article 1967.

[91] See Articles 689 to 693 of the Civil Code.

[92] See Article 63.25 of this Act.

[93] See Article 1990 of this Act.

[94] Title worded in accordance with Act 15/1989 of 29 May ("Official State Gazette" No 130 of 1 June), amending certain articles of this Act.

[95] See Article 63.26 of this Act.

[96] Article 5 of the Mortgages Act stipulates that deeds referring to the mere or simple fact of possessing shall not be admitted for registration.

[97] Article worded in accordance with Act 15/1989 of 29 May ("Official State Gazette" No 130 of 1 June).

Article 166 of the Civil Code, worded in accordance with Organic Act 1/1996 of 15 January, states that: "Parents may not waive the rights held by the children, nor dispose of or encumber any real estate properties, commercial or industrial establishments, precious objects and securities, except for preferred subscription right over shares, save for a just cause of utility or necessity, prior authorisation of the Judge of their domicile, after hearing the Public Prosecutor.

Parents must obtain judicial authorisation to reject an inheritance or legacy left to the child. If the Judge should refuse the authorisation, the inheritance may only be accepted under the benefit of inventory.

No judicial authorisation shall be required if the minor should be sixteen years of age and should consent in a public document, nor to dispose of securities, provided that the proceeds are reinvested in safe goods or securities.”

[98] Article worded in accordance with Act 15/1989 of 29 May.

[99] Worded in accordance with Act 15/1989 of 29 May.

[99] This article is worded in accordance with Act 15/1989 of 29 May.

[100] Article worded in accordance with Act 15/1989 of 29 May.

Text refers to the former Mortgages Act of 1909. These matters are currently governed by the provisions of Article 166 of the Civil Code, which is transcribed in the note to Article 2011 of this Act.

Also see Articles 190 and 191 of the current Mortgages Act, and Articles 266 and 267 of its Regulations.

[101] Article worded in accordance with Act 15/1989 of 29 May.

[102] Article worded in accordance with Act 15/1989 of 29 May.

[103] The article cited, in its new wording, consists of only one paragraph.

The second point referred to public bonds and securities of all kinds, bearer and nominative.

[99] Article worded in accordance with Act 15/1989 of 29 May.

[104] This article is worded in accordance with Act 15/1989 of 29 May.

[105] This title and its heading are worded entirely in accordance with the Act of 30 December 1939 (“Official State Gazette” No 6 of 6 January 1940), which was passed to adapt this matter to the Act of 8 September 1939 (“Official State Gazette” No 274 of 1 October), which amended the regulation of absence in the Civil Code.

[108] This article is worded in accordance with the Act of 30 of 1939 (“Official State Gazette” No 6 of 6 January 1940).

[109] Article worded in accordance with the Act of 30 December 1939. Bear in mind that Articles 887 to 902 of this Act were revoked by the single revocation provision of Act 1/2000 of 7 January (§ 1), this matter being henceforth governed by the provisions of Articles 455 to 465 of this latter Act.

[110] The text refers to Article 181 of the Civil Code, which sets forth the following:

> "In any event, upon the disappearance of the person from his domicile or from his last place of residence, without having any further news of him, the Judge may, at the request of the interested party or of the Public Prosecution Service, appoint a defender to protect and represent the disappeared person in court or in any business which does not admit delay without serious detriment. Those cases where the former should already have legal or voluntary representation in accordance with Article 183 shall be excepted.
>
> The present spouse who is of legal age and not legally separated shall be the ex officio defender and representative of the disappeared person; and, in the absence thereof, the nearest relative up to the fourth degree, also of legal age. In the absence of relatives, lack of presence thereof or notorious urgency, the Judge shall appoint a solvent person with good background, after hearing the Public Prosecution Service.
>
> He may also adopt, at his prudent discretion, any necessary precautions for the preservation of assets."

[111] This article is worded in accordance with the Act of 30 of 1939 ("Official State Gazette" No 6 of 6 January 1940).

[112] Article worded in accordance with the Act of 30 December 1939.

[113] Note that the concept of protutor and family council was removed by Act 13/1983 of 24 October ("Official State Gazette" No 256 of 26 October), leaving Articles 305 and 307 to 313 of the Civil Code without content.

[114] Article worded in accordance with the Act of 30 December 1939.

Article 189 of the Civil Code sets forth: "The spouse of the absentee shall be entitled to separation of estates."

Also see Articles 2033 and 2040 of this Act.

[115] Article worded in accordance with the Act of 30 December 1939.

Article 185 of the Civil Code states that:

"The representative of the person declared an absentee shall be subject to the following obligations:

1. To make an inventory of movable property and to describe any immovable property of his principal.

2. To provide the bond prudentially set by the Judge; representatives described under numbers 1, 2 and 3 of the preceding article shall be exempt.

3. To preserve and defend the assets of the absentee and obtain from his property any normal returns of which it is capable.

4. To comply with the rules provided in the Civil Procedure Act relating to possession and administration of the absentee's property.

The provisions governing the exercise of guardianship and grounds for ineligibility, removal and excuse of guardians shall apply to the court-appointed representatives of the absentee, insofar as they are adapted to their special representation."

[116] This article is worded in accordance with the Act of 30 December 1939.

Article 184 of the Civil Code, worded in accordance with Act 11/1981 of 13 November ("Official State Gazette" No 119 of 19 November) sets forth that:

"Unless the Judge perceives a serious impediment, the representation of the person declared an absentee, the investigation of his whereabouts, the protection and administration of his property and the performance of his obligations shall correspond to:

1. The present spouse of legal age not legally or de facto separated from him.

2. His child of legal age; if there should be several, those who lived with the absentee shall be preferred, and an older child shall be preferred over a younger child.

3. The nearest youngest ascendant of either line.

4. Siblings of legal age who have cohabited as a family with the absentee, with preference of older siblings over younger ones.

In the absence of the aforementioned persons, such representation shall correspond, in all its scope, to the solvent person of good background designated by the Judge at his prudent discretion, after hearing the Public Prosecution Service."

[117] This article is worded in accordance with the Act of 30 of 1939 ("Official State Gazette" No 6 of 6 January 1940).

[118] Article worded in accordance with the Act of 30 December 1939.

[119] See Articles 66 and 1375 to 1391 of the Civil Code.

[120] This article is worded in accordance with the Act of 30 of 1939 ("Official State Gazette" No 6 of 6 January 1940).

[121] Article worded in accordance with the Act of 30 December 1939.

[122] Article 197 of the Civil Code, worded in accordance with the Act of 8 September 1939 stipulates:

"If, after the declaration of death, the absentee should appear or his existence should be proved, he shall recover his property in its current condition, and shall be entitled to the price of any properties sold, or to any properties acquired with such price, but may not claim from his successors any rents, fruits or products obtained from the properties of his estate, until the day of his presence or of the declaration of not having died."

[123] Article worded in accordance with the Act of 30 December 1939.

[124] This article is worded in accordance with the Act of 30 December 1939.

[125] Article worded in accordance with the Act of 30 December 1939.

[126] Article worded in accordance with the Act of 30 December 1939.

[127] Worded in accordance with the Act of 30 December 1939.

The Central Register of Absentees was included in the Civil Register by the Civil Register Act of 8 June 1957 ("Official State Gazette" No 151 of 10 June). See its first final provision in this regard.

[128] Articles 387 et seq. of Act 1/2000 of 7 January (§ 1).

[129] See Article 63.27 of this Act.

[130] Articles 384 to 387 of the Civil Code are as follows:

"Article 384. Every owner shall be entitled to mark the boundaries of his property, summoning the owners of the adjoining plots.

Holders of rights in rem shall have the same entitlement.

Article 385. The marking of boundaries shall be performed in accordance with the deeds held by each owner and, in the absence of sufficient deeds, as results from the possession of the adjoining owners.

Article 386. If the deeds should fail to determine the limits or area belonged to each owner, and the matter cannot be resolved in reference to possession or by another means of evidence, the marking of boundaries shall be performed by distributing the land subject to dispute in equal parts.

Article 387. If the deeds of the adjoining owners should indicate a greater or lower area than that which comprises the whole of the land, the excess or shortfall shall be distributed proportionally."

Bear in mind the provisions of Article 1965 of this Code.

Regarding the boundary markings of State assets, see Articles 50 to 54 of Act 33/2003 of 3 November ("Official State Gazette" No 264 of 4 November), on the Assets of Public Administrations.

Regarding the boundary markings of property belonging to Local Administrations, see Article 82.b) of Act 7/1985 of 2 April ("Official State Gazette" No 80 of 3 April; correction of errors in "Official State Gazette" No 139 of 11 June), regulating Local Government Procedures; Article 10 of Royal Legislative Decree 781/1986 of 18 April ("Official State Gazette" No 96 of 22 April), consolidated text on matters related to Local Government, and Articles 56 to 69 of Royal Decree 1372/1986 of 13 June ("Official State Gazette" No 161 of 7 July), which passes the Rules affecting the Assets of Local Communities.

On the boundary definition of mountains, see Article 21 of Act 43/2003 of 21 November ("Official State Gazette" No 280 of 22 November), on Mountains, amended by Act 10/2006 of 28 April ("Official State Gazette" No 102 of 29 April); Articles 79 to 148 of the Regulations approved by Decree 485/1962 of 22 February ("Official State Gazette" Nos 61 and 62, of 12 and 13 March; correction of errors in "Official State Gazette" Nos 67 and 121, of 19 March and 21 May), and Article 14 of Act 55/1980 of 11 November ("Official State Gazette" No 280 of 21 November), on communal mountain land.

Also see:

Act 8/1975 of 12 March ("Official State Gazette" No 63 of 14 March), and the Regulations approved by Royal Decree 689/1978 of 10 February ("Official State Gazette" No 89 of 14 April), on areas and facilities of interest for national defence, bearing in mind that they have been the object of several amendments.

Articles 16 and 23 of Royal Decree 2362/1976 of 30 July ("Official State Gazette" No 247 of 14 October), which approves the Regulations of the Hydrocarbons Research and Exploitation Act, on the delimitation of exploration permits.

Article 70 of Royal Decree 2857/1978 of 25 August ("Official State Gazette" No 295 of 11 December), which approves the General Regulations for the Mining Industry, on demarcations.

Article 95 of Royal Legislative Decree 1/2001 of 20 July ("Official State Gazette" No 176 of 24 July; correction of errors in "Official State Gazette" No 287 of 30 November), which approves the consolidated text of the Water Act, and Articles 240 to 242 of the Regulations on Public Water Resources, passed by Royal Decree 849/1986 of 11 April ("Official State Gazette" No 103 of 30 April; correction of errors in "Official State Gazette" No 157 of 2 July), on the boundary definition of watercourses in the public domain, amended by Royal Decree 606/2003 of 6 May ("Official State Gazette" No 135 of 6 June).

Articles 11 to 16 and the first and second transitory provisions of Act 22/1988 of 28 July ("Official State Gazette" No 181 of 29 July), on Coasts, on the boundary definition of the terrestrial maritime public domain, Article 12 of which was amended by Act 53/2002 of 30 December ("Official State Gazette" No 313 of 31 December), and Articles 18 to 35 and the first to fourth transitory provisions of its Regulations, approved by Royal Decree

1471/1989 of 1 December ("Official State Gazette" No 297 of 12 December; with corrections in Official State Gazette No 20 of 23 February 1990)

[131] On communication via public notices, see Article 164 of Act 1/2000 (§ 1).

[132] See Articles 384 to 387 of the Civil Code, which are transcribed in the note to Article 2061 of this Act.

[133] Article 1655 of the Civil Code states that:

> "Foros and any other analogous encumbrances established after the enactment of the present Code, for an indefinite term, shall be governed by the provisions set forth for emphyteutic ground rents in the preceding section.
>
> If they should be temporary or for a limited term, they shall be deemed to be leases, and shall be governed by the provisions relating to such contracts."

[134] See Articles 63.27, 2092 and 2102 of this Act.

[135] See Articles 2077 and 2092 of this Act.

[136] Currently, Article 341 of Act 1/2000 of 7 January (§ 1).

[137] Currently, Articles 152 et seq. of the new Civil Procedure Act (§ 1).

[138] See Articles 2111.7 and 2118 of this Act.

[139] The procedures established for incidental matters are regulated in Articles 387 et seq. of Act 1/2000 of 7 January (§ 1).

[140] Currently, Articles 455 et seq. of Act 1/2000 of 7 January (§ 1).

[141] Currently, Article 341 of Act 1/2000 of 7 January (§ 1).

[142] The cited articles refer to the Commercial Code of 1829 and correspond to those of the Commercial Code currently in force as follows: Articles 121 and 122 coincide with Article 248, 218 with 367, 222 with 369, 365 with 332, 674 with 625 and 668, 745 with 656, 777 with 657, 781 with 678 and 988 with 844.

[143] Article 777 of the Commercial Code of 1829 corresponds with Article 657 of the Code currently in force.

[134] See Article 2146 of this Act.

[145] Article 218 of the Commercial Code of 1829 corresponds to Article 367 of the Code currently in force.

[146] The articles cited from the Commercial Code of 1829 correspond to Articles 366, 327 and 336, final paragraph, of the Code currently in force.

[147] Articles 670 and 945 of the Code of 1829 correspond to Article 624 of the Code currently in force.

[148] Article 947 of the Commercial Code of 1829 corresponds to Article 853 of the Code currently in force, although the latter provision does not require adjusters to take an oath.

See Article 2141 of this Act.

[149] See Articles 806 et seq. of the current Commercial Code.

[150] See Article 2142 of this Act.

[151] See Article 2143 of this Act.

[152] See Article 858 of the current Commercial Code.

[153] Bear in mind the provisions of Articles 865 and 867 of the current Commercial Code.

[154] Article 962 of the Commercial Code of 1829 corresponds to Article 866 of the Code currently in force.

[155] The cited article corresponds to Article 867 of the current Commercial Code.

[156] Article 775 of the Commercial Code of 1829 corresponds to Article 822 of the Code currently in force.

[157] See Articles 2153 and 2161.9 of this Act.

[158] The cited Article 765 of the Commercial Code of 1829 corresponds to Article 685 of the Code currently in force.

[159] Article 974 of the Commercial Code of 1829 corresponds to Article 822 of the Code currently in force.

[160] Currently, see Article 822 of the Commercial Code in force.

[161] Article 790 of the Commercial Code of 1829 corresponds to Article 687 of the Code currently in force.

[162] Article 794 of the Commercial Code of 1829 corresponds to Article 665 of the Code currently in force.

[163] Article 805 of the Commercial Code of 1829 corresponds, with some variations, to Articles 712 and 713 of the Code currently in force.

[164] The cited articles from the Commercial Code of 1829 correspond to Articles 269, 578, 579, 611, 667, 728, 824, 842, 845 and 925 et seq. of the Code currently in force. Article 614 of the Commercial Code of 1829 has no corresponding article in the current Code; nevertheless, see Article 591.

[165] The Colección Legislativa de España, volume CXXVI, corresponding to the first quarter of 1881, says: “it shall be accompanied where appropriate.”

[166] Article 248 of the Commercial Code of 1829 corresponds to Article 612.4 of the Code currently in force.

[167] Articles 644 and 826 of the Commercial Code of 1829 correspond to Article 611 of the Code currently in force.

[168] Articles 387 et seq. of Act 1/2000 of 7 January (§ 1).

[169] Article 798 of the Commercial Code of 1829 corresponds to Article 667 of the Code currently in force.

[170] Article 307 of the Commercial Code of 1829 is equivalent to Article 132 of the Code currently in force.

[171] Article 308 of the Commercial Code of 1829 corresponds to Article 133 of the Code currently in force. Article 310 of the Code of 1829 corresponds to Articles 150, 158 and 173.

[172] Articles 612 and 613 of the Commercial Code of 1829 correspond to Article 575 of the Code currently in force.

[172] The precepts cited from the Commercial Code of 1829 correspond to Articles 669 et seq. of the Code currently in force.

MAQUETACIÓN
Ministerio de Justicia. Secretaría General Técnica
Subdirección General de Documentación y Publicaciones
tienda.publicaciones@mjusticia.es
San Bernardo 62
28015, Madrid

GOBIERNO
DE ESPAÑA

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