

Ordine degli Avvocati di Lucca

## **FBE INTERMEDIATE MEETING**

**Lucca, 2-4 October 2014**

**Procedural systems in comparison.**

**Combine efficiency, justice, and equality of the parties.**

**Current solutions and projects under the sign of European unity. Directive ADR?**

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**Council and Secretary of the Council of the Madrid Bar Association and Elected Member of the General Spanish Council Bar**



# STATE AND PROPOSALS FOR SMALL CLAIMS IN SPAIN

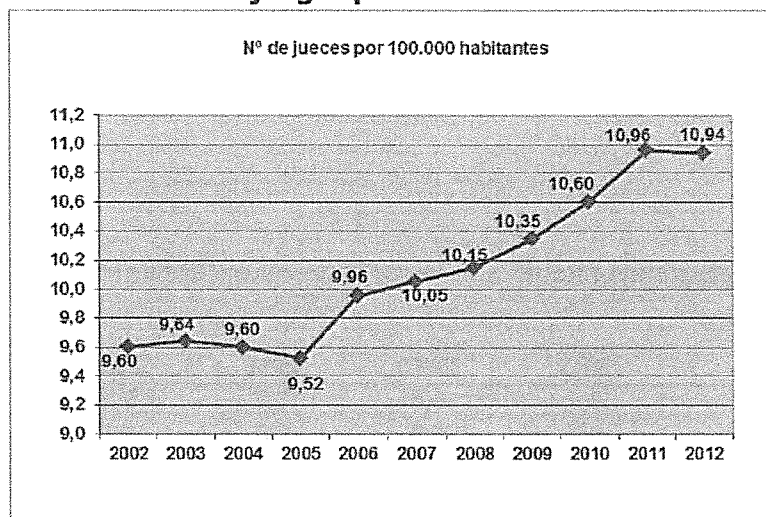
(Carmen Pérez Andújar-Member and Secretary of the Board of Madrid Bar Association-Elected Member of General Council of Spanish Lawyers)

## Synopsis for the FBE

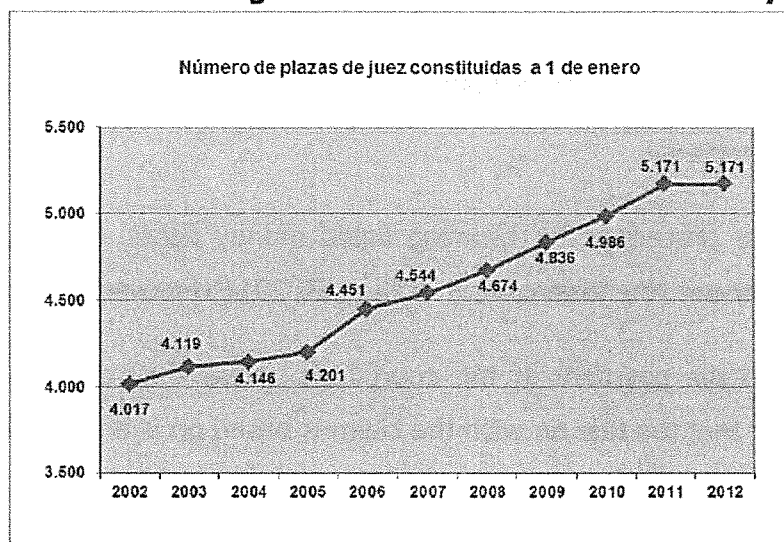
### 0.- INTRODUCTION

Spain is below the average investment in Justice (1% of public spending compared to the average in the rest of the countries CEPEJ-report 2012- whose average is 1,9%). To the same extent Spain is below the average in number of Judges per inhabitant.

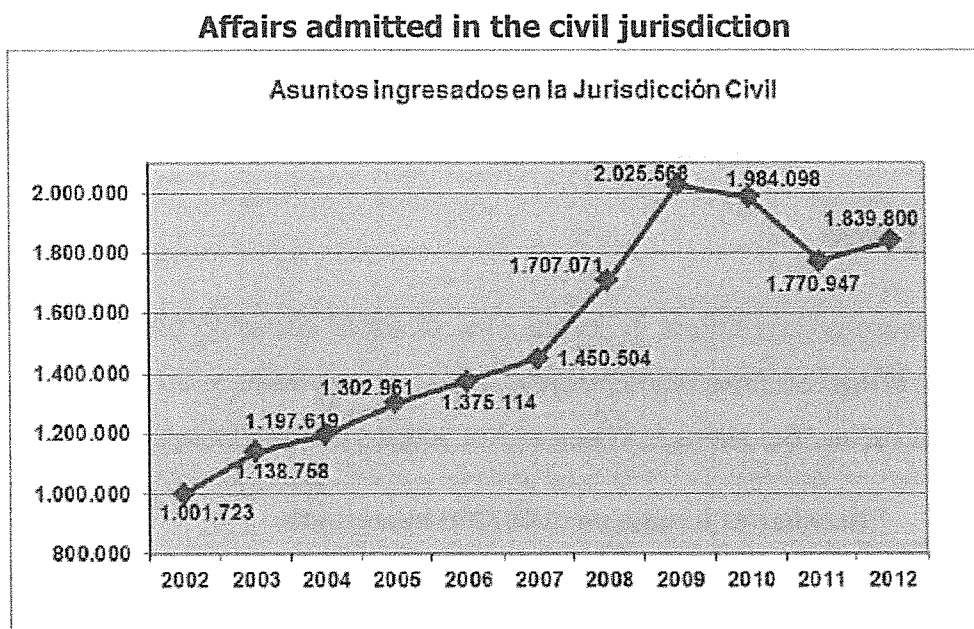
#### Number of judges per 100.000 inhabitants



#### Number of Judge seats created at first of January



Following we incorporate a review of global data for civil jurisdiction:



The average length of proceedings should still be considered excessive:

	2012	2011	2010	2009	2008
Jdos. 1ª Instancia	7,2	8,0	7,7	7,3	6,9
Jdos. Familia	4,5	4,4	4,0	4,0	4,0
Jdos. 1ª Instª. e Instrucción	9,2	9,9	9,3	8,6	8,1
<b>Total Primera Instancia Civil</b>	<b>8,0</b>	<b>8,6</b>	<b>8,3</b>	<b>7,7</b>	<b>7,4</b>

## 1.- SPANISH ORDER FOR PAYMENT (articles 812 a 818 LEC –Spanish procedural Code in civil matters)

- Quick and easy procedure for claiming liquid money debts, certain, due and payable any amount (the amendment of the LEC 2011 removed all amounts).
- It is subject to the payment of the court fees unless they claimed less than 2000 euros. Or that the title on which the claim is based on is enforceable.

- It starts with an initial request which must be accompanied by a prima facie evidence on the relationship between the parties and debt to any document that lists the LEC.
- The intervention of a lawyer and attorney is not required to submit the initial application. These professionals will be needed only when the debtor has objected; then it will be done by a judicial appropriate procedure, provided that the amount claimed exceeds 2.000 Euros.
- The initial application can be made through an official form approved by the CGPJ (General Council of the judiciary).
- The local jurisdiction corresponds to the Court of First Instance of the debtor's domicile or to where the debtor may be found for the purpose of demanding payment. The service of documents by notification edits it is impossible (except for claim for payment of a condominium fees).
- Once the application has been admitted, the debtor is required to act in one of the following ways:
  - a) To pay within 20 days: the procedure is filed.
  - b) To oppose in writing within 20 days: the declarative procedure that corresponds to the amount is opened.
  - c) Neither pay nor oppose to the plaint: The procedure is terminated by Decree of the Secretary, which shall fix the amount that may be claimed in the subsequent execution.

## **2.- SMALL CLAIMS UE REGULATION**

Council Regulation 861/2007 of 11 July 2007 establishing a European Small Claims Procedure seeks to improve and simplify procedures in civil and commercial matters where the value of a claim does not exceed 2.000 €.

- The Regulation applies between all Member States of the European Union with the exception of Denmark.
- The Small Claims procedure operates on the basis of standard forms. It is a written procedure unless an oral hearing is considered necessary by the Court.
- The Regulation also establishes time limits for the parties and for the court in order to speed up litigation.
- The Regulation provides for four standard forms.
- The ESCP only applies to cases defined as 'cross-border' that is cases in which at least one of the parties is domiciled or habitually resident in a Member State other than that of the Court or Tribunal seized with the claim.
- **The intervention of a lawyer and attorney is not required.** The Regulation makes it clear that except as provided in the Regulation the ESCP is to be governed by the procedural law of the Member State in which the procedure is conducted. It will carry out essentially in writing, but an oral hearing may be held if deemed necessary or one of the parties so requests it.
- The procedure is to be commenced using the multilingual Claim Form which is prescribed by the Regulation. The Regulation makes clear that the claim can be sent by post and by any other means of communication such as fax or e-mail acceptable to the Member State in which the ESCP is commenced. Then, within a period of 14 days after receipt of the claim form, the Court will send the respondent a copy both of the demand form and relevant supporting documents. The respondent will have to respond to the notification sending its reply to the Court within the period of thirty days following receipt.
- Thirty days after receipt of the response from the defendant, the Court shall issue the sentence. The Court can, before the ruling, request additional information, practice test, or quote to an oral hearing the parties.

- The question of whether or not an appeal against the judgment is available in the Member State where the judgment is issued is a matter regulated under the national law of the Member States. If there is an appeal available the same rules as to costs apply to the appeal as apply to the original proceedings in the claim. In Spain the appeal is possible before the "Audiencia Provincial" (Court of Appeal).

### **3.- EUROPEAN ORDER FOR PAYMENT**

Council Regulation 1896/2006 of 12 December 2006 creating an European order for payment procedure allows creditors to recover their uncontested civil and commercial claims according to a uniform procedure that operates on the basis of standard forms.

- The Regulation applies between all Member States of the European Union with the exception of Denmark.
- The procedure does not require presence before the Court.
- The claimant only has to submit his application, after which the procedure will lead its own life. It does not require any further formalities or intervention on the part of the claimant.
- The Regulation provides for seven standard forms.
- It is a special European procedure and summary uniform for the obtaining of an Executive Court ruling on a debt not aroused opposition.
- It is applicable only for cross-border procedures in civil and commercial matters.
- It will allow creditors to recover their uncontested civil and commercial claims.
- The assistance of a lawyer or a solicitor is not required.
- In the application for a European order for payment, the claimant should be obliged to provide information that is sufficient to clearly identify and support the claim in order to place the defendant in a position to make a

well-informed choice either to oppose the claim or to leave it uncontested. Any documents are requested.

- All the methods of service listed in the Regulations are admitted, the same as that the methods of the internal Laws of the Member States, provided that the service of documents through some of these procedures will not be accepted without personal acknowledgement of the debtor, when the domicile is not known.
- If the debtor is opposed within the period of 30 days from the requirement (through the standard form). In this case the procedure becomes the ordinary procedure that corresponds according to the amount, unless the creditor expressly stated that, in the event of opposition by the debtor, does not want to continue with the ordinary procedure.
- If the debtor does not object, the Court of origin shall declare Executive the European order for payment.
- Procedural issues not covered by the regulation are governed by the national law.

#### **4.- LEGISLATIVE INITIATIVES**

In August 1, 2014 the Draft Law on Voluntary Jurisdiction has been approved. It is currently in the Committee on Justice in period of amendments to the September 23, 2014. Its aim is to speed up the procedures in cases without controversy. Therefore, some issues will not go to Court and will be processed by Public Notaries or Public Register Offices. As an alternative to payment procedure (that may arise in any case afterwards), the Draft Law foresees that the procedure can be filed before a Public Notary.

It will be regulated in Article 69 of the Public Notaries Act of May 28, 1862.

- The creditor of a monetary debt liquid, determined, expired, and enforceable, may request a notary with residence in the place of domicile or residence of the debtor, or the place where he can be found, to require him of payment.
- The notary will require the debtor of payment to the petitioner within the period of 20 days to pay to the petitioner or to appear in the Public Notary's



Office to argue the reasons why it should not pay in whole or in part the amount claimed.

- If the debtor pays a letter of payment will be delivered.
- If the debtor makes is opposition, the grounds will be set out in the affidavit and the notarial activity will finish, leaving open the judicial way, including the order for payment procedure.
- If the debtor fails to appear or does not oppose the request, the notary shall record that fact in making the minutes leading enforceable document. The procedure for enforcement will be the one of and shall be exempt from tax.

## **5.- TOOLS THAT ALLOW THE ANTICIPATION OF THE JUDGMENT EFFECTS**

### **A) Request of precautionary measures.**

It is possible the preventive seizure of goods (article 727.1º of the Civil Procedural Code in civil matters).

### **B) Request of provisional execution.**

Once ordered the provisional enforcement of the judgment, there is no opposition to the provisional execution, unless payment or compliance, that must be justified documentary (art. 528 of the Civil Procedural Code in civil matters).

## **6.- INNOVATIONS IMPLEMENTED TO INCREASE EFFICIENCY IN CIVIL PROCEEDINGS**

- 37/2011 Act, on 10 October, of procedural streamlining measures, whose purpose is to incorporate certain measures to suppress unnecessary procedural formalities or to replace them with other shorter, and others, on the other hand, are aimed at limiting the misuse of judicial bodies.
- The quantitative limit of the order for payment procedure, is abolished thus equating it to the European order for payment procedure, in order to avoid

restrictions on access to this procedure, which has become the most common way to initiate judicial claims of amount.

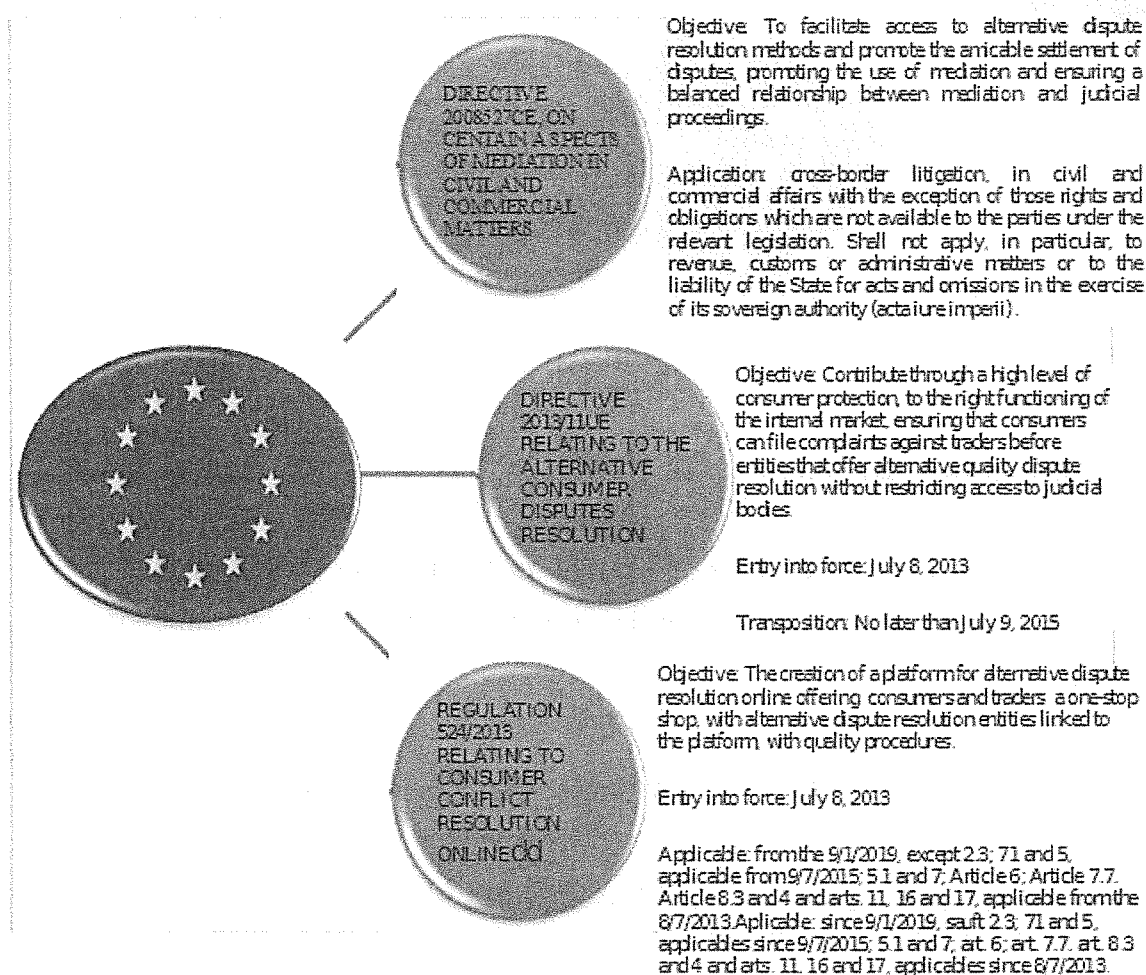
- The appeal in verbal procedures of amount is excluded when it does not exceed \$ 3,000.
- 5/2012 Act, of 6 July, of mediation in civil and commercial matters and their development through 980/2013 RD of December 13, provides a simplified procedure of mediation by electronic means for the resolution of claims of quantity through a simplified procedure of mediation, whereby the parts, that in no case shall refer confrontational arguments of law, may submit application forms of procedure, front to which the debtor may submit his reply. The procedure will have a maximum duration of one month, counting from the day following the receipt of the request and will be extended by agreement of the parties.
- Procedures that are referred to mediation are still very few

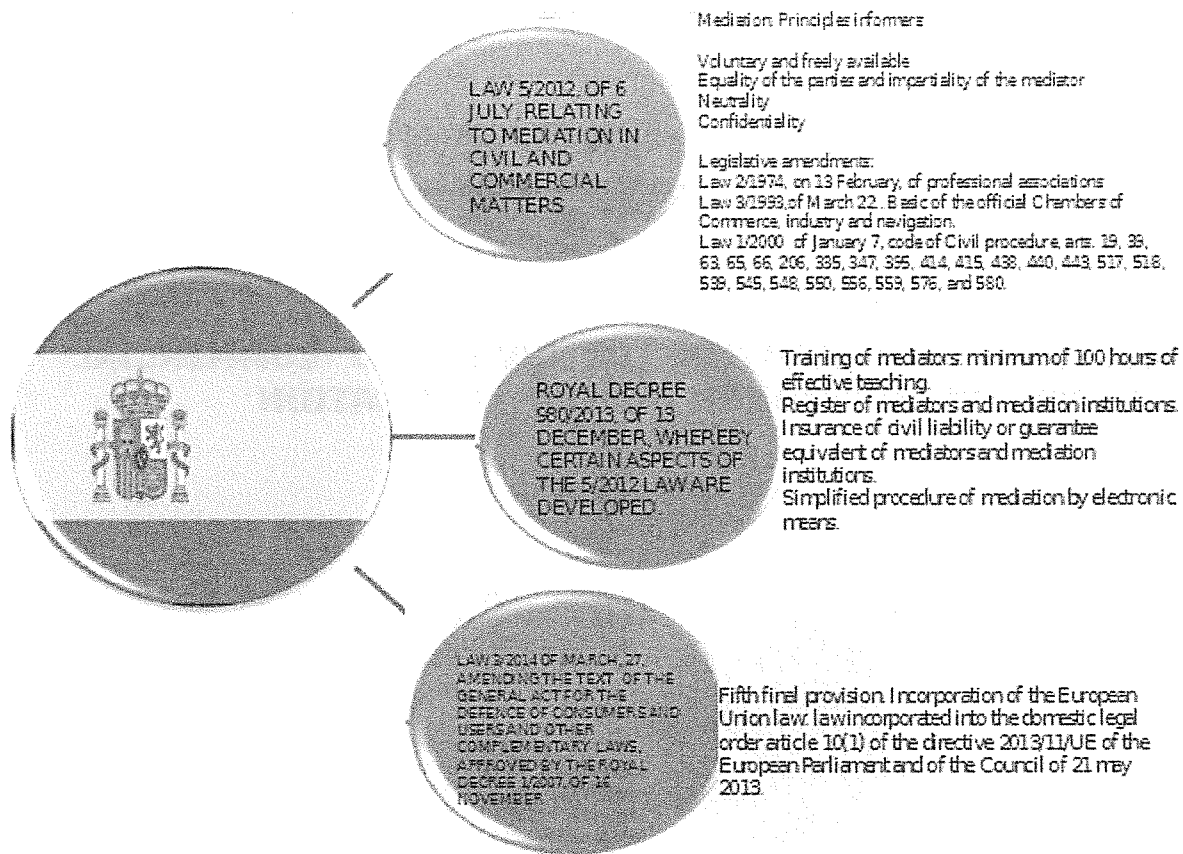
	Derivados a mediación	Finalizados con avenencia	Finalizados sin avenencia
Andalucía	378	47	246
Aragón	70	7	25
Asturias	34	9	22
Illes Balears	21	1	10
Canarias	124	24	43
Cantabria	0	0	0
Castilla y León	197	8	176
Castilla-La Mancha	11	6	5
Cataluña	1.225	86	569
C. Valenciana	748	92	452
Extremadura	71	4	57
Galicia	105	15	51
Madrid	401	28	326
Murcia	3	0	0
Navarra	65	9	56
País Vasco	146	41	80
La Rioja	9	0	5
<b>Total</b>	<b>3.608</b>	<b>377</b>	<b>2.123</b>

A bet from our State, more active and firm in favor of this mechanism of alternative resolution of conflicts, that contributes to a more effective and quick resolution and with lower costs than traditional justice and adversarial processes, is required.

The following is an overview of the directives relating to the matter and their incorporation into Spanish law.

## 7.- DIRECTIVES OF MEDIATION IN CIVIL AND COMMERCIAL MATTERS AND CONSUMPTION IN SPANISH LEGISLATION





## 8.-COURT FEES REGULATIONS

The Spanish Advocacy is against restrictive measures to the right of access to Justice implemented by the Government of Spain in order to reduce litigation by reimplantation of the Court fees.

The regulations that should be banished from our legal system is as follows

- Royal Decree-Law 3/2013, of 22 February, amending the regime of the rates in the field of the administration of Justice and the legal aid system.
- 10/2012 Act, of 20 November, which regulates certain rates in the field of the administration of Justice and the National Institute of forensic science and toxicology. (B.O.E - 21/11/2012).

- Order HAP/2662/2012, of 13 December, which approves autoliquidation 696 model, and the model 695 of application for refund (Official Gazette 15/12/2012).
- Instruction 5/2012, of 21 November, the Secretary General of the Administration of Justice, relating to the settlement of the legal rate on the occasion of the entry into force of the law 10/2012, of 20 November.

## **9. PROPOSALS FOR IMPROVING THE SYSTEM**

- € Promote the use of electronic means in the administration of justice both for bringing actions and for acts of notification.
- € Unification of the rules concerning the order for payment procedure with the European order for payment procedure.
- € Abolition of legislation on Court fees.
- € Empowerment of intrajudicial mediation as well as the introduction of regulatory reforms involving the imperativeness of seeking this system with prior and compulsory character to certain claims of low amount.
- € Introduction of effective mediation systems simplified electronically.

