



**ANSWERS TO THE QUESTIONNAIRE ON THE PROVISIONAL VERSION OF THE
HANDBOOK ON THE OPERATION OF THE SERVICE CONVENTION**

II. ADMINISTRATIVE INFORMATION AND UPDATE:

3. Central Authority:

3.1 Administrative information:

- **Subdirección General de
Cooperación Jurídica
Internacional.**
- **Calle San Bernardo, 62**
- **28015**
- **MADRID**
- **Tel. +34 91 390 2228/ 2291/
2386/ 2198**
- **Fax: + 34 91 390 4457**

3.2 Languages used: English and French (apart from Spanish).

3.3 Statistical information:

The Central Authority is able to provide statistical information relating to the number and source of requests directed to it, in application of the Service Convention, with regard to the country of origin and the year. Some examples are the following :

- Total number of requests directed to the Spanish Central Authority under the Service Convention:
 - 2000: 2.512
 - 2001: 1.637
 - 2002: 335
 - 2003 (1st semester): 344
- Number of requests, depending on the country of origin, during 2002.
 - USA: 36
 - Canada: 2
 - Norway: 22
 - Denmark: 27
 - Switzerland: 105



4. Case law and reference works:

- 4.1. On the case law, see the references in Annex A
- 4.2. On the Spanish doctrine, see the references in Annex B

5. Handbook:

5.1 Information to appear in the new Handbook: It would be very useful to include the declarations and reservations of the States Party to the Convention; the criteria established by each Central Authority and judicial authorities as to how the Convention is to be understood within its procedural law ; outstanding judicial decisions with practical implications to the application of the Convention; use and frequency of the alternative methods of transmission. It is also of the utmost importance to include precise information of the Central Authorities, specially in those countries that have chosen to establish several decentralized authorities.

5.2 Structure: there are no suggestions concerning the structure of the Handbook's provisional version. It seems fairly clear and consistent.

5.3 Other items to be included: All the main topics related to the operation of the Convention are included. Nevertheless, it might be the case that other items would come up during the discussions of the Special Commission's meeting in October 2003, which could be of interest to the States Party to be included in the final version of the Handbook.

5.4 Updating of the information contained in the Handbook:

?? updating : annually

?? resources: it would be desirable to centralize the information, in order to unify criteria and internal practice. For that purpose, the creation of a working group within each country, including experts and practitioners from different realms, would be useful.

5.5 Internet links: The web sites of the Spanish Ministry of Justice and of the Supreme Council of the Judiciary (www.mju.es and www.cgpj.es).



III. INFORMATION RELATING TO APPLICATION OF THE CONVENTION:

6. Scope of the Convention:

- 6.1 Change in the interpretation of the scope since 1992: no major changes in the Interpretation of the Convention's scope since the former version of the Handbook have been noted.
- 6.2 Interpretation of the phrase "in civil or commercial matters": the Spanish Central Authority adopts a fairly broad approach to this concept, and is ready to accept requests for service of documents under the Service Convention that relate to almost anything except criminal offences. In this respect, service has been granted for judicial documents pertaining to the labour and administrative branch of our jurisdiction.
- 6.3 Interpretation of the mandatory character of the Convention: Article 96.1 of the Spanish Constitution confers a *supra lege* force to all international treaties validly concluded by our country and published in the Official Journal. The application of international instruments is therefore mandatory to all judicial authorities. Furthermore, article 177 of the Spanish Procedural Law refers to international treaties as the first legal source to rule mutual legal assistance. Only in the absence of a specific treaty ruling this matter, shall the national law become applicable. See also article 323 of the Civil Procedural Law containing a specific reference to the application of international instruments concerning foreign public documents, conferring them legal force within the internal judicial process.
- 6.4 Interpretation of the Convention's exclusive character: no changes have been observed as to the exclusivity of the Convention's application since 1992.
- 6.5 Interpretation of the phrase "writ of summons" (*acte introductif d'instance*): the Spanish equivalent for this expression is contained in article 399 of the Civil Procedural Law, which states that the process will initiate with the *demanda*. The interpretation of this provision has not lead to major difficulties.

7. Forwarding authority:

- 7.1 Competent authorities to forward requests for service to a foreign Central Authority: according to article 279.3 of the Spanish Jurisdictional Law, the head of the Court administration (*Secretario Judicial*) of each Court is responsible for the service of documents and other acts of communication, in the manner provided by the internal law and international instruments.



7.2 Cooperation between Central Authorities aiming at the determination of the competence of the forwarding authority should remain subject to “special circumstances”, rather than extend its scope more widely.

8. Methods for service used by the C.A.:

8.1 Method /s used by the Spanish Central Authority: the Central Authority causes the document to be served, in the sense of article 5 (1) a) of the Convention, by forwarding it to the Dean Judge (*Juzgado Decano*) of the Courts of First Instance within the judicial territory (*partido judicial*) where the document is to be served. This judicial organ is competent for distributing the different matters (including service of documents) among the judicial authorities that fall under its jurisdiction. The actual service (in the sense of article 5.1 a) is done by the Court of First Instance to whom the matter has been forwarded.

In principle, although a different form of service is not prohibited nor allowed in our domestic law, the Central Authority is not usually confronted to a special request by the applicant (art. 5 (1) b) and does not practice informal delivery within the meaning of article 5 (2).

8.2 Requirement for translation is extended to the document or evidence to be served, as well as the document's summary, in case there is one. Spain has concluded a bilateral agreement with **Portugal** in 1997 aiming to exclude the translation requirement within our mutual legal assistance relations. There is also a bilateral agreement with Austria for the same purpose, but its application was directly related to the application of the Civil Procedure Convention of 1954 between our two countries, and the latter has been recently substituted by the EU Regulation as regards service of documents.

8.3 Actions taken to expedite the service procedure (such as setting of periods or outsourcing): No such measures have been undertaken.

8.4 Cost of the service of documents: Service of documents is costless, according to our domestic law, and it is performed by public authorities. Special costs deriving from a particular form of service required by the applicant should be dealt with according to the circumstances of the case.

9. Translation requirements (Article 5 (3)):

9.1 General declaration on translation requirements: Spain has not so far made a general declaration regarding the necessity to draft or translate all documents into Spanish. This means that, in principle, the Central Authority has the discretion to require such a translation or not.



Article 144 of the Spanish Procedural Law establishes that all documents drafted in a foreign language must be accompanied by a translation into Spanish. However, bearing in mind the superior legal hierarchy of international treaties, only if the Treaty in question states otherwise, might this obligation be avoided.

In practice, the Central Authority requires a translation into Spanish of all requests for service. Some exceptions have been made, considering the mother tongue of the addressee, with uneven results from the part of the judicial organs¹.

The general requirement for a translation does not necessarily entails making judicial assistance more cumbersome; it just places the burden in the applicant's side. Only if the forwarding authority justifies sufficiently that the translation is not needed in a particular case, might the Central Authority consider the possibility of accepting the request for service in the original language. However, a summary of the document should in any case be translated in the official language of the requested country.

- 9.2 Possible adoption of a Recommendation concerning translation requirements: it might be appropriate to adopt such a recommendation for cases in which the addressee is known to understand the original language of the document to be served.

However, the burden to verify this circumstance should be placed in the forwarding authority, and not just be presumed by the Central Authority of the State addressed on the basis of the addressee's personal circumstances (such as nationality or residence).

This possibility has actually been introduced in the EU Regulation 1348/2000 (article 8.1 a)) as the general rule for translation requirements under its provisions.

- 9.3 Suggestions concerning eventual implementation of such a measure: after the debate and discussions during the next meeting of the Especial Commission, a final text for the said recommendation should be agreed upon, taking into consideration proposals and ideas from all delegations.
- 9.4 Translation of the whole document or only the document's summary: This criteria should be subject to a case by case basis, considering the various situations that may occur. Eventually, it should be decided ultimately by the Central Authority, and, in any case, restricted to cases in which the forwarding authority has justified the addressee's sufficient knowledge of the language in which the document is drafted.

¹ A number of requests was forwarded to the Spanish Central Authority for service on several Norwegian nationals residing in Spain, all of them drafted in Norwegian, and without a translation into Spanish. The C.A. accepted these requests, on the basis of the addressees' mother tongue, and sent them to the competent authority for service. Some of them were effectively served on the addressees and others were rejected by the Court, on the grounds of lack of translation.



9.5 Do such translations need to be legalized or to bear an *apostille*?: they need just to bear an *apostille*.

10 Timing (cf. II, 1, E, d):

10.1 What is the average time required for performance of requests for service?: there are no statistical data regarding time elapsed to perform delivery.

10.2 Are there substantial differences between States addressed?: No statistical information has been processed regarding differences between States. However, substantial differences between States are noted in the ordinary application of the Convention, though they cannot be systematically described.

10.3 How could this procedures for mutual assistance be improved?: by encouraging cooperation and direct contact between Central Authorities, as well as between these and judicial organs.

11 Alternative transmission channels (cf. II, 2):

11.1 Consular and diplomatic channels (articles 8 and 9): these forwarding channels are used in practice when a judicial documents needs to be served on a Spanish national residing abroad. However, the case law show that the consular channel is also admitted concerning non nationals.

11.2 Postal channels (article 10 a): Notification by post is admitted by art.160 of the Spanish Civil Procedural Law, except for the writ of summons, although the last notification it is admitted in Labour Procedural Law. However, the case law evidences that the Courts, on the basis of art.10 a) of the Convention, have largely admitted this alternative transmission channel.

11.3 Judicial officers, officials or other competent persons (article 10 b):

- a) Method described under article 10 (b): it is not used in practice.
- b) Transmission between huissiers: it is not foreseen in the domestic legislation.
- c) Costs of forwarding and reimbursement of costs: there is no cost attached to the serving of judicial documents.
- d) Huissiers de justice: this institution does not exist in our country.



e) Are your country's lawyers or solicitors authorized to perform service from abroad? No, they are not.

11.4 Interested persons (article 10 c): there is no provision in our domestic law allowing private individuals to perform service of judicial documents abroad.

12 Judicial and extrajudicial documents (cf. I, 5, E):

12.1 Distinction between judicial documents producing procedural effects and those that not: The Service Convention is applied to both classes of judicial documents.

12.2 Volume of extrajudicial documents forwarded abroad under the Convention: there is no statistical information on this matter.

13 Date of service and double date (cf. II, 1, E, f):

13.1 What is your view of the dual- dating system?: In general terms, it is judged very useful, given that it safeguards the interest of each parties. The introduction of this system into the Convention, however, should be carefully considered.

13.2 Does your country's domestic law provide for a system to determine the date of service for the applicant? No, there is not such system. Besides, it is not usually necessary to determine the date of service for the applicant.

14 Exequatur:

14.1 Would it be possible to deny enforcement of a foreign judgment on grounds of breach of public policy based on the service procedure applied, even though that service has been performed by the methods provided for under the Convention? Yes, it is possible. Article 24 of the Spanish Constitution states that every person has the right to obtain the effective protection of the Judges and the Courts in the exercise of his legitimate rights and interests, and in no case may he go undefended. This is one of the fundamental constitutional rights and enjoys maximum protection under the Spanish Constitutional Law.

Therefore, if a person has not been able to provide himself with a proper defence due to lack of notification of the claim against him, even though the provisions of the Convention had been met, the above mentioned right would prevail. Eventual enforcement of the foreign judgement in Spain, would be denied on grounds of breach of a fundamental right.



In the case described in 14.1, enforcement might be refused if the lack of translation has led to misprotection .

15 Exclusion of the application of the Convention between the parties (cf. I, 5, B, 5):

15.1 Have rulings been issued in your country permitting the parties to exclude application of the Convention between themselves by agreement or contrat? No, there have not. As far as we are aware of, no such rulings have been issued. It is to be noted that procedural rules have the nature of public policy (*ordre public*) in our domestic law, and hence are not subject to exclusion at the parties' own will.

16 Fax and electronic mail (cf. II, 3):

16.1 Form of the request:

a) Would the Central Authority of your country be willing to accept requests forwarded to it by fax or e-mail? Article 162 of the Spanish Civil Procedural Law introduces the possibility to forward and receive judicial documents by electronic and telematic means as long as the authenticity of its content is guaranteed and there is exact awareness of the moment in which it has been completely sent and received .

b) Are e-mail and fax used in your country, as requesting State, to forward requests for service? Fax may be used in case of urgency, although it is seldom used. E-mail has not been introduced yet as an ordinary mean of forwarding requests for service.

16.2 Form of service:

a) In your State, may service from abroad be performed by e-mail or fax? If so, subject to what requirements? Yes, it is possible, according to article 162 of the Civil Procedural Law. Firstly, the Court and the addressees have to be provided with the necessary technical equipment to practice electronic service. Secondly, these electronic, telematic and infotelecommunication means must guarantee the authenticity of the document's content and the integrity of the service, as well as the moment in which it has been forwarded and received.

b) If your State allows postal channels for service from abroad, might the use of e-mail instead of postal channels be contemplated? If so, subject to what requirements? It may be contemplated in an international Convention if the necessary requirements indicated above are met. It may be also considered if



the defendant may have in any case the possibility of refusing notification by e-mail channel.

- c) As requesting State, does your domestic law accept service performed by e-mail or fax in the State addressed? As long as the requirements established in article 162 of the Civil Procedural Law are fulfilled, service abroad performed by electronic means may be accepted if expressly provided in the Convention.

16.3 Form of certificate:

- a) Does the Central Authority or any other competent authority in your country use or seek to use e-mail or fax for the sending of the certificate of due performance of service? There has been no proposal in this sense so far.
- b) As requesting State, would you accept receipt by e-mail or fax: If expressly admitted by the Convention.

16.4 Statutes or case-law on the use of e-mail or fax in service procedures: there is no case-law on this matter. The only provision of internal legislation ruling out the use of electronic means for service of documents is the mentioned article 162 of the Civil Procedural Law.

16.5 Is the use of e-mail or fax in service procedures subject to specific security requirements? Yes, it is. See article 162 of the Spanish CPL, described above.

16.6 Is the clause for service whereby parties to a contract agree in advance to receipt of service of any document by electronic channels used in practice? Does your domestic law recognize it as being valid? Ver Real Decreto Ley del 99 sobre Firma Electrónica.

17 **Model forms:**

17.1 Do you consider that the model forms ought to be revised? They are regarded as useful and appropriate for their aim.

17.2 In particular, do you consider that information for the addressee, such as the amount due, the place and period for payment, the manner in which a defence may be exercised and the consequences for the defendant of failure to enter a defence ought to be added to them? It does not seem particularly urgent to introduce these items in the model form right now, since they are in any case contained within the document served.

17.3 Amendment of the Request Form to provide a box for declaration of the capacity and competence of the forwarding authority: in principle, such an



amendment does not seem necessary. The forwarding authority is presumed capable to issue the request, unless there are reasons to believe otherwise.

17.4 Adoption of a new form by way of Recommendation: This solution seems less complicated than a formal revision of the Convention.

17.5 Electronic version of the model form: the introduction of an electronic version of the model form would be very useful, specially if transmission by electronic means is ever generalized.

18 Reservations and reciprocity:

18.1 Service through postal channels: there is no information concerning assertion of reciprocity against Contracting States having opposed to this transmission method. The issue would only arise in case this particular form of service would be questioned before a Court, and it has not been the case so far.

18.2 Transmission through consular channels: same as 18.1

19 Bilateral and multilateral agreements (cf. IV):

19.1 List of bilateral agreements with respect to international service:

- i. Tratado sobre ejecución de sentencias en materia civil y mercantil entre España y **Suiza**, hecho en Madrid el 10 de noviembre de 1896.
- ii. Convenio de ejecución de sentencias civiles entre España y **Colombia**, hecho en Madrid el 30 de mayo de 1908.
- iii. Convenio sobre asistencia jurídica, reconocimiento y ejecución en asuntos civiles entre España y **Checoslovaquia**, hecho en Madrid el 4 de mayo de 1987.
- iv. Convenio sobre reconocimiento y ejecución de sentencias judiciales y laudos arbitrales en materia civil y mercantil entre España y **Méjico**, hecho en Madrid el 17 de abril de 1989.
- v. Convenio de Cooperación Jurídica en Materia Civil entre el Reino de España y la República Federativa de **Brasil**, hecho en Madrid el 13 de abril de 1989.
- vi. Convenio entre España e **Israel** para el mutuo reconocimiento y ejecución de sentencias en materia civil y mercantil, hecho en Jerusalén el 30 de mayo de 1989.
- vii. Convenio entre España y **Rumania** sobre competencia judicial, reconocimiento y ejecución de decisiones en materia civil y mercantil, hecho en Bucarest el 17 de noviembre de 1997.



- viii. Tratado entre el Reino de España y la República Popular **China** sobre asistencia judicial en materia civil y mercantil, hecho en Pekín el 2 de mayo de 1992.
- ix. Convenio de asistencia judicial en materia civil entre el Reino de España y la República de **Bulgaria**, hecho en Sofía el 23 de mayo de 1993.
- x. Convenio entre el Reino de España y la **Federación Rusa** sobre asistencia judicial en materia civil, hecho en Madrid el 28 de octubre de 1990.
- xi. Convenio de cooperación jurídica entre el Reino de España y la República Oriental del **Uruguay**, hecho en Montevideo el 4 de noviembre de 1987.
- xii. Convenio entre el Reino de España y la República de **Túnez** sobre asistencia judicial en materia civil y mercantil y reconocimiento y ejecución de resoluciones judiciales, hecho en Túnez el 24 de septiembre de 2001.

19.2 Interamerican Convention on Letters Rogatory: Spain is a Party to both Conventions (the 65 Convention and the Panama Convention). In our relations with countries which are also a Party to both Conventions (namely, Argentina or Venezuela), The Hague Convention is preferred as regards service of documents.

19.3 EU Regulation 1348/2000: the Service Convention is no longer applicable among the States parties to the Regulation (all EU States Members, except Denmark).

19.4 African Asian Legal Consultative Organisation: Spain is not a party to this organisation.



ANNEXE 1: CASE LAW

Sentencia TS (Sala de lo Social) de 22 de octubre de 1993 RJ 1993\8057

Ponente: Excmo. Sr. D. Leonardo Bris Montes

REBELDIA: audiencia: desestimación. ACTOS DE COMUNICACION: realizados por correo certificado con acuse de recibo en territorio francés: eficacia.

El T.S. desestima el recurso de casación (nº 3849/1992) interpuesto por Guy Michel P. C. contra la sentencia del Tribunal Superior de Justicia de Cataluña, dictada en el recurso de Audiencia al litigante rebelde promovido frente a la sentencia del Juzgado dictada a su vez en autos seguidos a instancia de José I. R. contra el recurrente y otro, sobre despido.

Sentencia TS (Sala de lo Social) de 28 de marzo de 1994 RJ 1994\2645

Ponente: Excmo. Sr. D. Arturo Fernández López

REBELDIA: audiencia: desestimación. ACTOS DE COMUNICACION: realizados por correo certificado con acuse de recibo en territorio francés: eficacia.

El TS desestima el recurso de casación (nº. 3840/1992) interpuesto por Guy Michel P. C. contra la sentencia de 28-7-1992 del Tribunal Superior de Justicia de Cataluña, dictada en el recurso de Audiencia al litigante rebelde promovido frente a la sentencia del Juzgado dictada a su vez en autos seguidos a instancia de José V. F. y otros contra el recurrente y otros, sobre despido.

Sentencia TS (Sala de lo Social) de 23 de mayo de 1994 RJ 1994\5362

Ponente: Excmo. Sr. D. Mariano Sampedro Corral

REBELDIA: audiencia: desestimación. ACTOS DE COMUNICACION: realizados por correo certificado con acuse de recibo en territorio francés: eficacia.

El TS desestima el recurso de casación (nº. 3850/1992) interpuesto por Guy Michel P. C. contra la Sentencia de 31-7-1992 del Tribunal Superior de Justicia de Cataluña, dictada en el recurso de Audiencia al litigante rebelde promovido frente a la sentencia del Juzgadi, dictada a su vez en autos seguidos a instancia de Pedro S. C. contra el recurrente y otro, sobre despido.

Auto de la Audiencia Provincial de Huesca de 31 de junio de 1996 AC 1996\1448

RECURSO DE APELACION: PROCEDIMIENTO: admisión: improcedencia: extemporaneidad: mantenimiento del interesado al margen del proceso de modo consciente y deliberado: no procede hacer uso de la facultad extraordinaria concedida en el art. 16 del Convenio de la Haya de 1965.



La Audiencia Provincial de Huesca declara no haber lugar al recurso de queja interpuesto por la entidad "Les Assurances Federales", contra los autos dictados el 13 de septiembre y el 10 y 31-10-1995.

Auto de la Audiencia Provincial de Alicante, Sección 5ª, de 8 de octubre de 1997, AC 1997\2443

Ponente: Ilma. Sra. D^a Visitación Pérez Serra

NULIDAD DE ACTUACIONES: estimación: emplazamiento: demandada de nacionalidad francesa y residente en Francia: falta de traducción de la demanda y documentos acompañados entregados mediante Comisión rogatoria: existencia de indefensión.

La Sección 5ª de la Audiencia Provincial de Alicante declara haber lugar al recurso de apelación deducido por la demandada doña Marguerite Marie C. contra la sentencia dictada, en fecha 1-3-1994, por el Juzgado de 1ª Instancia num. 4 de Alicante, decretando la nulidad de lo actuado, retrotrayendo las actuaciones al momento anterior al emplazamiento a fin de que el mismo se lleve a cabo, entregando traducción al idioma francés de la demanda y documentos.

Auto de la Audiencia Provincial de Madrid, Sección 11ª, de 31 de marzo de 1998 AC 1998\7037

Ponente: Ilmo. Sr. D. Jesús Gavilán López

NULIDAD DE ACTUACIONES: improcedencia: remisión de exhorto de emplazamiento de la entidad alemana sobre demanda de reclamación de cantidad sin que alguno de los documentos se encontrasen debidamente traducidos, siendo devuelto dicho exhorto al Juzgado español, que una vez subsanada la deficiencia remitió nuevo exhorto de notificación de emplazamiento a la interesada, con entrega directa a su destinataria: inexistencia de indefensión. La entidad «Construcciones Aeronáuticas, SA» formuló demanda en juicio declarativo de menor cuantía contra la entidad «Liberindo Warenhandels Gesellschaft GmbH», ante el Juzgado de Primera Instancia núm. 20 de Madrid. El Juzgado dictó, con fecha 6-7-1995, sentencia estimando la demanda. La Audiencia declara no haber lugar al recurso de apelación interpuesto por la parte demandada.

En Madrid, a treinta y uno de marzo de mil novecientos noventa y ocho.

Sentencia de la Audiencia Provincial de Guipúzcoa, Sección 1ª, de 22 de mayo de 1998 AC 1998\7957

Ponente: Ilma. Sra. D^a M^a del Carmen Margalejo Ferrer

REBELDIA: AUDIENCIA AL REBELDE: improcedencia: demandado emplazado vía postal en virtud del art. 10.a) del Convenio de la Haya: transcurso del plazo de 5 días de la apelación.

La Sección Primera de la Audiencia Provincial de Gipuzkoa declara no haber lugar a la audiencia solicitada por el demandado «SA, Arcadie Distribución Sud-Quest», litigante en posición de rebeldía procesal, contra la sentencia de 28-6-1996, dictada por el Juzgado de Primera Instancia núm. 2 de Donostia-San Sebastián.



Auto Audiencia Provincial de Alicante, Sección 4ª, de 23 de abril de 1999 AC 1999\799

Ponente: Ilmo. Sr. D. Manuel Benigno Florez Menéndez

SENTENCIA EXTRANJERA: EJECUCION: límites: orden público: concepto y alcance: inclusión de los principios constitucionales: respeto a las exigencias del derecho a la tutela judicial efectiva; estimación: sentencia en rebeldía: la validez del emplazamiento debe decidirse conforme al derecho que resulte de aplicación, no según las normas españolas: validez de la citación por correo: aunque no sea admitida en Derecho interno español: aplicación del Convenio de Bruselas de 1968 y del Convenio de La Haya de 1965.

Sentencia TS (Sala 1ª) de 31 de diciembre de 1999 RJ 1999\9385

Ponente: Excmo. Sr. D. Ignacio Sierra Gil de la Cuesta

SENTENCIA EXTRANJERA: EJECUCION: procedencia: Sentencia dictada por Tribunal Holandés contra sociedad española -demandada- en rebeldía, emplazada en forma -por correo certificado con acuse de recibo- y con tiempo suficiente, notificándosele posteriormente la Sentencia en su contra por conducto notarial: inexistencia de indefensión.

Sentencia de la Audiencia Provincial de Barcelona, Sección 12 de 11 de febrero de 2000, AC 2000\146

Ponente: Ilmo. Sr. D. Pascual Ortuño Muñoz

RECONOCIMIENTO DE SENTENCIA EXTRANJERA: REBELDIA DEL DEMANDADO: rebeldía involuntaria y rebeldía táctica: distinción entre ambas: forma parte de lo que ha venido en denominarse «orden público» del derecho internacional privado. NULIDAD MATRIMONIAL: HOMOLOGACION DE RESOLUCIONES CANONICAS POR LA JURISDICCION CIVIL: ha de ceñirse a sólo dos extremos: la autenticidad de la sentencia y la adecuación de la misma al derecho del Estado, en el sentido de que las normas aplicadas no estén en contradicción con el sistema de libertades públicas y derechos fundamentales del ciudadano. RESOLUCIONES ECLESIASTICAS SOBRE NULIDAD DE MATRIMONIO Y MATRIMONIO RATO NO CONSUMADO: tratamiento como un auténtico «exequatur» de resolución extranjera.

Auto de la Audiencia Provincial de Madrid, Sección 12ª, de 28 de marzo de 2000 AC 2000\196260

Ponente: Ilma. Sra. Dª Leonor Fernández Benito

CONVENIO DE BRUSELAS DE 16-9-1968 SOBRE COMPETENCIA JUDICIAL Y EJECUCIONES JUDICIALES: RECONOCIMIENTO Y EJECUCION: procedencia: notificación de la demanda al demandado, siendo emplazado en el proceso judicial: obtención de sentencia de declaración de rebeldía notificada a dicho demandado conforme a la legislación británica y con



ejecutoriedad en el Estado de origen: ausencia de vulneración del derecho de defensa del demandado; competencia territorial del juzgado de primera instancia para conocer de la ejecución.

Auto de la Audiencia Provincial de Alicante, Sección 4ª, de 1 de marzo de 2002 AC 2002\779

Ponente: Ilmo. Sr. D. Manuel Benigno Florez Menéndez

SENTENCIA EXTRANJERA: EJECUCION: estimación: sentencia dictada por tribunal belga: rebeldía: citación por correo certificado con acuse de recibo: según aquel ordenamiento procesal: validez aunque no sea admitida en Derecho interno español: aplicación del Convenio de Bruselas de 1968 y del Convenio de La Haya de 1965: disposición de tiempo suficiente a fin de comparecer y defenderse en juicio: rebeldía de conveniencia.