

Spanish Judicial Decisions in Private International Law, 2012

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I. NATIONALITY, IMMIGRATION LAW, REFUGEES AND EU CITIZENS

- Judgment of the High Court of Justice [Tribunal Superior de Justicia] of Madrid (Chamber for Contentious Administrative Proceedings, Section 1) n° 35/2012 of 20 January 2012. (ROJ 125/2009). Foreign Legal Status. Residence authorized by family reunification. Application for a family reunification visa of minor. The “minor” status must be assessed in the starting date of the file, not the date of visa application.
- Supreme Court [Tribunal Supremo] Decision (Third Chamber, Section 3), of 27 April 2012 (ROJ 6769/2010). Foreign Legal Status. Granting of residence permit authorized by family reunification. Reunification of relatives in the ascending line.
- Supreme Court Decision (Third Chamber, Section 3), of 15 June 2012 (ROJ 6249/2011). Foreign Legal Status. Refusal of the residence permit authorized by family reunification.
- Judgment of the High Court of Justice of Madrid (Chamber for Contentious Administrative Proceedings) n° 672/ 2012 of 15 June 2012. Foreign Legal Status. Residence

Permit authorized by family reunification. Granting of a visa for family reunification of a parent whose daughter had obtained Spanish nationality.

- Judgment of the High Court of Justice of Castilla y León, n° 20/2012 of 20 January 2012 (ROJ 231/2011). Foreign Legal Status. Expulsion. Stay of the expulsion of the foreigner due to be disabled, to be under the supervision of their Spanish parents and family roots.
- Supreme Court Decision (Third Chamber, Section 3) of 22 March 2012 (ROJ 299/2010). Foreign Legal Status. Residence authorization without an occupation. Refusal of visa. Improper.
- Judgment of the High Court of Justice of Islas Baleares (Chamber for Contentious Administrative Proceedings) n° 316/2012 of 24 April 2012 (ROJ 45/2012). Permission or temporary residence and work. Foreign Legal Status. Granting by administrative silence positive.
- Supreme Court Decision (Third Chamber, Section 3), of 22 June 2012 (ROJ 6085/2011). Permit for temporary residence on the grounds of exceptional circumstances. Foreign Legal Status. Granting by humanitarian reasons.

II. NATURAL PERSONS

- Decision of Barcelona Provincial High Court [Audiencia Provincial] n° 70/2012 (Section 18) (ROJ 1866/2012). Absence of jurisdiction of the Spanish Courts to adopt provisional measures on resident minors in China.
- Decision of Barcelona Provincial High Court n° 88/2012 of 23 April (Section 18) (ROJ 3766/2012). Resolution of restitution of a minor to the State of his habitual residence before to the removal (UK), until the Courts of this country resolve on the right of custody and the right of access.

III. FAMILY LAW

- Supreme Court Decision (Third Chamber, Section 3) of 28 February 2012 (ROJ 6769/2010). Foreign special Legal Status. Granting of family reunification of descending lines until 21 years old.
- Judgment of Huesca Provincial High Court n° 20/2012 of 31 January 2012 (Cendoj 2125370012012100036). Divorce of two foreigners (from Ghana) in Spain. Foreign judgment already passed abroad. Not appropriate double jeopardy exception. Proof of foreign law by the contents of the foreign judgment of divorce.

IV. SUCCESSION LAW

- Supreme Court Decision (Third Chamber, Second Section) of 30 January 2012 (ROJ 591/2012). Inheritance and Donation Tax. Local law of Aragon. *Fideicomiso*. Nullity *ab initio* of Section 8 of Article 54 of the Regulation on Inheritance and Donation Tax, approved by Royal Decree 1629/1991.

- Resolution of the General Directorate of Registries and Notaries [Dirección General de los Registros y del Notariado] of 27 February 2012. Appeal against a refusal to register a deed of inheritance. Notification by a notary to heirs domiciled in the UK.

V. BUSINESS ASSOCIATION/ CORPORATE LAW AND LEGAL PERSONS

VI. COMPETITION LAW

Unfair Competition

- Order [Auto] of the Commercial Court nº 10, Madrid, 20 January 2012 (proc. 658/2011 ROJ: AJM 18/2012). Provisional measures against companies seated abroad providing on line gambling.
- Order of the Commercial Court nº 4, Barcelona, 16 January 2012 (proc. 758/2011 ROJ: AJM 26/2012). Provisional measures against companies seated abroad providing on line gambling.
- Supreme Court Decision (Civil Chamber, Section 1) of 13 April 2012 (nº 203/2012, ROJ 2012\5256). Protection scope of foreign commercial names and unfair competition.
- Order of the Madrid Provincial High Court (Section 28) of 12 March 2012 (nº 43/2012; ROJ: AAP M 6066/2012). Acceptance of the exception on judged in an unfair competition demand.

Restrictive Business Practices

- Supreme Court Decision (Administrative Chamber) of 8 March 2012 (proc. 1589/2009, Iustel: §347266, and proc. 3227/2009, Iustel: §347275). Forbidden practices.
- Supreme Court Decision (Civil Chamber) of 15 February 2012 (proc. 1560/2008, Iustel: §347093). Contracts (exclusive distribution of fuel) annulment on the basis of antitrust infringement. Effects. EU *de minimis* rule. Rejection.

Abuse of Dominant Position

- Supreme Court Decisions (Civil Chamber) of 14 February 2012 (proc: 213/2009, Iustel: §347020) and 29 March 2012 (proc: 729/2009, Iustel: §347662). Television broadcast of football games.

VII. CONTRACT LAW

- Judgment of Valencia Provincial High Court of 2 May 2012 (ROJ 1911/2012). Dismissal of declinatory plea. Interpretation of Incoterms CIF. Dismissal of the appeal.
- Judgment of Alicante Provincial High Court of 17 April 2012 (ROJ 1434/2012) Inadmissible Incoterm “ex factory” for a carrier who was not involved in the contract of sale.

- Order of Madrid Provincial High Court of 15 February 2012 (ROJ 5650/2012). Declining exercise of jurisdiction. International contract for the supply of goods. Estimation of the appeal.
- Order of Pontevedra Provincial High Court of 6 February 2012 (ROJ 1178/2012). Lack of objective competence of the Court. Application of Incoterm FCA.
- Supreme Court Decision (Chamber for Civil Matters, Section 1) of 28 June 2012 (ROJ 5708/2012). Concept of breach by the seller in the United Nations Convention on Contracts for the International Sale of Goods (CISG). Dismissal of the appeal.
- Judgment of Murcia Provincial High Court of 25 May 2012 (ROJ 1409/2012). Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- Judgment of Santander Provincial High Court of 30 May 2012 (ROJ 639/2012) Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- Supreme Court Decision (Chamber for Civil Matters, Section 1) of 19 June 2012 (ROJ 5354/2012). Registration efficiency of a public deed granted by a German notary.

VIII. TORT LAW

IX. PROPERTY LAW, INTELLECTUAL PROPERTY, SECURITIES

- Supreme Court Decision (Chamber for Civil Matters) n° 172/2012 of 3 April 2012, Resource 2037/2008 (ROJ 3942/2012). Google activity without a license or the permission of the copyright. Legality of its activity in connection with Law on Intellectual Property.
- Order of the Commercial Court n° 2, Bilbao, n°15/2012 19 January 2012 (*La Ley* 8924/2012). Public communication of artworks through the Guggenheim Museum website. Infringement of intellectual property rights. Adoption of provisional measures: cease communication.
- Resolution of the General Directorate of Registries and Notaries of 22 February 2012 (BOE [Boletín Oficial del Estado – Spanish Official Journal] n°62, 13-III-2012): Refusal to register in the Property Registry a document formalized in Venezuela.

X. INSOLVENCY LAW

- Order of Vitoria-Gasteiz Provincial High Court of 14 March 2012 (Section 1) (ROJ 91/2012). Termination of a contract and compensation for damages. Scope of the Regulation on insolvency. Jurisdiction of Spanish Court.

XI. INTERNATIONAL ARBITRATION

- Order of the High Court of Justice of País Vasco (Civil and Criminal Chamber, Section 1) of 19 April 2012 (ROJ 2/2012). Recognition and enforcement of foreign award. (Court of Arbitration of the International Chamber of Commerce).

- Order of Madrid Provincial High Court (Section 28) of 13 January 2012 (ROJ 1049/2012). Appeal against the order of 30 April 2010 that accepted the application for recognition and enforcement of an award rendered in London. Estimation of the appeal.
- Judgment of the High Court of Justice of Madrid (Civil and Criminal Chamber, Section 1) of 25 June 2012 (ROJ 9715/2012). Action for annulment: Estimation. Effective legal protection.
- Order of Barcelona Provincial High Court (Section 1) n° 133/2012 of 21 May 2012 (ROJ 4830/2012). Appeal against an order that declining the exercise of jurisdiction. Dismissal of the appeal.

XII. INTERREGIONAL CONFLICT OF LAWS

Cases in which there is an interregional conflict that is resolved applying a rule of conflict of laws

- Judgment of Barcelona Provincial High Court (Section 12) of 28 June 2012 (ROJ 2050/2012). Divorce, application of national civil law, articles 9.2, 9.7, 107 & 16 Civil Code [Código civil]
- Judgment of Barcelona Provincial High Court (Section 12) of 14 June 2012 (ROJ 6849/2012). Maintenance, application of national civil law, articles 9.7 & 16 Civil Code.
- Judgment of Huesca Provincial High Court (Section 1) of 27 April 2012 (ROJ 158/2012). Maintenance, application of national civil law, article 9.7 Civil Code.
- Judgment of Barcelona Provincial High Court (Section 18) of 7 May 2012 (ROJ 4476/2012). Maintenance, application of Catalan civil law, articles 9, 107 & 16 Civil Code.
- Judgment of Barcelona Provincial High Court (Section 18) of 23 February 2012 (ROJ 2835/2012). Marital property regime, application of Catalan civil law, article 9.2 Civil Code.
- Order of Barcelona Provincial High Court (Section 16) of 26 January 2012 (ROJ 245/2012). Marital property regime, application of Catalan civil law, article 9.2 Civil Code.
- Judgment of Navarra Provincial High Court (Section 1) of 16 January 2012 (ROJ 7/2012). Successions, application of Navarre civil law, New Autonomous Community Act [Fuero Nuevo de Navarra] 148.
- Judgment of Cuenca Provincial High Court (Section 1) of 31 January 2012 (ROJ 39/2012). Successions, application of Catalan civil law, articles 9.8 & 16 Civil Code.

International cases where Spanish civil law must be applied and is necessary to determine which of them is applicable

- Judgment of Barcelona Provincial High Court (Section 12) of 29 June 2012 (ROJ 6897/2012). Marital property regime, application of Argentine civil law. Divorce, application of national civil law, return renvoi. Effects of divorce and parental responsibility, application of Catalan civil law.

- Judgment of Barcelona Provincial High Court (Section 12) of 9 May 2012 (ROJ 4497/2012). Marital property regime, application of Catalan civil law, article 9.2 Civil Code – Supervening unconstitutionality – articles 107.2 & 16 Civil Code.
- Judgment of Barcelona Provincial High Court (Section 12) of 3 May 2012 (ROJ 4476/2012). Divorce, application of national civil law. Maintenance, application of Catalan civil law, articles 9.7 & 16 Civil Code.
- Order of Tarragona Provincial High Court (Section 1) of 2 May 2012 (ROJ 478/2012). Succession, application of Catalan civil law, articles 9.8 & 16 Civil Code.
- Judgment of Zaragoza Provincial High Court (Section 2) of 20 April 2012 (ROJ 1015/2012). Parental responsibility, application of Aragonese civil law, articles 15.1, 48.b, & 47.1 of The Hague Convention of 1996 on the International Protection of Children, article 16, application of Aragonese civil law, articles 16 & 9.10 Civil Code, articles 4 & 16 of The Hague Convention on the law applicable to maintenance obligations.
- Judgment of Barcelona Provincial High Court (Section 12) of 27 March 2012 (ROJ 1975/2012). Legal separation, application of national civil law, article 107.2 Civil Code. Maintenance, application of Catalan civil law, The Hague Convention on the law applicable to maintenance obligations.
- Judgment of Barcelona Provincial High Court (Section 18) of 23 February 2012 (ROJ 1747/2012). Marital property regime, application of Catalan civil law, article 9.2 Civil Code. Maintenance, application of Catalan civil law.
- Judgment of Barcelona Provincial High Court (Section 12) of 19 January 2012 (ROJ 215/2012). Marital property regime, application of Moroccan law. Effects of divorce, application of Catalan civil law, Article 14.1 EAC, Article 111.3.1 Catalan Civil Code, article 9.2, 107 & 16 Civil Code.
- Judgment of the High Court of Justice of Catalonia (Section 1) of 5 January 2012 (ROJ 1/2012). Succession, application of Catalan civil law.