



7th International e-APP Forum / İzmir 2012

Recognition of e-Apostilles abroad

Izmir- Turkey

June 2012

Javier L. Parra

Secretario de Gobierno – Chancellor Secretary at Murcia
Superior Court of Justice

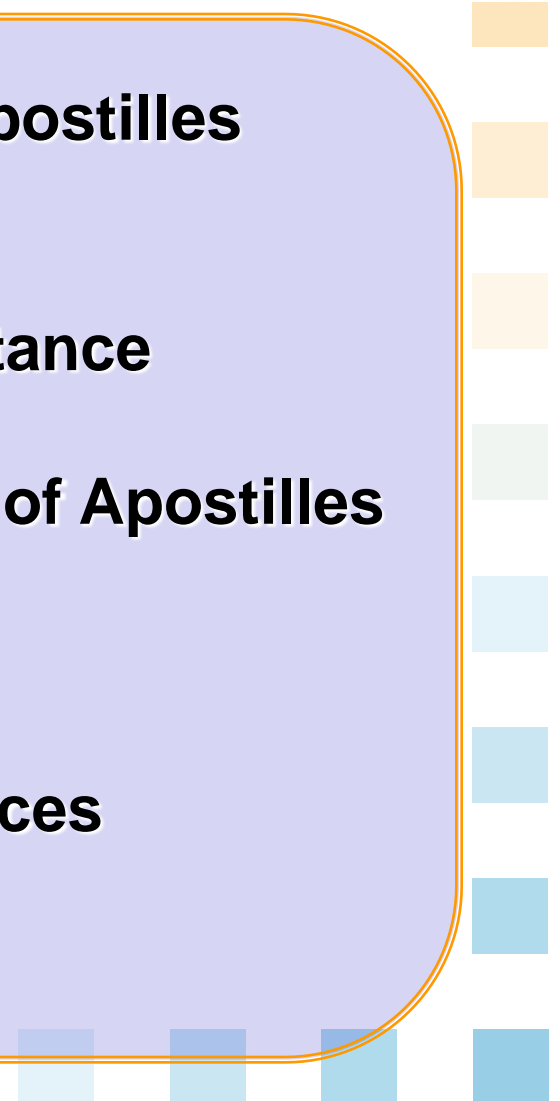
TSJ | TRIBUNAL
SUPERIOR
DE JUSTICIA
Región de Murcia



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INTERNATIONAL STATEMENTS



▶ HCCH SPECIAL COMMISSION & e-APP FORA

● HCCH SPECIAL COMMISSION 2003.

Recommendation 4:

*The SC emphasised that the Apostille, Evidence and Service Conventions operate in an environment which is subject to important technical developments. Although this evolution could not be foreseen at the time of the adoption of the three Conventions, the SC underlined that modern technologies are an integral part of today's society and their usage a matter of fact. In this respect, the SC noted that **the spirit and letter of the Conventions do not constitute an obstacle to the usage of modern technology and that their application and operation can be further improved by relying on such technologies...***

INTERNATIONAL STATEMENTS



▶ HCCH SPECIAL COMMISSION & e-APP FORA. New Orleans 1998

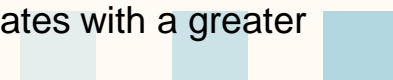


4th International Forum on the e-APP– C&R 6

1. DOMESTIC RULES FOR EVIDENCE PURPOSES.

Whilst strongly encouraging States to recognize foreign e-Apostilles issued according to the model suggested under the e-APP, the Forum recalled again that the **PROBATORY WEIGHT OF APOSTILLES**, **whether issued in paper or electronic form**, remains subject to the relevant rules of the jurisdiction where they are produced.

Arguably, it is conceivable to require the sending State to contact the receiving State to make sure e-Apostilles will be accepted, but if this approach was taken, then it would, in effect, give the receiving State the opportunity to reject e-Apostilles, which might hinder the development of e-Apostilles altogether, and also provide receiving States with a greater power in the digital world than they have in the physical world.



INTERNATIONAL STATEMENTS



▶ HCCH SPECIAL COMMISSION & e-APP FORA. LONDON 2009

•5th International Forum on the e-APP – C&R 5

Recalling the fundamental principle of the Convention according to which an Apostille validly issued in one State Party must be accepted in other States Party, mindful that the Convention is silent as to the means of production of Apostilles, be it paper or electronic, and adopting a “functional equivalent approach” based on an analysis of the purposes and functions of the traditional paper-based model of Apostilles with a view to determining how those purposes or functions can be fulfilled through electronic means, the Forum strongly encouraged States Parties to the Apostille Convention to accept and recognise foreign e-Apostilles issued according to the model suggested under the e-APP (see above paragraph 3).

The Forum, however, also recalled that the **probatory weight of Apostilles**, whether issued in paper or electronic form, remains subject to the relevant rules of the jurisdiction where they are produced. Finally, the Forum recognized that it is **GOOD POLICY** that States Parties **inform the other States Parties** when they begin to issue e-Apostilles.

INTERNATIONAL STATEMENTS



▶ HCCH SPECIAL COMMISSION & e-APP FORA. MADRID 2010

• 6th International Forum on the e-APP – C&R 6, 8

1. DOMESTIC LAW OF THE ISSUING STATE. The e-Apostille are valid.

2. NO DOUBLE STANDARD. There is no more “control” power in the electronic environment than in the paper environment. Furthermore, national legislations support the electronic signatures

3. ADVANTAGES OF PARALLEL USE OF e-REGISTER. Possibility of on line verifying of the original



FUNDAMENTAL PRINCIPLE OF ACCEPTANCE



▶ OBLIGATION TO ACCEPT VALIDLY ISSUED APOSTILLES

- **General principle on 1961 Convention** Each Contracting State is obliged to give effect to Apostilles that have been validly issued by other Contracting States. The only exception to this is Apostilles issued by a Contracting State to whose accession the State has raised an objection, (art. 3.1.)
- **No specific grounds for rejection.** Convention does not specify any grounds on which a Contracting State may reject an Apostille (in the sense that its effect may be refused to be given). In view of the purpose of the Convention to facilitate the use of public documents abroad, Apostilles should be routinely accepted unless there are serious defects with the Apostille or its issuance.
- **Possibility of verification.** A recipient of an Apostille may verify the origin of the Apostille by contacting the Competent Authority that supposedly issued the Apostille

ACCEPTANCE AND REJECTION



▶ POSSIBLE GROUNDS FOR REJECTING APOSTILLES

- **A) Apostilled document expressly excluded from the application of the Convention**

An Apostille may be rejected if it relates to a document that is expressly excluded from the application of the Convention by virtue of Article 1(3)



ACCEPTANCE AND REJECTION



▶ POSSIBLE GROUNDS FOR REJECTING APOSTILLES

- **B) Issuing State not a party to the Convention**

Certificates purporting to be Apostilles that are issued by States that are not parties to the Convention can be given no legal effect under the Convention



ACCEPTANCE AND REJECTION



▶ POSSIBLE GROUNDS FOR REJECTING APOSTILLES

- **C) Apostilled document not created in the territory of the issuing State**

An Apostille may be rejected if it relates to a document that was not executed on the territory of the State of the Competent Authority.



ACCEPTANCE AND REJECTION



▶ POSSIBLE GROUNDS FOR REJECTING APOSTILLES

- **D) Apostille not issued by a Competent Authority OR issued for a public document for which the Competent Authority is not competent to issue Apostilles**



ACCEPTANCE AND REJECTION



▶ POSSIBLE GROUNDS FOR REJECTING APOSTILLES

E) 10 numbered standard informational items not included

However, additional text outside the area containing the 10 standard informational items is not a valid ground for rejecting an otherwise validly issued Apostille



ACCEPTANCE AND REJECTION



▶ POSSIBLE GROUNDS FOR REJECTING APOSTILLES

F) Apostille detached from document or Forged or altered Apostilles

An Apostille that is not attached to, or has become detached from, a document may be rejected. A Competent Authority should advise users wishing to make photocopies of apostilled documents to avoid detaching the Apostille.

The recipient of an Apostille with concerns about its authenticity or integrity may contact the Competent Authority that supposedly issued the Apostille to verify its origin by checking that the particulars in the Apostille correspond with those recorded in the register kept by the Competent Authority.



ACCEPTANCE AND REJECTION



▶ INVALID GROUNDS FOR REJECTING APOSTILLES

- **1. Underlying document not a public document under the law of the State of destination**

The law of the State of creation determines the public nature of the underlying document.

- **2. Minor form defects. Such as...**
 - it is not square-shaped;
 - it has sides that are less or more than nine centimetres long;
 - it has no frame around the title and area containing the 10 numbered standard informational items.



ACCEPTANCE AND REJECTION



▶ **MOST IMPORTANT: THE APOSTILLE IS an e-APOSTILLE**

- **An Apostille should not be rejected on grounds alone that it is has been issued in electronic format**
- **The fundamental principle that an Apostille validly issued in a Contracting State must be accepted in another Contracting States also applies to e-Apostilles issued in accordance with the domestic law of the issuing State.**



The experience on rejections...

▶ From Spain to other Countries....

Russia

- **e-Apostille:** we try not provoke further inconvenient to citizens
- **Formal requeriments:** Apostille is not surrounded by a border identical to the one used in the Model Certificate annexed to the Convention



2008, REJECTIONS....in Spain?



MINISTERIO
DE JUSTICIA

O F I C I O

S/REF:315/2008

N/REF:

FECHA: 30 de abril de 2008

ASUNTO: Apostilla electrónica



Recibido el
19-5-2008

Ilmo Sr Encargado del Registro Civil de
SEVILLA

MINISTERIO DE JUSTICIA
REGISTRO AUXILIAR J.B. 3

- 8 MAY 2008

SALIDA

SECRETARÍA DE ESTADO DE
JUSTICIA

DIRECCIÓN GENERAL DE LOS
REGISTRÓS Y DEL NOTARIALDO

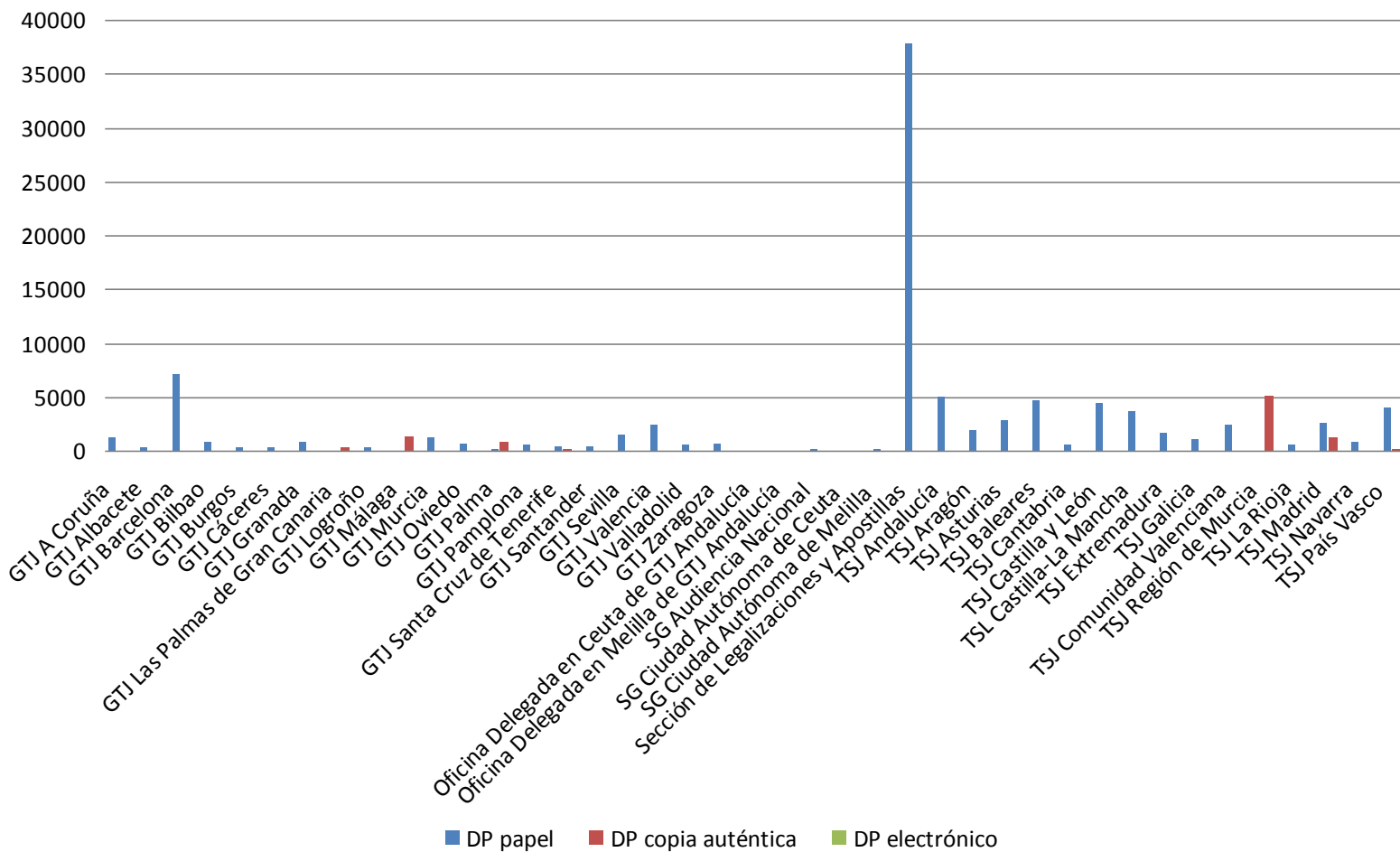
En relación con su consulta de fecha 20 de febrero de 2008 relativa a la aceptación en España de la apostilla electrónica se informa que en la actualidad el Programa Piloto de Apostilla Electrónica no reúne las condiciones exigidas en cuanto a seguridad jurídica exigidas por nuestra legislación.

CURRENT SITUATION



▶ FIGURES on e-APOSTILLE in SPAIN 2011

Nº de apostilla emitidas en 2011 por sede y tipo de DP

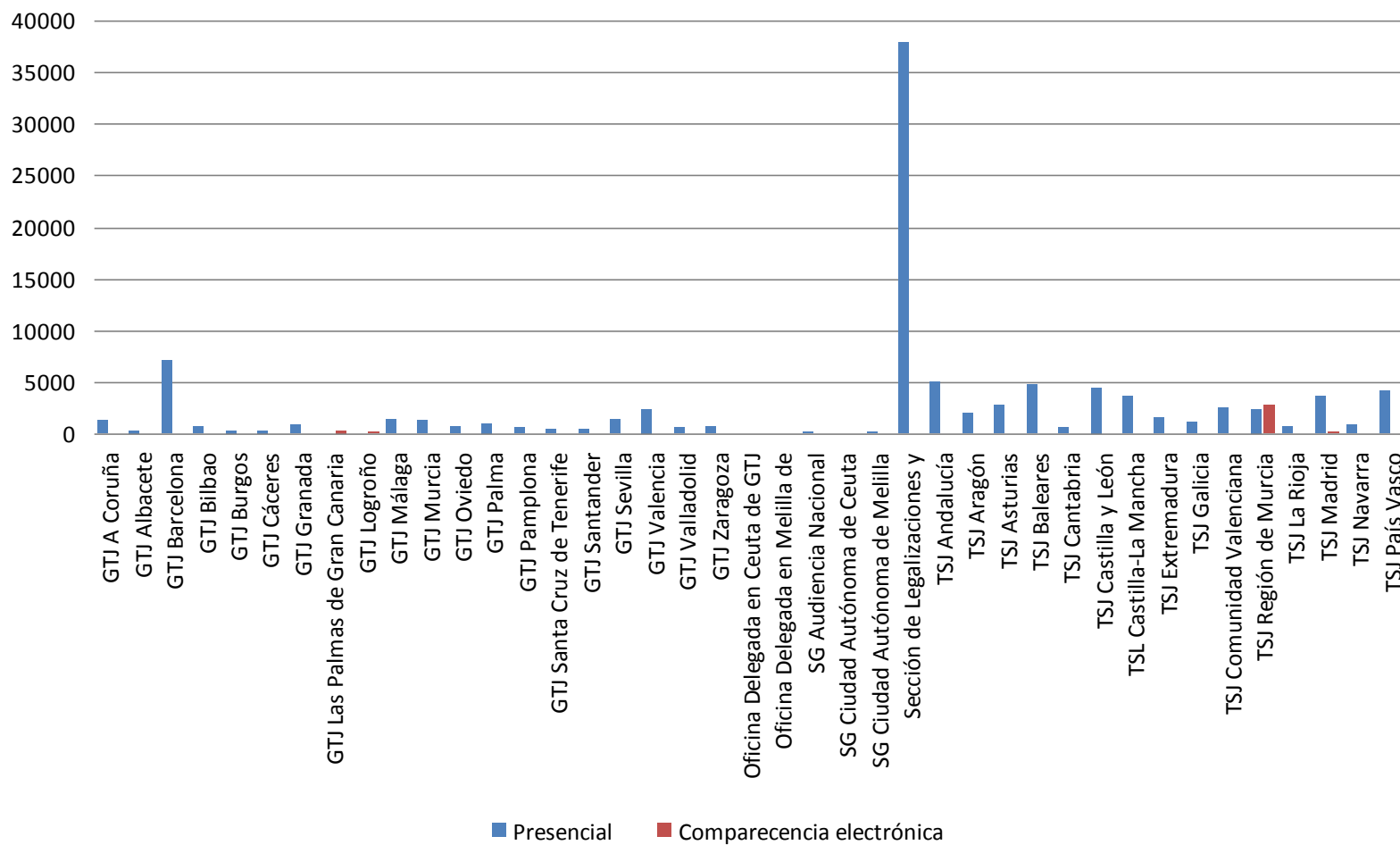


CURRENT SITUATION



▶ FIGURES on e-APOSTILLE in SPAIN 2011

Nº de apostilla emitidas en 2011 por sede y tipo de notificación



FINAL REFLECTION or a FURTHER STEP



▶ When receiving e-Apostille, What legal principle should we apply?

- Locus regit actum?
- Forum regit actum?