

PRESENTATION*

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The Colloquium of the International Association of Procedural Law was held in Gandia and Valencia on the 6th, 7th, and 8th of November 2008, bringing together eminent European procedural law specialists. It was, from a Spanish jurist's point of view, a good opportunity to examine recent legal reforms in European legislations regarding the civil procedure for appeals on points of law before supreme courts.

Spanish *casación* (civil procedure for appeals on points of law), which had not been modified significantly before 1984, has been subjected since then to fundamental changes, every eight years in fact (1984, 1992, and 2000), and was about to be reformed significantly in 2008.¹ It was, therefore, a chance not only to examine our own situation, but also to look further afield and expand our critical perspective concerning an institution which is not quite stable yet.

The wording for the title of the round table topic, from which the present publication draws basic premises, is somewhat imprecise, but cautious, and maybe for this reason it is the most appropriate. There is no doubt, that if we compare the wording with the legislations which were examined, it is also an ambitious title. This is a matter I shall comment on again below.

Appeals to supreme courts, rather than *recursos de casación* (appeals on points of law) were considered because, to begin with, appeals to these courts do not always share the same *nomen iuris* –although they do have more than one problem and solution in common, as illustrated in his well-known study by F. FERRAND²– in the four European legislations which are the subject of our attentions. Even when they do share the same name, as is the case of French, Italian and Spanish Law – the rules and procedures show us that we are faced with remarkably different institutions.

In short, and in reply to the pleas, heard from time to time, invoking a real and authentic *casación*, let me answer with the playful reply of proclaiming that nobody has ever seen this ancient and probably very elegant dame. Not even in Paris, not even by zooming in on the charming and secluded *Place Dauphine*, close to where she might be found.

We have learned –the well-known collection of studies by M. TARUFFO³ was of great use to me– that those appeals before supreme courts can be formulated in many

* Translated from Spanish into English and revised by Translatio.

¹ Examined in greater depth in: ORTELLS RAMOS, M., *Gleichheit bei der Gesetzesanwendung, Zugang zur Kassation und bindende Wirkung der Rechtsprechung des spanischen Tribunal Supremo. Kommentare zur aktuellen Krise der Kassation im spanischen Zivilprozess*, pending publication.

² I refer, as is well known, to *Cassation française et révision allemande*, Paris, 1993.

³ *Il vertice ambiguo. Saggi sulla cassazione civile*, Bologna, 1991.

ways, or better still, should have the possibility to serve their intended purpose by admitting different judicial policy options which can be incorporated as the main features of the procedure: rules governing right to appeal, including a definition of rulings which can be subject to appeal, the consequences of submitting an appeal on its effects and its ruling process, the extent of the judging powers of the supreme court, the effectiveness of its sentences, etc.

We were also made aware that assigning purposes to and the correlative formulation of the appeal process can not be done without taking into account the additional workload borne by the highest court and its real ability to take on and properly perform its work without incurring undue delays.

These points of convergence,⁴ reached from different areas – both geographic and judicial– were the central items discussed by the speakers at the round table: criteria for judicial policies which have been implemented, or are struggling to be implemented, being set in legislation, ruling techniques applied and their results, the relationship between the reforms and the work capacity of the high court, were among the questions considered relevant by the speakers.

I would like to give special thanks to professors CADIET, CHIARLONI, GIMENO SENDRA and GOTTWALD for their valuable contributions. It is an honour for me to present my address alongside such distinguished colleagues.

Let me return, very briefly, to the matter raised at the beginning. The round table could not reasonably be expected to consider all European legislations. But, after having given thought to certain characteristics of access to *casación* under Spanish Law, I think it would have been very useful to include the perspective of an English colleague regarding, among other matters, the discretionary right of appeal before the House of Lords. Maybe we might even end up finding, in this matter also, yet another example of consistency between legislations which at first seemed very different.

I wish to conclude this presentation with a few words of thanks, well-earned and heart-felt, to the organizations whose financial support has made possible the celebration of this International Colloquium, in which was included the round table whose results we offer the reader. These organizations are, on the one hand, the Departments of Education, and of Justice and Public Administration of the Valencian Government, the University of Valencia and its Faculty of Law, and the Bancaja Foundation. There are also special thanks for two other bodies: the Difusión Jurídica Publishing Company from Difusión Group, for the painstaking publication of the presentations and papers; the Ministry of Science and Innovation of the Government of Spain, whose financing of the SEJ-2005-08384-C02-01/JUR research project, which I direct as principal researcher, made it possible to carry out different studies in the field of this round table discussion, some of which have formed part of it.

⁴ An excellent explanation of these points can be found in: SONNELLI, S., *L'accesso alla corte suprema e l'ambito del suo sindacato. Un contributo al dibattito sulla cassazione civile in un'ottica comparatistica*, Torino, 2001.