REASONS FOR A MEETING[1]

MANUEL ORTELLS RAMOS

Professor of Procedural Law, University of Valencia

President of the Organising Committee

Although it is not at all necessary, merely a superficial reflection leads us to discover two good reasons that justify holding this academic meeting in Spain, and in the region of Valencia. The first is a commitment to the IAPL, which we felt it was about time to honour. The second is the subject under study, which, in addition to its scientific interest, merits, in Spanish law, even being the object of a constitutional precept.

The IAPL, which counted among its mentors –as had occurred with its predecessor, the International Institute of Civil Procedural Law- outstanding Spanish proceduralists, until today had not had the opportunity to hold one of its scientific meetings in Spain. As Spanish proceduralists, we made the commitment to the Association to prepare these days of personal encounter and scientific debate. And we have chosen the perfect place, the Valencian Community. Professor Alcalá-Zamora y Castillo, a former president of our association, taught in this city's five-hundred-year-old university, as did Professor Fairén Guillén, a long-standing vice-president and always a very active member of the association. In this place, in which those two leading figures in the life of our association were so closely linked, today we fulfil our commitment to welcome our colleagues.

The subject that will be, and has been, our centre of attention also has a strong connection with our land. I am not in this case referring to that paradigm of oral procedure that directs the Valencian Water Court, to which our president, Professor Carpi, has already referred in these pages and which is dealt with at greater length in Fairén Guillén's report. I am thinking of Article 120.2 of the Spanish Constitution of 1978 that states, "The procedure shall be predominantly oral, mostly in criminal matters".

I can image the sceptical expressions on the faces of those who cannot easily understand that, in the final quarter of the 20th century (not in the 19th century), orality merited such political attention that it was elevated to the altars of the Constitution. Those who lived through the preceding history here can better understand this. It was a reaction against a falsely oral criminal procedure, in which, in contravention of the law, a key role had been assigned to written pretrial proceedings as the basis of the judgement. It was a response to a civil procedure invested with a regulatory written regime so coherent, and above all, weighed down by such a heavy historical routine, that it condemned to failure any attempt to introduce spaces of orality in opposition to the system – I am thinking of the turbulent destiny of the pretrial conference that was inserted into what would, with the 1984 reform, become the common procedure with the widest application.

---

[1] Translated from Spanish into English by Paul Turner. Revised by Esther Monzó (Universitat Jaume I, Spain).

Nevertheless, we have to recognise that the constriction imposed by the drafter of the Constitution on the ordinary legislator is not very rigid. "Predominantly" and "mostly" are expressions that clearly reveal that orality is a question of degrees, the concretion of which is entrusted to the ordinary legislator. This is well illustrated in the presentation of our honorary president, Professor Storme.

The subject of the Colloquium formulates the exact equation: oral and written proceedings in an efficient civil procedure. It is a question of reflecting on the adaptation between the procedural forms and achieving the aims of civil litigation, with a high degree of intrinsic quality in terms of this objective, but less costly in time and money – directly for the parties and the public coffers and indirectly for the socioeconomic system of wealth creation and distribution. Professor Taruffo's presentation proposes an analysis of the overall approach to this subject, for which he uses highly illustrative regional contributions.

There can be no doubt that an examination of this equation immediately suggests that it might be opportune to relate the written and oral components of a procedure to the characteristics of the questions in dispute. In practice, these questions come in a huge variety. Is it, therefore, a good idea for the law to set, rigidly, the type or types – also rigid – of suitable procedures? Or could we open, in this matter, a sphere in which the configuration of the procedure was not strictly defined, but would rather depend on the powers of the parties, under judicial management? We have to thank Professor Leipold for his in-depth study of this subject, which he has examined while paying attention to copious amounts of information on different procedural codes or groups of them.

Instead of talking about orality and evidence, the subject of the third presentation is expressed more neutrally, as the evidence between orality and the document. The means of evidence are very diverse and the ways of introducing it into the procedure are very different – judicial cooperation for the investigation of evidence, disclosure (under heterogeneous rules for pleading the facts), and discovery. Moreover, the procedural reality is rich in situations in which it would be advisable, for reasons of proportion – of efficiency, all things being considered – to abandon, exceptionally, the almost sacred rules on the way of hearing certain kinds of evidence. Professor Peyrano's report deals with these and other closely-related problems, closely observing the rules and procedural experiences of various countries.

And when, naively, we began to think that the debate about procedural methods was about to remain confined to orality, the written and its combinations, technological evolution came along to move the game board, to propose a new set of ways of carrying out an efficient civil procedure. Data transmission does not just present us with simple changes in the way of dealing with the written and the oral, instead it offers a very different way of proceeding, with specific advantages and problems, into which we delve through Professor Amrani-Mekki's meticulously prepared presentation, which has been able to take into account the wealth of documentation gathered at the last congress in Salvador de Bahía.

I should like to thank the speakers who have placed their time at our disposal. We all know how valuable the time of such prestigious colleagues is.

Thank you as well to all the authors of national reports and presentations. Without their contributions, certain enriching aspects and perspectives would have gone unnoticed.

I should like to express the gratitude of the Organising Committee and, I am quite sure, of the IAPL, to all those bodies whose financial support have helped make it possible to organise this Colloquium. They include the Ministry of Science and Innovation, the Justice and Public Administration Department as well as the Education Department of the Valencian Government, the University of Valencia and its Faculty of Law, the Bancaja Foundation, and Difusión Jurídica Publishing Company from Grupo Difusión.

I will never be able to truly express the debt I owe to the members of the Organising Committee dear friends all of them, for the help they have given me in bringing this project to a successful fruition.

Thank you, finally and forever, to the Association for its trust.