“The Spanish Experience concerning Small Case Procedures in Civil Matters”

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First, **I would like to thank** the European Network for the Judiciary and the Spanish General Counsel for the Judiciary, for inviting me to this Seminar on the topic of Timeliness in Justice. The time available is limited. That's why, I will get down to the subject. This words are an approach to the means developed in Spanish civil justice to deal with the length of civil proceedings, with specific attention to small claim matters.

Any analysis of this issue previously requires to make reference to the current Civil Procedure Law, enacted in 2000. The problem of undue length of civil proceedings was already detected in Spain halfway to the last century. Since then, there had been only partial attempts to deal with this problem. The overall reform of civil procedure undertaken in 2000 sought to obtain a more efficient justice also in terms of duration of the proceedings, starting from the general idea that a slow justice is not justice.

Fifteen years are enough to evaluate whether the efficiency proposals contained in this important Law have lived up to expectations of the law-givers. I will focus this speech on the most outstanding aspects of the Spanish civil procedure for simple or small claims, so that everyone can evaluate how timeliness is tackled in the Spanish system

It must be remarked that the 2000 Act was based on three general principles, apart from respect for the elementary requirements of the right to due process.

First, it was intended to **simplify the structure of proceedings**, trying to keep the essential steps to make possible the judicial decision. Secondly, the Spanish Law **has opted for orality**, which is combined with written pleadings of the parties. The third principle was to **reduce the number** of ordinary civil proceedings, which passed from four to the present two: The so called “ordinary procedure”, for matters of more than € 6000 in amount (major claims procedure), and verbal judgment, for matters of up to € 6000 (small claim actions). Through these two procedures are dealt, as well, the majority of special civil proceedings existing.

As has been told, small civil cases are handled through the verbal judgment. But it must be emphasized that orality plays a very important role in ordinary proceedings too, overriding the predominant role played by the writing in our tradition, as the only form of civil litigation.

I will next outline the main phases of the Spanish verbal procedure.

In its original version (I mean, in 2000’s version), the oral proceedings began with a "short claim" filed by the plaintiff before the Court of First Instance (or before the Commercial Court, for matters of its competence) when they did not exceed € 3000, limit currently increased to € 6000.

Once allowed to proceed the suit (a task not performed by the judge, but by the court clerk), the parties, as a general rule, were summoned to an oral hearing in which they formulate their full pleadings, both verbally.

As seen, the procedure was predominantly oral. The only written document was the application. Arguments pertaining both to the procedure and to the merits were put forward orally, with procedural issues being solved there and then. The party who did not agree formulated an objection and was entitled to reiterate this in the court of second instance. By the same token, evidence was put forward and taken orally during the hearing in a concentrated manner, concluding with submissions by the parties. Once parties had rested their cases, the trial finished, and the matter was ready for judgment.

This regulation is based on the old Spanish civil verbal procedure, but introducing some novelties aimed at facilitating its efficiency. Currently, for instance, when the claim does not exceed the amount of € 2000, it can be submitted by means of a standardized form, available in the Courts: this helps the work of the plaintiff, since up to that amount does not require the assistance of attorney. The form is used only for the application document, however its use is optional. It can be downloaded from the website of the General Council for the Judiciary.

In addition, in civil verbal proceedings the possibility that the defendant present a counterclaim is reduced to the cases in which it was connected with the subject matter of the claim. If the defendant was intended to lodge a counterclaim, it had to be announced well in advance so that the plaintiff could prepare its defense for the oral hearing. If the parties needed witnesses, or

expert reports, they had to submit a list to the court before the trial date, for them to be summoned, thereby avoiding adjournment of the trial.

The judgment is similar in formal terms with the handed down in the ordinary procedure, although in some cases the judgment cannot have the effect of a final court decision (res judicata). In these so called “summary procedures” the possibilities of pleading are limited to specific points, leaving the question open in order for it to be debated at the corresponding hearing or in posterior proceedings.

Since 2011, when the claim does not exceed 3000 €, the judicial decision of the verbal judgment **is not appealable**, a firm commitment to first instance justice in small claims. And when appealing is possible, the Court of Appeal is formed by a single judge.

Another sort of small claim procedure is **the Payment Order Procedure or “Proceso monitorio**”. This is for the claim of a debt with invoices or any other similar private document, with no amount limit since 2011. This claim procedure consists of a requirement of payment issued by a Court. The debtor is given 20 working days to oppose or accept the payment. If the debtor does not oppose or accept the payment, a judgment is entered and it can be enforced immediately. But if the debtor opposes, the procedures continue at a different Court case type, according with the amount being claimed.

This specific procedure has been very successful from the point of view of efficiency, since its setting in force. According to the official statistics for 2015, less than a 10% of these claims were converted to a verbal or an ordinary trial, and more than 40% finished by payment or enforcement (the remaining, up to a 50% finished by other ways, usually by agreements between the parties). That's the reason why this kind of proceedings has been implemented for eviction due to nonpayment of rent, or quota claims owed in condominiums or apartment blocks.

So far a description of the Spanish system, in broad strokes. Now, the question is whether this system has been able to remedy the problems of timeliness in civil small cases.

The answer to this question highlights that the duration of a procedure is not always the result of adding the legal time limit of each procedural stage, but of delays due to other reasons. For example, in civil verbal proceedings there are delays generated with the notification of the claim to the defendant, and his or her summoning to trial; A problem that gets worse when litigating without an attorney (up to € 2000), which slows down the proceeding because the Court does not communicate with parties through their attorneys, but directly with them in their own addresses.

In Spain there is a question not yet answered, which is why it takes more time for a Court to communicate with the citizen than what takes the Public Treasury or the Administration when, for example, it notifies a traffic fine or a tax penalty.

Something that becomes more complicated when witnesses must also be as well summoned to trial, with serious risk of adjournments and nullities.

Thinking on timeliness and efficiency, in eviction procedures was intended to solve the problem by establishing that, if not found a tenant in the rental unit, the demand should be notified by publication at court, but the Constitutional Court in 2013 ruled that that would only be possible prior exhaustion of all attempts to personal notify (what in fact overruled the reform).

Another problem was the lack of availability of Courtrooms to make trials, which sometimes led to delays of more than a year from the moment of the claim. That meant, in other words, that in a verbal procedure the defendant had months to answer the lawsuit, when in the ordinary, more complex trial, it was only twenty days.

This problem has provoked that a major reform of 2015 of the Civil Procedure Law has substantially modified the verbal procedure, so that, as the main novelty, the answer to the demand is now always written (with a deadline of ten days), and the hearing is not mandatory in all cases but only if requested by at least one of the parties or the judge deems it necessary.

In conclusion, the Spanish civil proceedings in small cases have significantly reduced their times, which in the last judicial statistics stood at an average of 6/8 months. The question is whether that is a lot or a little, from the point of view of the right to due process, when it comes to issues of small size.

What clearly seems right is that the shortening of civil justice, itself in cases of small amounts or larger amounts, seems to depend not on the legal regulation of the procedures but on the provision of human and material resources in the Courts, making possible the enforcement of legal provisions on timeliness.

It should not be forgotten, for example, that Spain has a number of judges per inhabitant pretty lower than the EU average: perhaps this should be the key reform for having a good and efficient system of civil justice.

Thank you.