JUDICIAL REFORM IN SPAIN

Luis LOPEZ GUERRA
University Carlos III, Madrid

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My presentation refers to judicial reforms implemented in Spain subsequent to the ratification of the Constitution of 1978, and especially between the years 1996 and 2001 in which I have been able to participate as Vice-President of the General Council of the Judiciary. My objective is to outline the various stages of judicial reform, the reasons and purposes for implementing these reforms and, above all, the lessons which may be derived from these experiences.

First Stage: Constitutional Reforms

In a first stage, the ratification of the Constitution of 1978 resulted in a need to reform the administration of justice in Spain to adapt it to the provisions of the Constitution under a regime of separation of powers, and above all to guarantee the principles of due process and judicial independence. This reform was implemented during the 1980s mainly through the enactment of the extensive Organic Law on Judicial Power (1985), which replaced the former Provisional Law of 1870. The new law changed the territorial organization of the administration of justice, created new courts and introduced a new legal statute of judges, which ensured their independence. Simultaneously, procedural laws were reformed to guarantee due process to the parties, especially in criminal and administrative proceedings. The purpose of these reforms was essentially

political, and sought to establish the foundations of the rule of law with respect to the relationship of citizens with the courts, and of the courts with the other powers of state.

Second Stage: Increasing the Efficiency of Justice

However, it was soon evident that additional reforms were required in order to guarantee not only the independence of judges and due process for the parties, but also to ensure greater efficiency on the part of the courts, as well as the overall capacity of the administration of justice to satisfy the increasing social demands prompted by Spain's economic development. In that regard, from the ratification of the Constitution and continually during the last decades, there has been a spectacular increase in the number of cases brought before the Spanish courts, putting a heavy pressure on the justice system. The figure has risen from 2,500,000 annual cases in the early 1980s to nearly seven million cases lodged during the year 2000. Obviously, this increase has not taken place equally in all jurisdictions, but rather is most apparent in the criminal and administrative jurisdictions. At the same time, the media have given added attention to judicial problems, and criticism in the mass media and in academic and political circles has increased concerning the lack of coherence and delay in rendering judicial decisions, which have become some of the most frequent topics of debate in this present constitutional system. Frequent opinion polls taken by the General Council of the Judiciary and other institutions indicate that citizens are generally satisfied with the professional and ethical level of judges, but that they disapprove of the delay in issuing decisions and what is perceived unpredictability of the content of the courts' judgments.

The perception of these deficiencies has given rise to a series of separate reforms implemented with a view to increasing the efficiency of the courts, and which to date have been aimed at resolving specific, urgent problems. The reforms were carried out by different governments and ministerial staffs, as well as successive Councils of the Judiciary, and are very different in nature. A few examples include the 1988 Law on Judicial Personnel which considerably increased the number of judges in Spain, the 1994 reform of the organization of the Judges Training School, or a series of laws passed in the last few years to expedite administrative proceedings (1998), amend civil procedure (2000), and reform juvenile criminal proceedings (2001). In addition to these legislative measures, the Government and the General Council of the Judiciary have developed administrative programs to increase the efficiency and quality of court operations. The Government, for example, has established integrated administrative offices (*servicios comunes*) which perform administrative tasks servicing several courts, and has computerized the entire administration of justice system. In turn, the General Council of the Judiciary has increased its efforts to integrate new judges into the system and implemented programs to gather more reliable judicial statistics, provide specialized training to judges and to evaluate their productivity.

The numerous reforms already implemented or still in progress have required notable investments in time and human and economic resources. But as indicated above, these have been separate, unrelated reforms lacking an overall design.

Third stage: Overall Planning

Only in the last few years have new reforms been projected, largely at the initiative of the General Council of the Judiciary, based on coordinated plans and on the conviction that to achieve an efficient justice system from both a qualitative and a quantitative perspective, there must be an integrated project which reflects the lessons learned from the successes and failures of previous reforms. A result of this new policy is the "Pact for Justice" signed in May, 2001 by the principal parliamentary groups including the Government and opposition parties, to implement an overall reform of the administration of justice based on the conclusions obtained from the experience of the previous years, and requiring joint action and heavy investments over the next few years.

The lessons derived from past experience which seem to be widely accepted by those responsible for the present judicial policies, are threefold:

- the administration of justice must be perceived as a public service,
- the problems of the justice system must be approached from a global perspective, and
- the reforms implemented must be the result of a consensus on the part of the sectors involved.

a) The Administration of Justice Must be Perceived as a Public Service

A first conclusion, which still encounters some resistance, is the need, if a meaningful reform is intended, to perceive the administration of justice as a public service. Traditionally, the mission of the courts in Spain has been

viewed from the perspective of the individual case. From this perspective, the essential, and practically the only element emphasized in the Administration of Justice was the presence of an impartial judge expert in law, in order to resolve the conflicts brought before the Courts in an impartial and independent manner, in accordance with the law and with the necessary guarantees for the parties. But the increased demands required of the system of justice in the last decades, parallel to the demands for services in other sectors such as education, health or transportation, have demonstrated that other considerations must be taken into account by the Administration of Justice. The priority cannot be only to issue a just decision in each case brought before the Courts: other important requirements must be met. The Courts must render their decisions without undue delays, resulting from backlogs of pending cases, which prevent the prompt resolution of proceedings. Justice must be rendered without high costs for the citizens. The quality and coherency of judicial decisions must ensure legal certainty.

These requirements can only be met if the usually extensive Administration of Justice (which in Spain includes some 3,900 judges and 40,000 administrative employees) is organized efficiently, and is capable not only of rendering just decisions, but of doing so promptly, without high costs and with a high level of quality.

The view of the administration of justice as a public service means that it no longer suffices to have impartial judges who are experts in the law. Additional resources are needed. To be able to respond to the increased demands on our courts we must also have access to sufficient information concerning the number of cases and their distribution, as well as detailed judicial statistics to guide in the formulation of policies to assign resources

to our courts. There must also be an adequate policy of personnel selection and periodic evaluation of the level of productivity of the employees of the justice system, including judges.

This view of the administration of justice as a public service has encountered considerable resistance from those who maintain the traditional perspective based exclusively on the "correct" solution of the individual cases before the courts, as well as from those sectors seeking to protect their corporatist status quo. Thus, at times, the effort to eliminate the backlogs of pending cases has been criticized, indicating that the emphasis should remain on the quality, rather that the quantity of the judgments rendered, forgetting that "slow justice is no justice," or at least is less effective and provides fewer guarantees. Others consider that the evaluation of the output of judges might threaten their independence. Precisely one of the problems of any reform is to reconcile the need to manage and ensure the efficiency of the justice system with the constitutional mandates which guarantee the judges' independence to resolve the cases before them.

b) Judicial Reforms Must be Implemented in an Integrated Plan

A second conclusion gleaned from the Spanish experience is that in order to obtain effective results, any reform of the justice system must be based on an integrated plan which takes into account the administration of justice as a whole, as a system of persons, resources and procedures which must operate in a coordinated manner. Reforms implemented without an integrated plan, in a single jurisdiction or involving only a given aspect or procedure of the justice system without considering their impact on other sectors, often produce more disadvantages than improvements. All aspects

of the complex administration of justice are interrelated, and it is difficult to reform a specific procedure, or the organization or selection process for personnel, without prompting profound changes in other sectors of the justice system. The Spanish experience has shown that reforms in court procedure require corresponding changes in the organization, selection and training of judicial personnel, as well as, in many cases, additional material resources. For example, the introduction of adversarial procedures in criminal proceedings requires the prior increase of the number of public prosecutors, as well as their re-training. The reform of civil procedure, increasing the role of oral proceedings vis-à-vis the traditional written proceedings, requires not only additional judges, but also additional installations in which to hold hearings as well as means for recording those proceedings. Likewise, to be really effective, changes in the administrative organization of the courts must be adapted to the requirements of the judicial proceedings. And any changes in procedures, personnel or administrative organization must be accompanied by adequate economic and material resources.

Certainly, we cannot exclude the possibility that reforms in a single aspect of the administration of justice may represent an improvement. In Spain, for example, the creation of integrated court services, grouping the administrative offices of several courts in one, has yielded very positive results. But given the complexity of judicial proceedings, any unforeseen deficiency in one aspect of the system, due to a lack of coordination with other areas, can paralyze or provoke long delays in their daily operations. At least in the case of Spain, possibly one of the reasons for the reduced effectiveness of some of the reforms introduced in the judicial system is due to a lack of coordination among them. Moreover, given that the operation of the courts affects fundamental rights guaranteed in the

Constitution, any deficiency immediately elicits attention and criticism from public opinion and the press.

In Spain, the experience of the last few years has demonstrated the need to adopt this integrated perspective. There are many examples of reforms, which were less effective than intended due to not having calculated their repercussion in other areas of the judicial system. A few examples could be cited:

1. A well-intentioned reform introduced in 1995, which sought to relieve the backlog of pending cases in first instance criminal courts, by reducing their workload, subsequently threatened to paralyze the operations of the provincial criminal courts where this workload was transferred. In consequence, a second reform had to be hastily implemented, returning the jurisdiction in the matters in question to the original first instance courts.

2. To reinforce the effectiveness of the Judges Training School, a substantial increase in the initial training period for judges, extending it to two years, was approved in 1994 and implemented in 1997. As a result, there was a two-year period in which there was a notable scarcity of first instance judges, since no new judges were available during that time. The system had to be once again changed in 2000 to reduce the duration of the initial training period.

3. A new law in 1998 created a number of single-judge courts (*juzgados*) in administrative jurisdictions altering the traditional system, in which the judges sit in panels (*salas*). The goal of the reform was to expedite these proceedings and eliminate the huge backlog of pending cases.

Despite the projected outlay of economic and material resources, the measure met with considerable difficulty since no provision had been made to train sufficient judges in this specialized field of law. When arrangements were made to provide the necessary training, an equivalent shortage of judges appeared in other areas, as the newly trained administrative judges were transferred from other jurisdictions.

4. The implementation of a new law on civil procedure, started early on the year 2001, has encountered difficulties since not enough provision was made for additional installations to accommodate new oral proceedings.

5. Likewise, there have been difficulties in applying the new juvenile criminal law, since there are insufficient prosecutors trained in that specialty.

The need to implement reforms from a global perspective of the judicial system became apparent in the mid-1990s. In 1997, after a year of work and analysis, the General Council of the Judiciary prepared a *White Paper on the Justice System* which, from the public service perspective, sought to offer an integrated analysis of the administration of justice in Spain, revealing its deficiencies and proposing overall solutions. Three years later and still insisting on this perspective, the Council approved a document entitled "Proposals for the Reform of the System of Justice," based on the premise that reform must be coherently implemented in all areas of the system, including procedural reforms, changes in the methods of selecting and evaluating personnel and in administrative organization, and providing sufficient economic resources. This perspective was finally adopted by the Government and the principal political parties, as reflected in the "Pact for

Justice" signed in May 2001, which takes a global view of the judicial reforms planned for the next eight years.

c) Judicial Reforms Must Be Based on Consensus

This point leads us to a third conclusion stemming from the reforms implemented in Spain: any significant reform of the justice system must be carried out with the highest possible level of consensus among the sectors involved, and must be coordinated among the political groups who will implement these reforms, by means of prior agreements or pacts reached among them, whether explicit or implicit.

In effect, in many countries (and certainly in Spain) many different public powers, institutions and organizations, both public and private, must play a significant role in this reform which will greatly affect the interests and expectations of many individuals and groups. The public entities in Spain with competence over judicial matters include the Ministry of Justice, General Council of the Judiciary, the national Parliament, the governments and parliaments of the Autonomous Regions, and the governing bodies of the courts themselves. Relevant sectors affected by such reforms include judges and prosecutors associations, bar associations, and the trade unions of the employees of the judicial system.

This implies, in a first place, the need to achieve a level of cooperation among various public institutions and to create the means for this cooperation, be it by means of a coordinating authority in charge of the reform, or by means of coordinating committees. In that regard, the complexity of the judicial system and the necessity of implementing global

reforms require the cooperation of different powers of the state. But it also implies the need to take into account possible negative reactions to reform efforts from the sectors affected, which wield notable political and social influence.

Any reform, and especially a thorough reform of the system, may yield results which are considered detrimental to the interests of a given sector, giving rise to implicit or explicit opposition which, whether active or passive, can discredit, hinder or even block the implementation of the reform in question. It is possible to cite examples of this phenomenon occurring in Spain.

1. Commencing in 1985 a program was introduced to increase the number of judges without resorting to the traditional long, slow process whereby candidates for judge must pass a series public examinations followed by a prolonged period of studies in the Judges Training School. The program provides for a complementary system in which a committee selects jurists with practical experience, such as lawyers, law professors and civil servants, to occupy roughly one fourth of the judicial vacancies at the Courts, without having to pass the traditional examinations This procedure which has certainly been beneficial in filling speedily vacant judicial posts, has met with considerable opposition from judges associations which believe this procedure for selecting judges may affect the quality of judicial system, and above all, their expectations for promotion. The result has been that the selection commissions, composed mainly of judges, have greatly reduced the number of judges selected from other legal professions. Thus, in this aspect, this reform has not had yielded all the results expected.

2. Likewise, as indicated above, programs designed to measure the productivity of judges have encountered both formal and informal opposition from the judges associations. Critics of these policies range from those which question the accuracy of the measurement techniques to those who express doubts as to their compatibility with the judges' independence.

3. Attempts to facilitate access to the courts by eliminating the obligation of the parties in a process to be represented by a lawyer in small claims proceedings have logically encountered resistance from the bar associations. Given the political and social importance of these associations, any projected legislation or regulation in that regard is subjected to intense criticism in public, based on claims that procedural guarantees and equal treatment of the parties must be maintained. It must also be taken into account that a majority of the members of the Government and Parliament are lawyers and, thus, any opposition from this sector to future reforms has significant consequences.

4. The reform of the administrative services of the courts in matters involving redistribution of personnel, the evaluation of productivity, or the control of the hours worked are generally met with profound suspicion on the part of the employees of the judicial system and their trade unions. In Spain, employees of the justice system have traditionally followed different models and less rigorous schedules than other state civil servants. For example, court offices have not traditionally opened during the afternoons. Thus, any attempt to expedite the operations of court offices usually encounters resistance on the part of employees and their trade unions which occasionally have resorted to demonstrations and strikes which paralyze the administration

of justice and are highly detrimental to the prestige of the judicial system in the eyes of public opinion. And even without resorting to demonstrations, the passive boycott of reform measures can cause any changes to fail.

Therefore negotiations with the groups involved and consultation with the affected sectors and their prior participation is an important factor in the success of any reform. Although it is not easy to achieve the participation of all the affected groups in the consultation process, and to obtain a complete consensus is practically impossible (since there are interests which are often difficult to reconcile) at least this consultation will serve to justify the reform, having given all interested parties an opportunity to express their opinions. This was the course of action followed by the General Council of the Judiciary in drafting the White Paper on the Justice System in 1997 and the Proposals for the Reform of the Justice System in 2000.

In that regard, the White Paper on the Justice System was drafted after submitting detailed questionnaires to many different jurisdictions and organizations (judges and prosecutors associations, bar associations, the governments of the autonomous regions, the Ombudsman, the governing bodies of the courts, and parliamentary groups, among others). The responses were later discussed and clarified in personal interviews conducted by a commission of the Council. The Proposals for the Reform of the Justice System were based on reports submitted by the governing bodies of the Supreme Court and the superior courts of justice of the autonomous regions.

In addition, there is a second dimension to this need for consensus. The complexity of the task of reforming the administration of justice usually requires any reform to be implemented over a period of several years. Thus, long-term plans must be made in aspects such as the selection and training of personnel, or providing economic recourses. Such long-term plans may be impossible if there is no way to ensure that these projects will be carried out despite changes in the government, ministerial staffs or parliamentary majorities, so that a change in the party in power does not result in an abandonment of the projects underway or their being replaced by others. To achieve this assurance requires true political agreements among the groups or parties which play a major role in public life. Both the groups or parties in power, as well as the major opposition parties which may eventually occupy those positions of power, must all be committed to the essential objectives of the reform This will enable long-term projects to be implemented without being subject to the natural cycles of change in governments and Parliament, nor to changes in those in the entities directing the reform.

In Spain the necessity of reaching such a pact between the Government and the opposition political parties became evident due to the fact that, although there was widespread agreement concerning the need to reform and improve the administration of justice, it was equally evident that the two main political parties (representing, in ideological terms, conservative and progressive options) although sharing many common objectives, differed greatly in many of their objectives and methods for this reform. Thus, to achieve a reform to be implemented over a period of time and with long-term objectives, it was imperative to reach an agreement to establish objectives and provide resources over several years, without the fear of having the project interrupted by a change of the party in power. This

agreement, repeatedly recommended by the General Council of the Judiciary, was reached after long negotiations in May of this year. It includes provisions for reforming procedural laws (especially regarding criminal proceedings), the method for selecting judicial personnel and the organization of the courts, and provides budgetary resources over a period of four years. The government and opposition parties signing the pact have agreed to assist in achieving the established goals which implies that the parties in the opposition today will not obstruct the Government's efforts in that regard, and that the plans implemented to achieve these goals will not be altered in the event of a change of government.

Of course, it is impossible to make predictions concerning the future of the agreement. A parliamentary Steering Committee (*Comisión de Seguimiento*) has been created on a multi-party basis to supervise the implementation and progress of the agreed measures. At the present moment (February, 2002) several reforms are being discussed: a Charter of Rights for the users of the justice system; a new design for administrative services, and the introduction of a new type of speedy trials in some criminal cases. The implementation of these measures (or lack thereof) in the near future will be a good indicator of the success of the agreement.