

Jury trial in Spain: past, present and future

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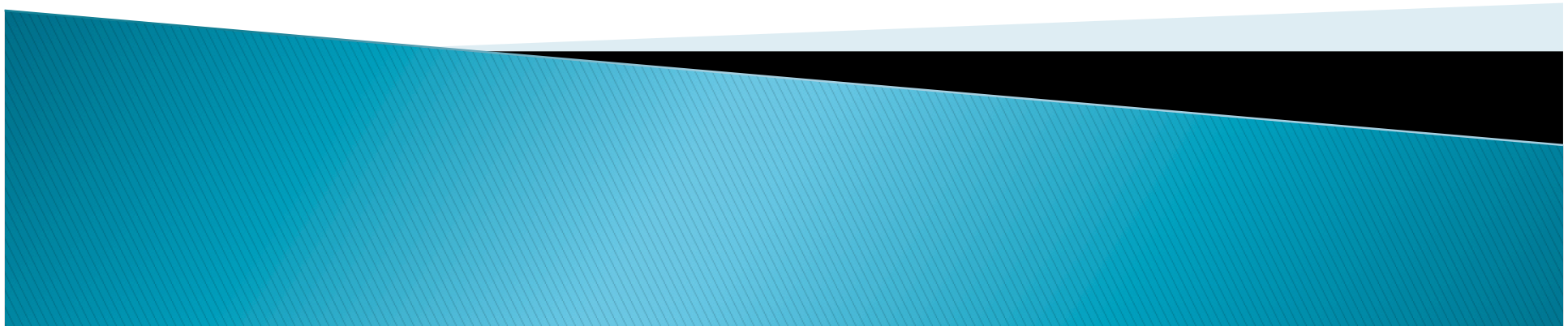


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Introduction

- ▶ This paper does not correspond to the abstract submitted in December 2012
- ▶ At that time, there was still in force another draft of the Criminal Procedure Act presented by the socialist party then in power
- ▶ The draft contemplated the idea of enforcing the jury trial as a model for all of Spanish criminal procedure; the idea was to construct a common criminal procedure based on the jury trial
- ▶ This situation does not exist any more, as a new draft has been presented by the conservative party now in power; it has a very different purpose in relation to the jury trial

Origin of the jury trial in Spain

- ▶ Jury trial in Spain was introduced by the Jury Law 1995 under a socialist government
- ▶ It was a personal commitment by the Minister of Justice at Home Affairs at that time, Juan Albert Belloch
- ▶ Also there was a debate in Spain about the introduction of the jury in Spain
- ▶ Lay participation in the administration of Justice was provided in the Spanish Constitution, enacted in 1978; there were also antecedents in Pacheco Law 1888; the choice between classical and mixed courts models was very controversial as well
- ▶ In the end, the jury trial in Spain follows the Anglo-Saxon pattern, in contrast to the mixed courts existing in continental Europe (*Cour d'Assises, Corti di Assisi, Gerichtsschöffen* ...)

Present situation of the jury trial in Spain

- ▶ At the moment, according to current regulations contained in Jury Law 1995, the jury trial in Spain is a special proceeding and the jury is constituted to hear only certain types of cases
- ▶ Nevertheless, this limited use of the jury is exacerbated by some judicial practices in which jury courts' magistrate-presidents try to avoid jury trials whenever possible
- ▶ Such practices include:
 - The suppression of the 'relationship rule'; according to present regulation all related crimes with minor punishment must be attached to the jury trial
 - The allowance of particular agreements (such as plea bargaining) between the accused and the prosecution before constituting a jury panel, though according to the written law such agreements are only possible once the jury trial has started
- ▶ Another problem is the reluctance of some citizens to be jurors; this fact reveals a 'hidden' conscientious objector clause
- ▶ As a result, at the present time, jury trials in Spain are used in only 1% of cases, according to the most recent official statistics

Statistics from General Attorney Office

- ▶ Statistics show the number of accusations presented by the public prosecutor in Spain
- ▶ As mentioned, many of these accusations will not end in a jury trial; because of that, there are even fewer jury trials than the present figures show
- ▶ For example, in 2012, there were 310 accusations in jury trials in comparison to:
 - 153.530 accusations in urgent proceedings
 - 148.455 accusations in abbreviated proceedings
 - 2.378 accusations in ordinary proceedings
 - 304.673 accusations as a whole in criminal procedure
- ▶ Source: Report elaborated by the General Attorney Office presented in September 2013 to His Majesty's Government at the beginning of the judicial year; available at <http://www.fiscal.es> (menu *Documentos*)

The new drafts on Criminal Procedure Act

- ▶ For a long time, Spain has wanted to enact a new Criminal Procedure Act
- ▶ The current Criminal Procedure Act in Spain was enacted in 1882 and it is still in force, albeit with several amendments
- ▶ There is also the idea to have a more accusatorial model of criminal procedure similar to other European countries and even the US
- ▶ The principal feature of this new model is having the pretrial investigation conducted by the public prosecutor instead of the Investigative Judge (rejecting the inquisitorial model of criminal procedure)
- ▶ In the last 3 years, there were two different drafts by the two different majority parties in the Spanish government at the moment
- ▶ Both drafts contain similarities:
 - The inclusion of the jury trial in the ordinary criminal procedure act; at the moment it is contemplated as a special law, the Jury Law 1995
 - The reduction of the competence of the jury in relation to criminal proceedings
- ▶ But there are important differences too, especially in relation to the provision of the jury trial as part of the ordinary criminal procedure in Spain

Draft on Criminal Procedure Act 2011

- ▶ This new draft of the Criminal Procedure Act was presented in 2011 by the socialist government, which provided a new model of criminal procedure
- ▶ This new model relies on the jury trial in order to regulate the ordinary criminal proceeding
- ▶ In fact, the new criminal procedure was based on American criminal procedure
- ▶ The purpose, as mentioned, was the construction of a more 'accusatorial model' by having the pre-trial investigation conducted by the prosecutor with supervision by the Judge of Guarantees (French model)
- ▶ In relation to the jury trial itself, two different changes were contemplated:
 - Restricting the use of a jury: some of the current offenses, such as threats, trespass in a dwelling place and arson in forestlands, will no longer require a jury trial
 - Extending the use of a jury: providing the right to a jury trial for the accused charged with serious offenses (similar to the Sixth Amendment to the US Constitution)

Draft on Criminal Procedure Act 2013

- ▶ This new draft was presented in March 2013 by the conservative party now in power in Spain
- ▶ The idea of constructing the new Spanish criminal procedure according to the jury trial model has been forgotten
- ▶ Regulation of the jury trial is included too in a way that is similar to that provided by special law, the Jury Law enacted in May 1995
- ▶ Reduction of competence by the Jury Court is provided here too: some current offenses are excluded from the list and will no longer get a jury trial
- ▶ Also other amendments are foreseen, including:
 - Simplification of the verdict subject matter, which is now rather complicated
 - Provision of a new hearing to the parties before reversal of the verdict by the magistrate-president
 - The new role to be exercised by the two substitute jurors, who will participate in a new deliberation with the nine jurors when there is a third reversal of the verdict: in accordance with such provision it is also contemplated the compulsory attendance of these two substitute jurors to the whole jury trial

Future competence of the Jury Court

- ▶ In the new draft enacted in 2013 it is only contemplated that the Jury Court will hear cases of intentional homicide and murder (ex.: murder in first degree)
- ▶ Also such competence is maintained for 'related crimes' (*vis expansiva* of jury courts), which is discussed at the Supreme Court
- ▶ There is also an exception when such homicide or murder is committed by criminal or terrorist organizations; in this case competence is given to a special court, the National Court, located in Madrid for entire Spanish territory
- ▶ Another exclusion is when the accused person has parliamentary immunity and has the privilege to be judged by a superior court, such as the regional Supreme Court or Supreme Court
- ▶ In sum the future provisions reduce the criminal competence of the jury courts by excluding all other offenses from being heard by a jury, which are currently heard by a jury under the Jury Law of 1995, eg, threats, failing to render aid, trespass in a dwelling place, arson in forestlands and crimes against the public administration

Concluding remarks

- ▶ It is not certain that the current draft of the criminal procedure act will be enforced
- ▶ What it is certain is the discussion in Spain about the survival of the jury; there are defenders and critics of the jury
- ▶ Conservative party has always shown preference for a model of the mixed court according to earlier reports and literature
- ▶ Judicial practice is not supportive with respect to the role played by the jury:
 - Surprising verdicts eg, Gürtel case in relation with Camps accusation in Valencia (paper presented LSA Annual Meeting, Honolulu 2012)
 - Reluctance of Spanish citizens to be jurors and practical restriction of competence of jury courts as mentioned (also content of paper presented in LSA Annual Meeting 2011, San Francisco, published in *Symposium on Comparative Jury Systems* by N. Marder, 2011)
- ▶ Likely outcome is the reduction of competence of jury courts
- ▶ In which case the jury trial will be just a symbol in the future in Spanish criminal procedure

Current jury trial in Spain



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