Barriers to appeal

Spain has made access to its Supreme Court much tighter to ease the case burden on the country's most senior legal institution

Eduardo de León

The Spanish Supreme Court is the last resort for matters from its national and regional courts, covering both criminal and civil appeals that deal with the laws of Spain, explains Eduardo de León, a Dispute Resolution Partner at Araoz & Rueda.

Recent cases in the Supreme Court, for example, have focused on matters as diverse as the legal standing of the wearing of burqas in public spaces, he says, the charging of capital gains tax on foreign entities and the criteria for obtaining copyright.

The Spanish Constitutional Court is the only outlet that does have the power to overturn the Supreme Court, but these are in cases where constitutional rights have been breached.

A Supreme Court is, of course, always meant to be the ultimate authority on the law, de León says, but in the case of the Spanish Court, the sheer volume of cases was affecting its ability to issue rulings on a detailed and timely basis. And years of appeals had created a sizeable backlog.

"If you look at the statistics, the Supreme Court had more than 10,000 cases to deal with back in 2000," he says. "Such a large number of cases meant that it was very expensive to run the Court and also a slow process for matters to reach a conclusion."

The decision was made to amend the law in 2011 to restrict the type of case that can be filed in the Supreme Court.

A wave of reforms was brought in to establish which cases can be heard to help lighten the load and reduce the spiralling costs.

Tightening the rules

"The Procedural Act has 21 sections on the rules of appeal," de León explains. "In terms of civil cases, only those of particular significance – valued at more than €600,000 – can be heard.

Claimants must also be very clear on the reasons for their appeal because the Court only considers the application of the law rather than the facts of individual cases."

The Court has taken further steps to dissuade pointless appeals. The process has now become much more expensive for the participants, who have to pay higher court fees to be heard.

In the case of a corporate entity, it can pay up to €10,000 while individuals can pay up to €2,000.

"These additional costs are on top of the solicitors' fees and Spain has the 'loser pays' model, so if a party loses a case, that unsuccessful party may end up being liable for both legal bills," says de León.

"Therefore adding a further €10,000 for the extra courts costs makes parties more reserved than they used to be in terms of legal action."

The changes have meant that both law firms and clients have also had to alter their approach because it has become a challenge to gain access to the Court.

A change in approach

"We have to be honest with clients and they must know that it is extremely difficult to get an appeal heard in the Supreme Court," de León says.

"If we do not get the decision we wanted in the junior courts, we all must think very hard about whether the case meets the 'application of law' criteria while clients also have to be aware of the increased costs in pursuing action in the Supreme Court."

The data suggests that the reforms are working to dissuade pointless appeals.

The Supreme Court issued 792 civil judgements last year, says de León, but rejected more than 2,000 appeals. He also expects that the timeframe for cases to reduced dramatically – under the previous system appeals could drag on for five or six years.

"The number of appeals has dropped radically while the global economic crisis has also reduced the desire to undertake expensive litigation," de León concludes.

"As solicitors, we know that the barriers to access are very high now and that the vast majority of appeals will be rejected by the Supreme Court."