

Alonso says the defendants in such cases know that, if they do



“Prices are not increasing, we need to improve efficiency and knowledge management systems.”

José María Alonso
Baker & McKenzie

not continue fighting such claims, there will be a growing queue of people looking to bring similar cases. Meanwhile, he explains that the modification of the criminal code in Spain means lawyers are increasingly needed by clients to advise on compliance.

Another new phenomenon is a rise in lawyers selling their

services to consumers in an effort to generate legal work, according to Clifford Chance partner Iñigo Villoria. He adds: “People are investing in legal business as there is less certainty about what outcomes can be expected in courts.” Pérez-Llorca partner Guillermina Ester says that in 2016 we will see more decisions made by the European Court of Justice that will have a direct

impact on ongoing cases in Spain, especially in relation to banking litigation.

Banking litigation can be divided into that brought by “common consumers” and disputes involving “sophisticated consumers”, says Cuatrecasas, Gonçalves Pereira partner Alfonso Iglesia. With regard to

claims brought by sophisticated consumers, banks have often strong defences, he adds. Iglesia also highlights the trend for disputes related to price amendments in public-private partnerships (PPPs), and says that some of such cases are “now being seen in the criminal courts because they are being presented as potential fraud”.

Cultural barriers

Villoria says mediation is not working in Spain as it is in other jurisdictions, while Araoz & Rueda partner Clifford Hendel adds: “We don’t yet see a lot of ADR in Spain, or in much of continental Europe – mediation is a long-term project, but when decision makers realise that 75 per cent of mediations tend to settle on the very day of mediation, they will begin to take notice. When they do, today’s vicious cycle – and the view ‘it will never work here’ – could give way to a virtuous circle, where understanding leads to confidence and confidence leads to results.”

López de Argumedo says lawyers have “pressed hard to convince clients that mediation is one of the possible ways” with limited success. He adds: “Lawyers need to take the lead and show clients the benefits of mediation or judges must force parties to mediate.”

There are cultural barriers to using mediation in Spain, according to Alonso. “Unless the clients are big companies, they think that if the issue is not solved in a short meeting then it should be resolved in the courts,” he adds. Murrilo says that, while lawyers have shown a commitment to promoting arbitration, there has not been the same effort at promoting mediation. He continues: “Clients have less appetite for mediation.”

“One may think that there is little incentive for defendants in cases to go to mediation,” says Ester. “Litigation is not expensive, and clients may think [given the time litigation takes], it is better to pay in five years, for example, than pay now.” Iglesia says another problem affecting

Portugal: What have been the major developments and trends in litigation and ADR in the last year?

“The growth in arbitration as an alternative to common courts, the implementation of the new civil procedure code and the significant change in the Portuguese court structure.” **Gonçalo Malheiro, partner, Pbb**

“Arbitration has made progresses in Portugal, mainly in the area of pharmaceutical & life sciences, as well as in tax.” **João Caiado Guerreiro, partner, Caiado Guerreiro**

“Insolvency and restructuring proceedings have been on the rise, as have enforcement proceedings. In relation to the Banco Espírito Santo issue, there has seen a significant increase in disputes involving shareholders, regulators and corporate bodies.” **Sofia Martins, managing associate, Miranda**

“Two major Portuguese banks collapsed and caused an enormous trail of lateral criminal and civil litigation involving not only stakeholders but also a swarm of depositors that unfortunately had lost their life savings.” **Martim Bouza Serrano, associate, CCA Ontier**

“The consolidation of the Civil Procedure Code’s reform, and, regarding debt recovery, the consolidation of extra judicial procedure (PEPEX). In public law the biggest developments were the new administrative procedure code and the reform of the administrative processual code. In the last year, we have also seen the rise of arbitration, particularly in private law, commercial law and taxes.” **Adelaide Moura, managing partner, A.M. Moura Advogados**

“Cases of insolvency and restructuring, recuperation of credits and breach of contracts.” **Ana Cláudia Rangel, senior associate, Raposo Bernardo**

“Highly sophisticated financial services litigation increased due to the collapse of the Espírito Santo Group. Domestic and foreign investors have been challenging innovative bank restructuring measures implemented by the government and the Bank of Portugal.” **João Maria Pimentel, partner, Campos Ferreira, Sá Carneiro & Associados**

Clients can help increase the use of ADR

While arbitration is functioning well in Spain, there is still room to grow, says Clifford Hendel – partner at Araoz & Rueda in Madrid

Hendel suggests that parties should be encouraged to “reconsider proceeding to litigation and take advantage of other options such as arbitration and ADR instead”. He also acknowledges that “ADR is still a very long term project” in Spain and other countries, but clients can be the driving force to increase the use of mediation and ADR.

Hendel sees a lot of opportunities for law firms in the area of arbitration, both commercial and investment. “Spain is now a very important respondent or defendant in investment arbitration. Spanish companies have always been very active and will continue to be, as claimants in investment arbitration.” He also points out to energy- or M&A-related disputes as generating more work for law firms in Spain in the coming months.

But all is not rosy in the garden, “law firms and litigators face problems with fees these days,” Hendel says, echoing what is felt across most practice areas. “Now you need to budget previously, respect that budget and if you exceed

that budget a certain amount of explanation is required.”

Hendel also highlights other challenges presented to law firms: “The difficulty of promoting makes it harder to attract and retain. Those issues need to be addressed beyond the litigation context, that’s simply a global law firm issue for the coming years.”



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Public contract disputes increasingly settled by arbitration

Disputes concerning public contracts in Portugal are increasingly settled using arbitration, according to José Luís Esquível, partner at Esquível Advogados.

To illustrate the point, Esquível says that arbitration is more and more commonly the method adopted to resolve disputes related to infrastructure, transport, toll road, and hospital projects. “We work with companies in sectors such as environment, health, infrastructure, energy and transport and I have noticed an upward trend of solving ongoing public concessions disputes via arbitration so we are particularly active,” he adds.

Despite ongoing political turbulence, Portugal remains attractive for international investors, says Esquível. “The current government is moderate and is now considered more pro-business”, he adds. “However, some concerns remain regarding the 2016 budget approval, privatisation measures and regulatory matters in concessions.”

Portuguese real estate, agriculture and banking assets are particularly attractive to foreign investors, especially those from Asia, according to Esquível. He continues: “The country is stable, safe and with reasonably priced assets – some Portuguese companies are actively seeking to partner with international investors. Moreover, some assets owned by investors from countries affected by low oil prices are being put on sale so the market is quite active.”

The market currently offers considerable opportunities for Portuguese law firms, says Esquível, given that there are many new regulations, major transactions, and long-standing disputes in some sectors – for example the fallout from the collapse of Banco Espírito Santo – that need to be resolved. Esquível adds: “In a market in flux, you have to anticipate the next opportunity or challenge for your client – you need to pay attention to the market, to new regulatory changes and be aligned with your client needs and strategies. That’s how you succeed.”



José Luís Esquível



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