Unravelling the language of the law in Spanish courts

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Abstract

When deciding on a case, Spanish judges must construe relevant legislation with the help of a body of ambiguous and often mutually inconsistent rules. Apart from general principles (e.g. those collected in the Constitution), the most significant guideline available for interpreting statutes, subsection 3(1) of the Spanish Civil Code, stipulates that rules shall be interpreted according to "the proper meaning of words". The vagueness of this provision, based on the idea that language conforms to reality in a univocal manner, goes hand in hand with the principle of judicial independence, under which Spanish judges are free to make any decisions they think suitable. This paper describes the principles of statutory interpretation in Spain and emphasizes how the application of these rules, together with the concept of judicial independence, sometimes makes statutory interpretation and court decisions a rather unpredictable process.

Keywords: legal language, legal text type, statutory interpretation, judicial independence, court decisions.

Resumen

El lenguaje del Derecho y su interpretación por los tribunales españoles

A la hora de dictar la resolución que pone punto final a un proceso, los jueces españoles interpretan la ley con la ayuda de un corpus de normas ambiguas y, en muchos casos, incoherentes entre sí. Aparte de los principios generales, recogidos por ejemplo en la Constitución Española, la herramienta más significativa de que disponen estos jueces para comprender y aplicar la letra de las leyes está contenida en el artículo 3.1 del Código Civil. Esta disposición estipula que las normas se interpretarán según "el sentido propio de sus palabras". La vaguedad de este criterio, que se fundamenta en la idea de la correspondencia unívoca entre lenguaje y realidad, coexiste, además, con el principio de independencia judicial, según el cual los jueces españoles son libres

de tomar las decisiones que consideren adecuadas. Este artículo describe los principios de interpretación legal vigentes en España, con el objeto de subrayar cómo la aplicación de estos criterios, unida al principio de independencia judicial, convierten la exégesis legislativa y las resoluciones judiciales, en ocasiones, en procesos de resultados imprevisibles.

Palabras clave: lenguaje legal, género legal, interpretación legal, independencia judicial, resoluciones judiciales.

1. The need for tools to interpret the law

The fact that all legal writing needs to be interpreted has been stated, among others, by Mellinkoff (1982). Even apparently straightforward pieces of legislation must be construed by lawyers and judges if they are to apply them to a set of given facts, or if they have to conclude the meaning of a contract or a will. From a more conservative perspective, it has been argued that clearly drafted documents leave no room for ambiguity and, as a result, require no interpretation at all. According to this approach, a judge should be nothing more than a hands-off intermediary between the unambiguous words of the law and the citizens in most instances. However, this standpoint seems, on the one hand, not to be in contact with the very diverse daily routine of courts and, on the other hand, to lie on a misconception about language by regarding the relationship between word and meaning as unequivocal and self-evident.

Legal professionals (most notably, judges), aware of the untruthfulness of this belief, have developed and availed themselves over the centuries of rules and principles which help them better understand and apply the texts which they work with. In Spain, these rules and principles consist of a limited and rather imprecise set of guidelines which are not arranged in order of rank, and where the decision as to when to use one tool of construction as opposed to another is left to the discretion of courts and public officials. In this paper, I will describe the principles of statutory interpretation employed by Spanish courts from a legal perspective, by paying particular attention to the way in which language is regarded in this very specific professional area. I will also argue that the vague wording of the main interpretative provision in Spanish law, together with other factors (e.g. the right of its judges to independence in decision making), allow for some uncertainty as far as the outcome of judicial proceedings is concerned. This study will not examine the interaction between the Spanish maxims of construction and those of

other countries; that is, the multilingual and multicultural contexts of legislation, as labelled by Bhatia et al. (2003), and also dealt with, among others, by Sarcevic (1997).

2. The rules of statutory interpretation in Spain

The set of guidelines to statutory interpretation at the disposal of Spanish courts is composed of a single rule of construction (subsection 3(1) of the Spanish Civil Code) which must be applied consistently with:

(a) the principles of the Spanish Constitution;

(b) the international law which has been expressly accepted by Spain (particularly, EC law); and

(c) the decisions made by the two highest courts (i.e., the *Tribunal Supremo* and the *Tribunal Constitucional*).

In addition, Spanish courts may also invoke legal maxims or aphorisms in order to support their decisions.[1] These rules, principles and aids will be described briefly in the following sections.

2.1. Subsection 3(1) of the Spanish Civil Code: a general provision on how to interpret the law

Subsection 3(1) of the Spanish Civil Code may be defined as the single rule of construction for Spain's judges. This rule, generally applicable to any matter covered by law, specifies the method to be followed when construing any piece of legislation and provides a universal approach to statutory interpretation in Spain. Subsection 3(2) and sections 4 and 5 of this Code, likewise, offer other interpretive principles which must not be ignored by courts when applying the law.[2]

> **Section 3**
> (1) Rules shall be interpreted according to the proper meaning of words, in connection with their context, historical circumstances, previous relevant legislation, and the social reality of the time in which these rules are to be applied. In all cases, the spirit and purpose of the rule must be regarded as an essential tool of construction.

(2) Equity shall be considered when applying the law. However, court decisions may only exclusively rely on equity when the particular rule explicitly allows for it.

Section 4

(1) When a rule does not specifically refer to a certain situation, it may be interpreted by drawing an analogy with another rule covering a similar situation and which has been found to have an identical ratio.

(2) Criminal, exceptional and temporary rules shall only apply to the situations and within the periods of time expressed in them.[3]

(3) The provisions in this Code shall be regarded as supplementary when applied in connection with distinct matters regulated by other rules.

Section 5

(1) Unless it is otherwise provided, periods of time shall be interpreted as beginning the day after the initial date set in the rule. If the periods are fixed in months or years, they shall be computed including both the initial and final months or years set in the rule. When the final month of any period does not have a day corresponding to the initial date, the period shall be understood to expire on the last day of the final month.

(2) In civil matters, periods of time are calculated including non business days.

Apparently, having to deal with only one compulsory rule of construction (the one expressed in subsection 3(1)) should prevent the courts from taking different directions when making decisions. In other words, legal consistency and certainty should benefit from the judges' lack of choice as far as rules of construction are concerned. However, far from providing a clear guidance for the application of the law, subsection 3(1) reveals itself as a rather vague statement, which actually allows for any method of interpretation which judges may find effective to arrive at their personal conclusions. Thus, the main reason why I characterise this rule of construction as unclear and uncertain is that subsection 3(1) does not express a straightforward rule of construction, but refers to several (potentially contradictory) elements which must be taken into account at interpreting the law. These elements are the following:[4] grammatical[5] (i.e., the words of the law), logical (i.e., the network of "logical" relationships between its different components), systematic (i.e., its connection with the legal system as a whole), historical (i.e., the way in which the law on a particular matter has developed and changed up to the present time), social (i.e., the social reality of the time in which the law is to be applied), and purposive (i.e., the purpose behind the law, both the motivation of

legislators and the object expressed in the rule)[6]. It is possible that legislators intended that these elements be applied simultaneously, but actual practice has demonstrated that they can be used in an alternative manner. By giving more emphasis to any one of these factors in the process of arriving at a decision, courts may pronounce different verdicts before materially identical situations, as the case study in section 3 will show. As a consequence, judges can justify any method of interpretation (e.g. the one which better suits their intention) invoking the words of subsection 3(1).

Additionally, the main clause of subsection 3(1), "according to the proper meaning of words", is as imprecise as it gets. Even though it is supplemented, after a detaching comma, by the phrase "in connection with", this expression, which somehow supports the unrealistic principle *in claris non fit interpretatio* (i.e., clear words need no interpretation) (Iturralde Sesma, 1989), manifests a concept of language whereby it is possible to convey a "pure" and unambiguous meaning for every word. I understand that, in practice, trying to stick to "the proper meaning of words" leaves courts free to make any decision they consider suitable.[7]

As it may be the case in other legal systems, the social and the purposive elements are the most frequently adduced by Spanish courts when it seems obvious that their verdicts deviate from what the rule apparently stipulates (Segura Ortega, 2003). In all cases, however, all decisions by judges and public officials in Spain, whether they have been made on social grounds or for any of the other reasons laid down in subsection 3(1), must not collide, above anything else, with the principles of the Constitution.

2.2. The adherence to the Spanish Constitution

The principles which act as a basis for both the Spanish legal system and its social order are those specified in the Spanish Constitution, which was enacted on 29 December 1978. Any decision which seeks to be sanctioned in Spain must abide by the provisions in the Constitution, as the Judiciary Organic Act 6/1985, of 1 July[8], indicates in section 5:

> 1. The Constitution is the primary rule of the Spanish legal system and it binds all judges and courts. These shall construe and apply the law in the light of the rules and principles of the Constitution, in such a way as they have been interpreted by the Spanish *Tribunal Constitucional* in all kinds of proceedings.

This requirement also refers to the role of the Spanish *Tribunal Constitucional*. This court of last resort, which is in charge of determining whether any legal act adheres to the Constitution, binds all lower courts and constitutes one of the two sources of precedent in the Spanish legal system. As a result, its decisions regarding the interpretation of the Constitution must always be observed, and, in case of a presumed conflict between a court decision and any constitutional principle, an appeal may be made to the *Tribunal Constitucional* for them to decide on the issue.

2.3. The compliance with EC law and international conventions

International treaties to which Spain is a signatory also have to be consistent with the Constitution, and this requirement inevitably results in the amendment of either of the two texts under discussion (i.e., either the particular international piece of law or the Spanish Constitution). The decision as to which text is to be modified depends on the imbalance of power between the negotiating parties[9]. Once international treaties and the Constitution are no longer in conflict, the former must be published in Spain's official journal in order to become Spanish law (a condition stated in section 96 of the Spanish Constitution). As such, the new international legal principles should not be violated by Spanish courts when interpreting any statute. In this respect, EC law is the most notable example of multinational law having an influence on the activity of Spanish judges.

Spain's accession treaty to the European Economic Community[10], published in the Spanish national official journal on 1 January 1986 and ratified the previous year by the parties concerned, included the following provisions regarding the compulsory observance of EC law principles by the Spanish legal system:

> **Article 2**
> From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions of the Communities before accession shall be binding on the new Member States [Spain and Portugal] and shall apply in those States under the conditions laid down in those Treaties and in this Act.
>
> **Article 3**
> [...]
> 2. The new Member States undertake to accede to the conventions provided for in Article 220 of the EEC Treaty and to those that are inseparable from

> the attainment of the objectives of that Treaty and thus linked to the Community legal order, and also to the protocols on the interpretation of those conventions by the Court of Justice [...].
>
> **Article 4**
> 1. The agreements or conventions entered into by any of the Communities with one or more third States, with an international organization or with a national of a third State, shall, under the conditions laid down in the original Treaties and in this Act, be binding on the new Member States.[11]

The "reference procedure", by which domestic courts of the member States refer questions on how to interpret EC legislation to the European Court of Justice and, subsequently, must abide by the European court's rulings on that matter, shows the extent to which EC legal principles are to be taken into consideration by national judges.

2.4. A low-key doctrine of precedent, judicial independence and the lack of consistency and certainty in court decisions

Apart from the binding role of the decisions taken by the European Court of Justice on matters relating to EC law or institutions, the doctrine of precedent is only very modestly applied in Spain. Far from the influence it has as a source of law in common law systems[12], Spanish courts are only bound by the two most superior courts, the *Tribunal Supremo* and the *Tribunal Constitucional*, which, as a consequence of the principle of authority, determine, when appealed to, the exact meaning of legal rules. This apparent source of certainty and consistency for the "consumers" of the court system very often clashes, however, with the principle of independence of Spanish judges, which is laid down as one of their basic rights in sections 12 and 13 of the Judiciary Organic Act 6/1985, of 1 July:

> **Section 12**
> 1. In the exercise of their jurisdiction, judges shall be independent from all other judicial and governing bodies of the Judiciary.
> 2. Judges and courts shall not correct the application or interpretation of the law made by lower courts (as set by the hierarchy of the Spanish courts), unless they have a right to do so under the law as courts of appeal.
> 3. Judges, courts, governing bodies of courts and the General Council for the Judiciary shall not give any instructions, whether general or particular, to lower courts on the application or interpretation of the law which these may carry out when exercising their jurisdiction.

> **Section 13**
> Everyone shall respect the independence of judges.

This principle of independence has been sanctioned by several rulings of the *Tribunal Constitucional*. In one of them, the Court stated that "a different interpretation of the rules should not be understood in itself as a breach of the right to the equal application of the law", and that "the use of different criteria at interpreting the law is legitimate, as seen from the perspective of the principle of equality, provided it is reasoned out, reasonable and consistent; that is to say, provided it is not arbitrary" (ruling 161/1989 of the *Tribunal Constitucional*). In a further development of this principle, the *Tribunal Constitucional* prescribed that one court might use different criteria of construction in different proceedings even though the facts under consideration were materially identical (ruling 42/1993 of the *Tribunal Constitucional*). This decision, given in appeal proceedings, stipulated that, in the context of the independence of the courts within their jurisdiction, the requirement of uniformity in the application of the law would be fulfilled when (a) the legal criteria applied in the particular case were "externalised" and reasoned out; and (b) the grounds for the judgement were expressed in the "innovative" decision or, instead, could be easily deduced from it. This means that, as the court put it, the requirement of uniformity in the application of the law by judges and courts lies more on formal aspects than on substantive matters.

Given the different ideologies, prejudices and intuitions of individual judges, their "freedom" to apply the law actually results in divergent rulings in cases of similar characteristics. Moreover, this uncertainty regarding the implementation of the law is reinforced by the facts that (a) there are no official rules of preference for judges in order to choose a method of construction as opposed to another; (b) all interpretive criteria are deemed equally valid and effective; and (c) the judicial system lacks any effective method of control on the activity of the courts (Segura Ortega, 2003). As a result, citizens find it impossible to guess beforehand at the likely conclusion of their proceedings.

2.5. Maxims, presumptions and rules of language

A final and even less systematised source of tools of statutory interpretation is the collection of maxims, presumptions and rules of language which Spanish courts regard as part of their legal tradition. These "canons of

construction" and substantive legal principles (also called "arguments") constitute very general and concise statements which have their origin in old judicial doctrines and rulings (Escobar de la Serna, 1990), and are almost always referred to by their Latin expressions. Some have been incorporated into legislative provisions, and others convey interpretive criteria which can also be found in written law. The following are some of the most frequently employed by courts as a support for their decisions[13]:

- Interpretations producing an absurd result should be avoided (*ad absurdum* argument).[14]
- The same rule should be applied in cases for which the law does not make any distinction (*ubi lex non distinguit, nec nos distinguere debemus*).
- In cases with identical ratio, the rule of law should be the same (*ubi eadem ratio ist, ibi eadem iuris dispositio esse debet*; *a pari ratione* or "analogy" argument).[15]
- The express mention of one or more specific things of a particular class "may be taken as tacitly excluding others of the same class which are not mentioned" (Gray, 2006: 54) (*inclusio unius est exclusio alterius*, meaning the same as *quod lex dicit de uno, negat de altero*; *a contrario sensu* argument).[16]
- Where a rule allows for a right or behaviour at its highest degree, it will also allow for that right or behaviour at lower degrees (*a maiori ad minus* argument).
- Where a rule forbids a behaviour at its lowest degree, it will also forbid that behaviour at higher degrees (*a minori ad maius* argument).
- Favourable rules and matters must be applied and interpreted in an extensive manner; on the contrary, unfavourable ones are to be construed in a restrictive way (*favorabilia amplianda, odiosa restringenda*).
- The rights of the individual must not be restrained in a disproportionate way ("proportionality" argument).

As it is the case with every other principle of statutory interpretation available in Spain, these maxims may or may not be invoked at the pleasure of the courts. Again, judges are given a freedom of choice which, in the event, may constitute a detriment to the certainty and consistency of court rulings as a whole.

3. A case study: the prosecution of military service insubordinates in Spanish courts in 1992

From what we have seen so far, it could be said that the determining factor in court decisions is the will of the judge, who, depending on the result he wishes to arrive at, employs the method of construction which better leads him to it (Segura Ortega, 2003). Thus, in the instances in which courts have apparently violated the law in their rulings, they mostly allege, as it has been said, that they have relied on a purposive or social approach to legislation (i.e., two of the elements provided as interpretive criteria in subsection 3(1)).

As an illustration of the resort to social reasons in order to justify unexpected interpretations of the law, we will refer to the variety of rulings given in the 104 prosecutions of military service insubordinates in Spanish ordinary courts in 1992. The assortment of upheld decisions based on the same piece of law and on identical facts demonstrates the lack of consistency of court decisions in Spain.

In the late eighties and early nineties, a time at which military service was still compulsory for all male citizens in Spain, conscientious objection was governed by two Acts:

(a) Act 48/1984, of 26 December, regulating the conscientious objection and the substitutional social service (i.e., *prestación social sustitutoria*)[17]; and

(b) Organic Act 8/1984, of 26 December, regulating the appeal proceedings in cases of conscientious objection and its criminal treatment, and repealing section 45 of the *Tribunal Constitucional* Organic Act 2/1979, of 3 October, as amended by the Organic Act 14/1985, of 9 December, amending the Criminal Code and the Organic Act 8/1984, of 26 December, in relation to the Military Criminal Code.[18]

Subsection 2(3) of the latter specified that conscientious objectors who refused to perform the "voluntary" social work intended to replace their service in the armed forces should be imprisoned and pronounced ineligible for any public office:

> Those exempt from the military service because of their conscientious objection (i.e., conscientious objectors) who refuse to perform the

> substitutional social service shall be punished with minor imprisonment at its medium and maximum degrees, and shall be pronounced ineligible for any public office during the period of the sentence.

As a consequence of the passing of the Military Service Organic Act 13/1991, of 20 December[19], the Spanish Criminal Code was reformed and it was provided that insubordination proceedings were to be heard in non military courts instead of in military courts, which had been the case so far. With regard to the sentences to be imposed, those for military service insubordinates were leveled up to the ones applicable to insubordinate objectors as laid down in the Organic Act 8/1984 (i.e., a minimum prison sentence of two years, four months and one day, and a maximum period of imprisonment of six years).

Under this new Act, non military courts were now in charge of trying insubordinates, and criminal proceedings of this kind amounted to 104 in 1992. In a context of growing reaction against the compulsory military service, most accused plainly rejected the armed forces and any substitutional social service on conscientious grounds. Given the similarity of the facts under consideration in the different cases, one should have expected a uniform and consistent application of the law; that is to say, the same, or at least similar, rulings in all cases. However, some individual judges, exercising their right to independence, interpreted the provisions in the law in a surprisingly unique manner and presented the several accused with what was described as a "lottery of verdicts". For example, only about 35% of the people under trial for insubordination were given the minimum prison sentence term stipulated by legislation. The remaining 65% were punished with imprisonment for one year or less[20], and, most surprisingly, a few of the accused were acquitted of the crime of insubordination.

The first verdict of innocence, which became controversial front-page news, was made on 6 March 1992, by the presiding judge of the Madrid criminal court *Juzgado de lo Penal* 4, José Luis Calvo Cabello, and the insubordinate being prosecuted was a 25-year-old man. Through an elaborate argumentation, this judge arrived at the discharge of the accused even though he admitted the full force of the applicable legislation and the fact that the prosecuted had refused to perform the substitutional social service required. According to his verdict, the circumstances and the behaviour of the insubordinate, which were not materially different from those of others, gave rise to a conflict between "conscience" and "law" (i.e., the individual

against the State), which had to be solved in favour of conscience or, in other words, in favour of the individual and their dignity. The judge stated that the non performance of the substitutional social service constituted the only means of the accused to preserve his dignity, and that the damage caused by his non performance was of less importance than the one avoided with such a behaviour (Atienza, 1992).

By virtue of subsequent developments of the law, occurring in parallel with a transformation of Spanish social mores and the abolishment, on 31 December 2001, of the compulsory military service and its alternative social service, all crimes connected with these previously compulsory services were eventually removed from the Criminal Code and the Military Criminal Code.[21] As a result, about 4,000 insubordinates (whether still undergoing criminal proceedings or already convicted) were amnestied in 2002.

5. Conclusions

Judge Calvo Cabello's acquittal verdict relied on social and systematic grounds, taking into consideration the observance, among others, of the presumption against the disproportionate punishment of individuals. In doing so, the judge turned a blind eye to "the proper meaning of words" of the rule which he was supposed to apply; or, perhaps, he found that "the proper meaning of words" of this rule also offered room for the protection of the dignity of the individual as he considered this to be. Anyway, this instance of statutory interpretation shows that, as far as the construction of the law is concerned, the measure as to which meaning of the rule is "proper" and which one is "improper" depends on the prejudices, moral principles and political ideas of the judge in question. And, because statutes have language as their raw material, it may be inevitable that this is so.

Moreso Mateos and María Vilajosana (2004) have pointed out that the great discretion of courts when applying the law is caused, in part, by the limitations of language, a tool which is often ambiguous, vague and with an "open texture".[22] Even though agreeing that language may be an obstacle to the interpretation of the law, I believe that it is not its limitations to be blamed, but its richness of meaning in different contexts; and this is precisely the reason why every piece of law must be interpreted in the first place. In Spain, the right to independence of judges and their disregard for precedents not coming from the two superior courts, together with the

complex nature of language, account for the uncertainty and inconsistency of some court decisions. Paradoxically, Solan (1993) describes a somehow similar scenario in US courts, which belong to a common law system where, in principle, the observance of the doctrine of precedent should guarantee the uniformity of its judicial decisions. Moreover, some of the features mentioned with regard to the Spanish system (e.g. the rules of interpretation are not ordered by rank; some of the principles invoked by courts are mutually inconsistent) may be also applied to the decisions made by common law judges. In this respect, I find the following quote from Solan (1993: 92) highly relevant for the discussion presented in this paper: "it can only advance the cause of thoughtful decision making to debate openly which of these principles are to be taken seriously, and what the hierarchical relationship among conflicting principles should be". For the moment, to rely on "the proper meaning of words" (i.e., an assertion which seems not to recognise the multifaceted nature of language) as the primary method of construction of legal texts constitutes an approach to statutory interpretation which seems neither pragmatic nor effective.

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NOTES

[1] Individual Acts may also contain *ad hoc* interpretive directions. In this paper, we will only refer to generally applicable provisions.

[2] In this paper, all legal excerpts are my translation except when noted. To access the original pieces of legislation, the reader may visit, among others, the following web site: <http://noticias.juridicas.com>.

[3] Subsection 4(2) of the Spanish Civil Code partially corresponds to the provision in subsection 4(1) of the Spanish Criminal Code: "Criminal law shall be applied only to the instances expressly set forth in it".

[4] Of great influence on Spanish legal scholars, Savigny's (1878) theory of statutory interpretation advanced these elements as factors to be taken simultaneously into account when construing the law. Even though six elements may be distinguished in subsection 3(1), Savigny identified only the first four: grammatical, logical, systematic and historical.

[5] This element corresponds to the "literal rule" or plain meaning rule, the oldest rule of construction in English law, which states that "if the words of the Statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense" (*Sussex Peerage Case* (1844) 1 Cl & Fin 85).

[6] According to Almagro Nosete (2004: 453), these elements may be identified in subsection 3(1) as follows: "Rules will be interpreted according to the proper meaning of words [grammatical element], in connection with their context [logical and systematic elements], historical circumstances, previous relevant legislation [historical element], and the social reality of the time in which these rules are to be applied [social element]. In all cases, the spirit and purpose of the rule [purposive element] must be regarded as an essential tool of construction."

[7] The Civil Code includes some special provisions with regard to the interpretation of agreements (sections 1281-1289). In this respect, there is also a plain reference to the principle *in claris non fit interpretatio* in section 1281: "When the terms in an agreement are clear and leave no doubt as to the intention of the parties involved, its clauses shall be interpreted in a literal way".

[8] Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial.

[9] In this respect, Spain amended its Constitution in order to be able to accede to the EEC in 1986.

[10] Instrument of ratification of 20 September 1985 of the Treaty made in Lisbon and Madrid on 12 June 1985 regarding the accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and the European Atomic Energy Community (*Spanish Official Journal* 1, 1 January 1986, pages 3-687).

[11] Official English version of the European Community Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustment to the Treaties (*Official Journal of the European Union* L 302, 15 November 1985, page 23).

[12] The doctrine of precedent, as it is understood in common law systems, means that a court must decide

in the same way as it has been decided in an earlier case if the facts which are legally relevant (the material facts) are the same.

[13] As collected by Escobar de la Serna (1990: 58-59). Sieira Mucientes (2004: 42) refers specifically to the principle of proportionality.

[14] This roughly corresponds to the "golden rule of construction" of the English system: "[...] the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity or inconsistency, but not farther" (Lord Wensleydale in *Grey v. Pearsons* (1857) 6 HL Cas 61).

[15] This argument corresponds to subsection 4(1) of the Spanish Civil Code.

[16] English law gives a slightly different wording to this rule of language: *expressio unius est exclusio alterius* ("expressing one thing excludes another").

[17] Ley 48/1984, de 26 de diciembre, reguladora de la objeción de conciencia y de la prestación social sustitutoria.

[18] Ley Orgánica 8/1984, de 26 de diciembre, por la que se regula el régimen de recursos en caso de objeción de conciencia, su régimen penal y se deroga el artículo 45 de la Ley Orgánica 2/1979, de 3 de octubre, del *Tribunal Constitucional*; tal como ha sido modificada por la Ley Orgánica 14/1985, de 9 de diciembre, de modificación del Código Penal y de la Ley Orgánica 8/1984, de 26 de diciembre, en correlación con el Código Penal Militar.

[19] Ley Orgánica 13/1991, de 20 de diciembre, del Servicio Militar. This Act was repealed by the National Defence Organic Act 5/2005, of 17 November (Ley Orgánica 5/2005, de 17 de noviembre, de la Defensa Nacional).

[20] From January to April 1993, 108 prosecutions to insubordinates took place. 77% of them were given prison sentences of one year or less.

[21] Organic Act 3/2002, of 22 May, amending the Criminal Code Organic Act 10/1995, of 23 November, and the Military Criminal Code Organic Act 13/1985, of 9 December, on criminal matters related to the military service and the substitutional social service (Ley Orgánica 3/2002, de 22 de mayo, por la que se modifican la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, y la Ley Orgánica 13/1985, de 9 de diciembre, del Código Penal Militar, en materia de delitos relativos al servicio militar y a la prestación social sustitutoria).

Before the enactment of this final Act, the legal treatment of these crimes had relaxed thanks to a 1998 Act: Organic Act 7/1998, of 5 October, amending the Criminal Code Organic Act 10/1995, of 23 November, in which prison and fine sentences are abolished for the cases of non performance of the compulsory military service and the substitutional social service, and in which the sentence of ineligibility for public office is reduced in these cases (Ley Orgánica 7/1998, de 5 de octubre, de modificación de la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, por la que se suprimen las penas de prisión y multa para los supuestos de no cumplimiento del servicio militar obligatorio y prestación social sustitutoria y se rebajan las penas de inhabilitación para dichos supuestos).

[22] The other factors mentioned by this author are: firstly, the conflict between different pieces of legislation, which may not be always solved automatically; secondly, the conflict between principles which need to be weighed; and, finally, the existence of legislative gaps, which may be fulfilled either by the *a contrario sensu* argument or by the "analogy" argument, each of them resulting in opposite rulings.