

The Current Importance of the Rules of Civil Procedure in the Portuguese Legal Order: Between Legalism and Adequation

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Abstract : The rules of Civil Procedure that are defined in the Portuguese Civil Procedure Code of 2013 particularly their articles 552 to 626- represent the model that the legislator thought that would be more suitable for national civil litigation, from the moment the action is brought by the plaintiff to the moment when the sentence is issued. However, procedural legalism is no longer a reality in the Portuguese Civil Procedural Law. According to the article 547 of the code of 2013, the civil judge has a duty to adopt the procedure that better suits the circumstances of the case, whether or not it is the one defined by law. The main goal of our paper is to answer the question whether the formal adequation imposed by this article diminishes the importance of the Portuguese rules of Civil Procedure and their daily application by national civil judges. We will start by explaining the appearance of the abovementioned rules in the Civil Procedure Code of 2013. Then we will analyse, using specific examples that were obtained by the books we read, how the legal procedure defined in the abovementioned code does not suit the circumstances of some specific cases and is totally inefficient in some situations. After that, we will, by using the data obtained in the practical research that we are conducting in the Portuguese civil courts within the scope of our Ph.D. thesis (until now, we have been able to consult 150 civil lawsuits), verify whether and how judges and parties make the procedure more efficient and effective in the case sub judice. In the scope of our research, we have already reached some preliminary findings: 1) despite the fact that the legal procedure does not suit the circumstances of some civil lawsuits, there are only two situations of frequent use of formal adequation (the judge allowing the plaintiff to respond to the procedural exceptions deduced in the written defense and the exemption from prior hearing for the judges who never summon it), 2) the other aspects of procedural adequation (anticipation of the production of expert evidence, waiving of oral argument at the final hearing, written allegations, dismissal of the dispatch on the controversial facts and the examination of witnesses at the domicile of one of the lawyers) are still little used and 3) formal adequation tends to happen by initiative of the judge, as plaintiffs and defendants are afraid of celebrating procedural agreements in most situations. In short, we can say that, in the Portuguese legal order of the 21st century, the flexibility of the legal procedure, as it is defined in the law and applied by procedural subjects, does not affect the importance of the rules of Civil Procedure of the code of 2013.

Keywords : casuistic adequation, civil procedure code of 2013, procedural subjects, rules of civil procedure

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