

COURTS NEED SYSTEM OF 'BINDING DECISIONS' - RAMÓN Y CAJAL

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If judges are given a lot of discretion then the concept of “legal certainty” – which is what clients want – is difficult to achieve, Joaquín García Bernaldo de Quirós, partner at Ramón y Cajal Abogados, says. He adds that, while the judicial system does include measures aimed at increasing the likelihood of legal certainty, it is time to change the system because it is now outdated.

Bernaldo de Quirós acknowledges that this problem has already been identified and there have been attempts to provide a solution by making some judgments of the higher courts binding. However, there is still a great deal of diversity in judicial decisions and there is a strong need to standardise decisions and it is crucial that interpretations of the law are unified.

Making decisions binding saves time and money and also reduces the amount of resources spent on litigation. Currently, when clients present their case to their legal advisers they want to be given an idea of whether their case will be successful or not, explains Bernaldo de Quirós. He adds that

clients want to be given an indication of the probability of their case being successful and what would be a court's interpretation of their argument.

A system of "binding decisions", would be more suited to the needs of commercial clients, Bernaldo de Quirós argues. "Many times, the case is not worth the effort or the economic investment and what the client would really like is the judicial system to provide them with guarantees," he adds. "The economic analysis of law and the litigation is more important than we sometimes think. If the loser in a court case is required to pay the costs of the process, the system should give parties involved in disputes a clear indication of whether their case will be successful."