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Recommended Citation

Julian Nebreda-Urbaneja & Raymond K. Berg, *Introduction to the Venezuelan Legal System - A Typical Civil Law System of Latin American*, 10 DePaul L. Rev. 41 (1960)

Available at: <https://via.library.depaul.edu/law-review/vol10/iss1/3>

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INTRODUCTION TO THE VENEZUELAN LEGAL SYSTEM—A TYPICAL CIVIL LAW SYSTEM OF LATIN AMERICA

JULIAN NEBREDA-URBANEJA AND RAYMOND K. BERG

AS A RESULT of the latest political developments in Latin America, public opinion in the United States has crystallized into critical concern for the political, economical and social status of Latin American countries. A better understanding between the peoples of the United States and Latin America will strengthen and solidify the bonds that join us together in the common cause of freedom. From a practical point of view this can, for example, be accomplished by expanding governmental and private investment in Latin America, by increasing United States participation in Latin American organizational activities and by encouraging greater exchange of students and visitors. However, it is not enough to mechanically promote friendship with Latin America. The people of the United States must as well affirmatively demonstrate their friendship with the peoples of Latin America by manifesting a sincere interest in Latin American history, culture, politics, law and all the other intangible ingredients which constitute the national spirit. It is imperative that the peoples of Latin America know that the people of the United States understand and appreciate them and their problems.

Every day more United States attorneys are dealing with Latin American governments, businessmen and lawyers. It is important that these attorneys, as well as the people of the United States, have some knowledge of, and appreciation for Latin American law. The United States attorney who is not familiar with Latin American law cannot easily promote United States-Latin American good will, nor

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can he readily avoid the decisive and adverse effects often exerted on United States interests by unfamiliar processes, nor gain the trust, confidence and friendship of the Latin American people with whom he must deal. It is the purpose of this article to serve both as an introduction to certain aspects of the laws of Latin America, and as an invitation to explore further into the laws of those countries.

Generally speaking, the countries of Latin America are governed by civil law systems influenced primarily by the French Napoleonic Civil Code of the nineteenth century. There are, of course, variations in legal history, organization of the bar, judiciary, and techniques of judicial decision in Latin American countries, and each system reflects its own political, economic and sociological pressures. However, these variations will not affect a general overall understanding of Latin American law as it is represented by the Venezuelan legal system, which is typical of all Latin American legal systems.

I. THE LAWYER

The education of the Venezuelan lawyer (*abogado*) is quite different from the education of the United States lawyer. He first attends primary school for a period of six years and then attends secondary school (*liceo*) for a period of five years, after which he graduates at approximately the age of eighteen with the diploma of Bachelor (*Bachiller*) which is comparable to the diploma of *Bachelier* in France. As there is no intermediate step between secondary education and the University schools, the *Bachiller* enters the school of law at a period when his average United States counterpart is still in college.

The ordinary law student takes approximately five or six subjects a year during the six-year law school course and attends class approximately twenty to twenty-five hours a week. Unlike the United States, the classes are, for the most part, held from 7:00 a.m. to 9:00 a.m. and from 6:00 p.m. to 8:00 p.m., because most students customarily work, either as court clerks, or in law offices, during the day.

The primary method of instruction is, as in France and most of Europe, by lecture, though, unlike most European law schools, attendance is compulsory. As in Europe, the case method is not used. The students also attend practice classes in certain subjects; in these classes they are taught legal research and the drafting of legal documents and in addition, each student attends a seminar in which he is

required to write a legal monograph which must be approved before he receives his degree. At the end of each year, the student is given one basic examination for each subject which consists of an oral and written test. If the student fails any examination, he is not dropped from law school, but takes the course again and continues on until he passes the examination.

Since the Venezuelan law student, as opposed to his counterpart in the United States, enters law school without the benefit of previous college education, the objectives of the law school are broader in the sense that during the first years an informational approach to political and social sciences is stressed, whereas United States law schools primarily seek to prepare their students for the practice of law. The ordinary law school curriculum is as follows:

Introduction to Law: General Principles of Law.

Sociology

Economics

Roman Law: Historical Development of the Roman Law and the Law of Justinian.

Public Law: The Law of the State and Its Political powers. Principles of Constitutional Law.

Constitutional Law: Venezuelan Constitutional Law.

Administrative Law: General Principles. Regulations of the Government.

Criminal Law: General Principles. Each Crime in Particular.

Legal Medicine: (Forensic Medicine)

Finances and Taxation: Budget, National Revenue, Taxes.

Jurisprudence: (Philosophy of Law)

Civil Law: Introduction and Persons

Goods and Property

Obligations

Contracts

Family (Domestic Relations), and

Probate Law

Mercantile Law: Contracts and Partnership and Admiralty and Bankruptcy.

Labor Law

International Public Law

Private International Law

Mines and Oil Laws

Civil Procedure

Criminal Procedure

Once the student graduates from law school and receives his degree, he does not have to take any bar examinations, but can practice law anywhere in the Republic providing he becomes a member of a legal professional association or bar association in the state of his domicile and registers his degree and bar association attestation in the public

registrar's office. (Ley de Abogados—Lawyers' Act, art. 5.) There are no restrictions on becoming a lawyer because of nationality or residence, although, by statute, some persons such as clergymen, judges, notaries and members of the armed forces cannot practice law.

The actual practice of the Venezuelan lawyer departs from the accepted French and English legal practice, as it is based upon a general division into those members of the legal profession who act as agents of the litigant and who are concerned with procedural details, such as the *solicitor* in England and the *avoué* in France, and those members of the legal profession who take part in court hearings, such as the *barrister* in England and the *avocat* in France. In Venezuela, as in the United States, the lawyer not only appears in court but also performs the procedural and administrative details for his client as well. In addition, the signature of a lawyer is required on all documents submitted to certain administrative officers, such as public registrars or notaries; consequently, most legal documents are drafted by lawyers in contrast to France, where untrained persons may and do prepare legal documents. Parties can, however, represent themselves in legal proceedings, though the court, in some instances, may appoint counsel. (Ley de Abogados—Lawyer's Act, art. 4.)

Before an attorney can represent a party in court, he must first be given a power of attorney, which is a written, notarized document filed in the record of the case. (CODE OF CIVIL PROCEDURE, art. 39 *et seq.*) In its general form, the power of attorney confers authority to act for the party in all proceedings, including appeals, although express authorization must be received for certain acts, such as settlement of a case.

The lawyer is primarily responsible to the local bar association (*Colegio de Abogados*), a self-governing professional association established by law with some official character and functions. (Ley de Abogados—Lawyer's Act, art. 10 *et seq.*) One of the most important functions of the bar association is carried on by the disciplinary board, which can suspend the membership of a lawyer for certain statutory violations and consequently prevent him from practicing law, though the suspended lawyer may appeal to the courts.

II. THE COURTS

Venezuelan courts are organized on a national basis into courts of ordinary or general jurisdiction and courts of special or limited jurisdiction. (Ley Orgánica del Poder Judicial—Organic Statute of the

Judicial Power—art. 2 *et seq.*) The courts of ordinary jurisdiction are superior courts (*cortes superiores*); courts of first instance (*juzgados de primera instancia*); district or department courts (*juzgados de distrito o departamento*); municipal or parish courts (*juzgados de municipio o parroquia*); and courts of investigation in criminal cases (*juzgados de instrucción*). The courts of special jurisdiction are military courts (*tribunales militares*); labor courts (*tribunales del trabajo*); treasury or customs courts (*tribunales de hacienda*); mercantile courts (*tribunales mercantiles*); minors courts (*tribunales de menores*); and criminal courts (*tribunales penales*).

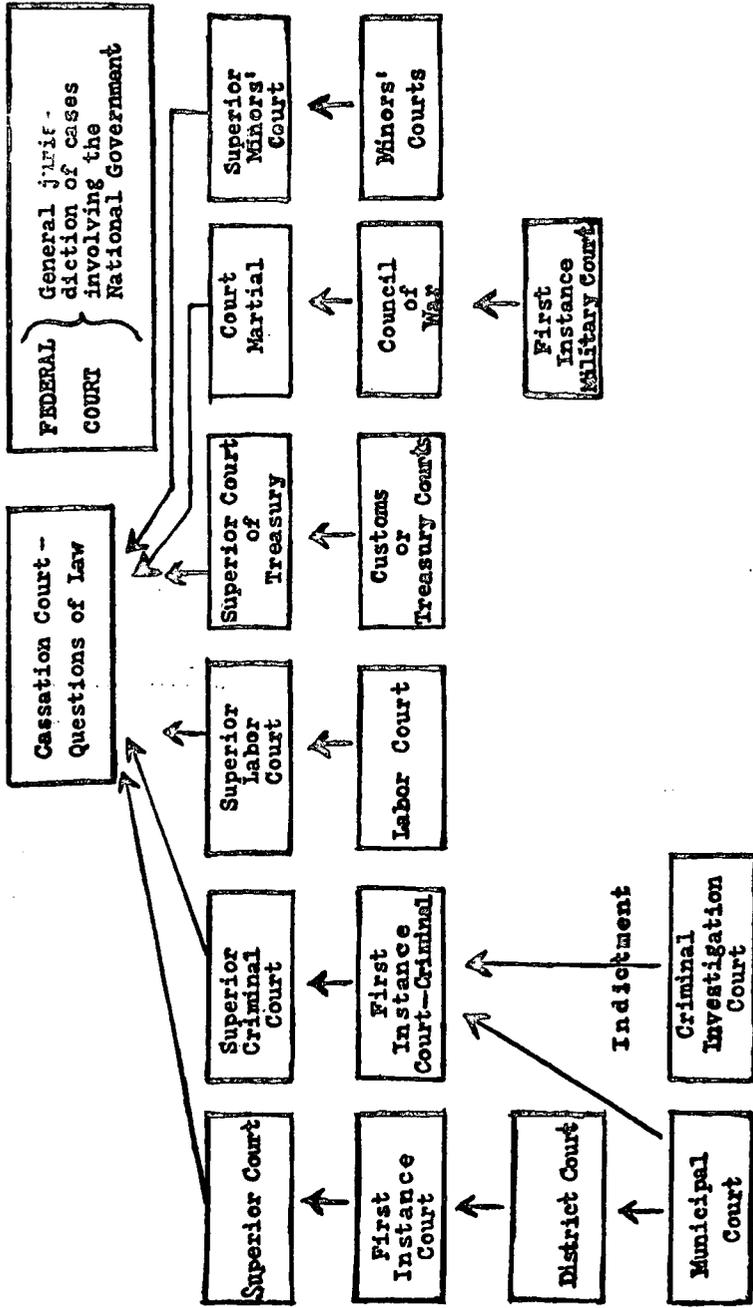
In each municipality or parish (village or town) there are one or more municipal or parish courts composed of one judge and having jurisdiction over cases of less than 2,000 *bolivares* (a bolivar is worth approximately 29 cents), marriages, and certain misdemeanors. In some towns and cities there are one or more special courts of criminal investigation composed of one judge and having jurisdiction over indictments and warrants of arrest. Otherwise, this function is exercised by the municipal court.

In each department or district, similar in territorial division to a United States county, there are one or more department or district courts composed of one judge and having jurisdiction over cases of less than 4,000 *bolivares*; these courts serve as appellate courts for municipal courts, and from them there is no further appeal.

The Republic is divided into judicial circuits (*circunscripciones judiciales*), containing one or more courts of first instance which are composed of one judge having jurisdiction of cases over 4,000 *bolivares* and which serve as appellate courts for the department courts; no appeal can be taken from a decision of these appellate courts. Each circuit also contains one or more superior courts, ordinarily consisting of three judges, which serve primarily as appellate courts for the courts of first instance; again, no further appeal is possible.

Though the special courts, as their names imply, hear only specific jurisdictional matters, such as labor or military cases, their jurisdiction over these matters is not exclusive and often, in those areas in which no special courts are located, the ordinary courts hear these matters as well, except for military cases and income tax appeals cases both of which are exclusively reserved to the special courts. Generally speaking, each special court has its own special appellate court, and is not within the appellate system of the ordinary courts.

The two highest courts of Venezuela are the Federal Court (*Corte*



The Venezuelan Court System

Federal) and the Court of Cassation (*Corte de Casación*). The Federal Court is composed of five justices and a secretary, and is located in Caracas. Formerly this Court, together with the Court of Cassation, constituted a single court called *Corte Federal y de Casación*. The principal functions of the Federal Court are to decide the constitutionality of laws; to decide the constitutionality of acts of government officials; to decide cases involving accusations against the President; ministers, and other high officers acting in their official capacities; to decide cases involving foreign diplomats; to decide conflicts of jurisdiction between public officers; to decide cases involving execution of foreign judgments; to decide damage cases against the nation; and to elect judges of ordinary and special courts other than the Court of Cassation and special courts of criminal investigations. (CONSTITUCIÓN NACIONAL—NATIONAL CONSTITUTION—art. 133.)

The Court of Cassation, located in Caracas, is composed of ten justices divided into two sections or chambers—one for criminal cases and the other for civil, mercantile, and labor law cases. As in French legal theory, the function of the Court of Cassation is limited to *cassation*—that is, setting aside judgments for errors of law appearing in the opinion or proceedings of the court below, and referring the case for final determination to an appellate court other than that which rendered the judgment. (CODE OF CIVIL PROCEDURE, art. 418 *et seq.*) The purpose of special resort to the Court of Cassation is uniform interpretation of the laws and, therefore, this Court decides only questions of law.

Besides the judge (*juez*) or judges, the Venezuelan court is usually staffed by a secretary or clerk of the court (*secretario*), the bailiff (*alguacil*) and the clerks (*escribientes*).

The Justices (*Magistrados*) of the Federal Court and Court of Cassation must be native Venezuelan lawyers over thirty years of age. They are elected by the National Congress for a period of five years and may be re-elected. (CONSTITUCIÓN NACIONAL—NATIONAL CONSTITUTION—art. 130.) The judges of the other courts must likewise be Venezuelan lawyers of good character who are not engaged in political activities. As previously indicated, they are elected by the Federal Court from a list which is presented by the executive power through the Minister of Justice (*Ministro de Justicia*) for a term of five years and may be re-elected. (Ley Orgánica del Poder Judicial—Organic Statute of the Judicial Power, art. 33 *et seq.*)

The secretary or clerk of the court is often a lawyer, and is appointed by the judge with notice to the Minister of Justice. His principal functions are to keep the seal of the court, to authorize with his signature all acts of the court and all documents and certifications, to receive all documents, and to keep the daily journal and all other books of the court.

The bailiff is appointed by the judge with notice to the Minister of Justice, and is charged with keeping order in the court and serving summonses and notifications.

The clerks are appointed by the Minister of Justice with the advice of the judges. The law provides that law students must be preferred as clerks, and consequently most of the clerks are law students. (Ley Orgánica del Poder Judicial—Organic Statute of the Judicial Power, art. 94.) The duty of the clerks is to keep a written record of the case. All the documents and papers as well as the testimony in a law suit are sewn into a book which constitutes a file of that case. The clerks, during court proceedings, perform the functions of the court reporter in the United States although, as will be subsequently pointed out, there is never a trial in the United States sense of the word, and consequently the duties of the clerk as court reporter are not as extensive as in the United States.

Similar to the Ministry of Justice in France, the Ministry of Justice in Venezuela is a branch of the executive power with broad powers. The Ministry of Justice in Venezuela is responsible for inspection of the administration of justice and courts through an Inspector General of Courts, as well as other important functions related to: relations of the executive with the attorney general and public defenders, forensic doctors (coroners), prisons and penitentiaries, pardon and amnesty, extradition, judicial police (similar to the *police judiciaire* in France), registrars and notaries, public interpreters, bar associations, drafting of new laws, and codification. (Estatuto Orgánico de Ministerios—Organic Statute of Ministries, art. 29.)

In France, the *ministere public* is under the supervision of the Ministry of Justice. It originated in the fourteenth century as a means of presenting the king's views in litigated matters of a public or general interest and grew to an office of agents for the executive power provided to assist in the dispatch of criminal, civil or political justice. In France, members of the *ministere public* are assigned to all courts

except the *Tribunal d'Instance*, and in criminal cases act as public prosecutors, while in civil cases they represent public or community interests in general rather than the specific interests of the State.

In Venezuela, the functions of the *ministere public* are carried on by the attorney general (*Procurador de la Nación*) of Venezuela who is elected by the National Congress and whose office is separate from the Ministry of Justice. (CONSTITUCIÓN NACIONAL—NATIONAL CONSTITUTION, art. 136.) Members of his office, *fiscales del ministerio público*, are assigned to most courts in Venezuela where they serve as public prosecutors in criminal cases and represent the public interest in civil cases.

III. CIVIL PROCEDURE

The Venezuelan CODE OF CIVIL PROCEDURE was originally drafted by a distinguished lawyer, Licenciado Aranda, in the first half of the nineteenth century. The Code has undergone few modifications. Its last amendment was enacted in 1916. The Code is structurally organized as follows:

- a. General Principles:
 - Rules of procedural theory; interpretation of laws; conflict of laws; etc.
- b. First Book: General Provisions for all proceedings.
 - I. Benefit of poverty
 - II. Parties
 - III. Jurisdiction of courts
 - IV. "Recusación" or challenge of judges and court officials
 - V. Summons
 - VI. Other provisions about procedural terms, decisions, appeals, letters rogatory, records of cases, joinder of causes, etc.
- c. Second Book: Ordinary or plenary suit.
 - I. Complaint and answer
 - II. Proofs or evidences
 - III. Preventive measures, intervention
 - IV. Decision and enforcement
- d. Third Book: Special Proceedings.
 - I. Contested proceedings:
 - Arbitration; execution proceeding; foreclosure of a mortgage; divorce; partition; interdiction (restraining orders); etc.
 - II. Non-contested proceedings:
 - Consent to marriage; appointment of guardian; authentication of documents; certain probate proceedings; affidavits; etc.

In the ordinary civil case (CODE OF CIVIL PROCEDURE, art. 234 *et seq.*), a lawsuit commences with the filing of a written complaint

(*libelo de demanda*) stating the facts, the plaintiff's injuries, and the relief sought. Where an action is based upon a written instrument the same must be attached to the complaint. The secretary of the court, with the judge's authorization, then makes a copy of the complaint and issues a summons (*citación*) which together with a copy of the complaint is served upon the defendant. If the defendant is not found, upon application of the plaintiff, the court will order service by publication. There is no service by mail, by rogatory letters or by substitution. The defendant must either sign for the summons or be served in the presence of two witnesses. Challenge to service can only be made by separate suit.

The defendant must file his answer (*contestación de la demanda*) at the day and hour set forth in the summons, though a grace period of one hour is always allowed. If the defendant does not file his answer on time, a confession is implied, which in practice, does not preclude the defendant from introducing evidence, but merely shifts the burden of proof to the defendant. The plaintiff, contrary to practice in the United States, can amend the complaint only until the time the answer is filed.

The defendant may answer plaintiff's claims or he may except to the complaint by alleging one or more of the exceptions (*excepciones*) set forth in the Code, such as *res judicata*, incapacity of a party, lack of jurisdiction or insufficiency of the complaint, which may be of a dilatory nature or constitute a bar to the action. Similar procedure is provided in the United States, for example, by rule 12 of the FEDERAL RULES OF CIVIL PROCEDURE. The day after the answer is filed, the probatory term (*termino probatorio*), or term for introducing evidence into the record of the case, begins. The probatory term may, of course, be waived and the case will then be decided on the documents of record.

The probatory term is the equivalent of the trial in the United States although the word "trial" is inappropriate since, as in France, the securing of evidence, the development of legal contentions, the definition of relevant issues, takes place gradually over an extended period of time until the case is ready for final determination on a complete written record. In the first stage of the probatory term, the parties are given a certain period of time, usually ten days in the ordinary case, to come into court and submit requests directed to the judge dealing with the inspection of documents and other evidence, inter-

rogation of witnesses, and other similar discovery mechanisms. The parties do not request the discovery for themselves, but rather for the judge's consideration. It is the judge who inspects the documents and interrogates the witnesses as requested by the parties. In the second stage of the probatory term, the judge usually has three days in the ordinary case to hear the parties' objections to requested discovery and to decide which requests he will honor. Generally speaking, discovery is broad and the judge will not sustain objections except in some instances, such as clearly irrelevant questions, private documents, or interrogation of close relatives. In the third stage of the probatory term, usually twenty days in the ordinary case, the evidence is produced and recorded in writing; the judge interrogates the witnesses, who may be cross-examined by the other party through the judge; and all questions and answers are also recorded in writing.

After the probatory term, the court fixes a day to hear the arguments of the parties which, although often also oral, must be filed in writing. At this time, the judge may call for further evidence if he feels it necessary. After final arguments, the court has a certain period of time, depending on how many documents he must consider, to render his decision. As in all French courts, except the *cours d'assises*, the decision in Venezuelan courts must be read in court together with the reasons for the decision. Most decisions are approximately five or more pages long, in contrast to the short, terse French decisions, and describe the allegations of the parties and the reasons for the decision. Failure to set forth the reasons for the decision is grounds for reversal.

Appeal in any case is accomplished in perfunctory fashion by merely a statement of appeal. The record is then transferred to the proper court of appeals. The court of appeals will then review the record, hear arguments, and in some cases, require further evidence.

The primary means of proof in Venezuela are confessions, depositions of parties, interrogatories of witnesses, public or notarized documents which may be offered as evidence at any time, private documents which may be only offered as evidence during the probatory term subject to verification of signature before the court by other party (*reconocimiento*), physical examination of the situs by the judge who notes his observations—since no photographs or real or demonstrative evidence are admissible—and expert testimony, one expert being chosen by the judge and one by each of the parties.

There are some additional features of the Venezuelan legal system

which are worth noting. For example, "benefit of poverty" permits a litigant to avoid the heavy expense of trial by dispensing with the use of sealed paper or stamps, granting the right to an attorney's service gratuitously, dispensing with the payment of court fees, and dispensing with payment of costs. The benefit is granted at a special pre-trial hearing during which the other party may cross-examine the witnesses. The person who enjoys the benefit must also promise that he will pay these costs and fees when he is able to do so. (CODE OF CIVIL PROCEDURE, art. 28 *et seq.*)

Another interesting aspect of the Venezuelan legal system is the *recusación*, or challenge of judges. (CODE OF CIVIL PROCEDURE, art. 105 *et seq.*) There are twenty-two specific causes for challenge of judges, ranging from family relationship with one of the parties, and debt or lawsuit pending with one of the parties, to any other similar cause deemed to be prejudicial to a litigant. If the judge is aware that one of these causes exists, he must disqualify himself and, if he does not, the party affected may ask for his disqualification. If the judge refuses to disqualify himself, he must halt the proceedings and send the matter to the proper court of appeals to decide the *recusación*. If there is no cause for *recusación*, the party is fined and the judge so challenged may initiate both a penal action against the challenging party and an action for libel. A similar procedure exists for other court officers.

In Venezuela, contrary to the French legal system, and contrary to the other Latin American countries, a dissenting judge may file a dissenting opinion in writing. (CODE OF CIVIL PROCEDURE, art. 168.) The purpose of the French rule is to promote uniformity and to prevent judges from expressing their own personal views.

In Venezuela, special exceptions to the plaintiff's complaint, such as *res judicata* and the statute of limitations, bar the plaintiff's claim, but in other Latin American countries, these exceptions do not bar the claim and although they may cause a delay, the whole proceedings are completed before the judge will consider these exceptions.

There is one final major distinction between the Venezuelan legal system and other Latin American systems. In other Latin American countries, a summons must be issued and served on the defendant several times during the proceedings of one law suit. The Venezuelan Code provides that one summons is sufficient to bring the defendant

before the court for all appearances during the proceedings of a law suit. (CODE OF CIVIL PROCEDURE, art. 134.)

What has here been written about the Venezuelan legal system is introductory. It is an invitation to welcome the challenge presented to students of comparative law and to United States lawyers who do business in Latin America, in an effort to gain the knowledge, understanding and friendship that the peoples of the United States and Latin America must have in order to strengthen and solidify the friendship between all the countries of the Western Hemisphere.

DE PAUL LAW REVIEW

Volume X

AUTUMN-WINTER 1960

Number 1

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