TABLE OF CONTENTS

FOREWORD

Two centuries have passed already since the birth of Cassation in the French legal system, and it has just been one hundred years since the publication of Piero Calamandrei's "*Cassazione civile*", which is still today the foundational book on the subject, mainly its first volume concerning the history of the institution.

However, many things have occurred since then. Despite the somewhat exaggerated praise that legal scholars have lavished on cassation in recent years, the fact is that it has not stood the test of time. The aforementioned praise was inspired by – perhaps copied from – Calamandrei's own praise of cassation in his book, probably the fruit of youthful enthusiasm resulting from long historical research by the end of which, it must be said, he was unable to locate a single precedent of cassation. Thus arose the idea that it was a *sui generis* remedy, absolutely original, fruit of the tremendous importance attributed by the French revolutionaries to the law as an expression of the popular will, in this manner overcoming the dictatorship of the former absolutist kings of the *ancien régime*. The Cassation model was the culmination of this great work, deemed to be the instrument that would protect the law itself from attacks by judges. Hence originated the main purpose of cassation according to Calamandrei: the *ius constitutionis*. These ideas convinced the entire civil procedural law jurisprudence, and, in fact, still do.

In this scenario, a group of professors from different countries and legal systems decided to act with a certain irreverence. In fact, we decided to compile our ideas and reflections in a book on Cassation in the 21st Century. The result is the publication you have in your hands, originally published in Spanish by Marcial Pons publisher, in 2021. Not satisfied with this single effort, we decided to gather at a workshop in Barcelona, on September 25, 2022. It was decided that the workshop would be held without an audience in an attempt to ensure that our debates, which were expected to be polemical, would not be overshadowed by the rhetorical needs of a speech before a large audience. The intent was to foster honest discussion among colleagues that would make us return to our own reflections, which had already been published, in search of new ideas and conclusions.

Noting the tremendously high level of the debates that were taking place at that seminar in Barcelona, Professor Teresa Arruda Alvim, one of the authors of this preface, suggested that we should translate the essays in the book into English, the *lingua franca* of the seminar. Some of these essays still underscore the importance of cassation, but absolutely all the participants felt the need to criticize various aspects of a remedy that certainly needs to be modified in order to render it suitable for the different functions and roles of the courts. Therefore, the current reality of the nomophylactic function and its real efficiency, which was seriously questioned by Michele Taruffo, Sergio Chiarloni and Luca Passanante, were discussed. In the wake of the regretful death of Michele Taruffo and Sergio Chiarloni a few months before the Barcelona seminar, Professor Elena d'Alessandro joined the group, complementing the renowned opinions of the two deceased masters with her very original and well-elaborated ideas.

Moreover, Leandro Giannini returned to the problem of the filters frequently adopted by different countries before the supreme courts, seeking only to relieve Cassation of one of the main evils it has suffered in the last two centuries: the overload of cases. In fact, Teresa Arruda Alvim addressed the topicality of another of the most complex debates on the subject: the traditional restriction to questions of law. This

restriction makes no sense in the present day precisely because the role of the superior courts has changed considerably in the last three decades. Renzo Cavani, also one of the authors of this foreword, delves into the concept of precedent court, a system of precedents and their relations with the theory of precedent, in such a way as to demonstrate several conceptual problems to explain how the precedent phenomenon differs between common and civil law systems.

However, the most surprising aspect was saved for last. An English Professor, John Sorabji, was invited to participate in the collective work, which may seem incomprehensible considering that there is no cassation in the United Kingdom. However, is this inveterate and repeated conclusion actually true? One of the authors of this preface, Jordi Nieva's historical study revealed that this French Cassation was not original, but, rather, based on the English appeal before the House of Lords in the 18th century, which of course still exists but is now lodged before the Supreme Court of the United Kingdom. That conclusion, received with tremendous scientific curiosity by Professor Frédérique Ferrand, is also published in this book and, therefore, makes pertinent the detailed study of the English Professor on the Supreme Court of the United Kingdom concerning its proceedings, precedents and reform. In the end, to understand what cassation was, one had to turn to that which Calamandrei had willfully ignored, and which shed tremendous light on the study: the work of the common law supreme courts. This perspective of cassation has made it more palatable to European and Latin American jurists seeking solutions for this remedy in need of many adjustments.

It was Frédérique Ferrand herself, a French expert on the subject, who explained to us, with a remarkably critical spirit and enviable scientific precision, what reforms cassation had undergone in France and what modifications were still necessary. The study was thus complete. The main problems of cassation have been analyzed, the reality of the appeal to the Anglo-Saxon supreme courts have been investigated, its previously ignored origin has been ascertained – and corrected – and we have, in conclusion, explained what remained of the old Cassation in France, that is, the legal system that in its revolutionary reforms brought

so much from the English system. It should long have been noticed that the very division of powers, a topic that is so important for Cassation, had been explained by Montesquieu in the course of his explanation of a foreign system, and not just any system, but specifically the English one.

We now have the satisfaction, therefore, of being able to present a truly original work, the result of a joint plan and debate, which has already been a publishing success in the Spanish language, now published by a Brazilian publisher that aims to be a boutique publisher. The work is now presented with interesting updates in the *lingua franca* of the common law systems. Enjoy!

Barcelona, Curitiba and Lima

September 2023

Jordi Nieva Fenoll

Teresa Arruda Alvim

Renzo Cavani