I. Introduction.

The present article deals with a comparative study on the most important competences of the Court of Justice of the European Communities, as the custodian and interpreter of the Community’s ‘Constitution’—that is its founding treaties—and of the constitutional jurisdiction of the National Constitutional Courts. Of the latter, there has been selected the Spanish Constitutional Court as a reference.

The comparison made between the two Courts—Community and National—is mainly a reflection of my personal career as judge of both Courts for twelve years, an experience that perhaps equips me to make some assessments that cannot be learnt from books or do not even appear in them. Finally, the contribution of my personal experience may be the only element of practical value contained in the following pages.

There are two additional reasons why I chose this topic. One is the fact that the Court of the European Communities is—and should increasingly become more—like a Constitutional Court in its features and functions. I say should become advisedly inasmuch as the EU needs to become more united and

recover the federal spirit in which it was conceived by its founding fathers. Otherwise, we shall revert to a mere customs union. The results of the Conferences that have reviewed the founding treaties—Maastricht, Amsterdam and Nice—point the way for the common future of the EU and its Court.

The Court of the European Communities, to which the Court of First Instance has been attached in the revision of the treaty, is shaping itself more into a Constitutional Court. The treaty, in the version of Nice, attempts a major restructuring not only of the Court but of the whole Community judicial system, redistributing the jurisdiction between the ECJ and the CFI and creating the possibility of establishing judicial panels for specific subject areas, such as trade marks and the like. Despite all this, the Court not only stands at the apex of the entire judicial system, but it is also the repository of the whole jurisdiction regarding constitutional matters. Furthermore, it has the last word both in the event of an appeal in cassation and also in the revision of judgments of any other of the Community’s jurisdictional bodies.

Paradoxically, the Court of Justice is increasingly acquiring the role of a constitutional court for the EU, like many other domestic constitutional courts, and in particular the Supreme Court of the United States. We will be elaborating further on these ideas in the course of this chapter.

On the other hand, the fear of the unknown or the new in a non-national institution will surely dissolve to a large extent once we analyse, however briefly, the broad analogies between the two Courts—the Court of the European Communities and the Spanish Constitutional Court. In this analysis we shall be comparing not only some types of appeals or procedures, but also their jurisdiction, organization, material and human resources—judges, registrars, etc.—and a number of coincidences and similarities in their internal working.

II. GENERAL COMPARISON BETWEEN THE TWO COURTS

First, a general observation: both Courts are in essence supervisors and supreme interpreters respectively of the Constitution and of the founding treaties of the Community. The basis of judgment in either case are these two ‘supreme norms’.

It is important to bear in mind how these two courts are legally defined, which is as follows:

Article 1 of the Spanish Constitutional Court Act, Organic Law 2/1979 of 3 October, defines the latter as: ‘the supreme interpreter of the Constitution, independent of all other constitutional bodies and subordinate only to the Constitution and to this Organic Law’.

For its part the Court of Justice of the European Communities is not only

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1 The references to Articles are based on the Treaty of Nice.