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Modernisation of Spanish justice system: key changes

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Introduction

In April 2022, the council of ministers approved:

- the Organisational Efficiency Bill; and
- the Procedural Efficiency of the Public Justice Service Bill.

These bills are designed to modernise and reform the current Spanish justice system and to bring it into line with rapidly developing technologies as part of the Justice 2030 Plan.

Organisational Efficiency Bill

The purpose of this bill is to:

- make public administration more accessible to the public;
- reinforce effective judicial protection; and
- promote equal access to the justice system.

For this purpose, three fundamental entities have been created:

- the courts of first instance;
- the Judicial Office; and
- the justice offices in the municipalities.

In each judicial district there will be a court of first instance based in the capital city, instead of different courts, thereby simplifying access to justice. The Judicial Office will be implemented throughout the country as a single point of contact for citizens, enabling centralised work to limit adverse effects on the environment. The magistrate's courts will become the new justice offices in the municipalities to deal with less populated rural areas. It will be possible to hold judicial proceedings online.

Procedural Efficiency of the Public Justice Service Bill

This bill comprises three blocks:

- The first focuses on strengthening alternative dispute resolution (ADR) mechanisms as an alternative to court proceedings.
- The second deals with reforms in the legislation of the following jurisdictional orders to streamline judicial processes:
 - the Criminal Procedure Law;
 - the Civil Procedure Law;
 - the Law Regulating the Contentious Administrative Jurisdiction; and
 - the Law Regulating the Social Jurisdiction.
- The third focuses on adapting Spanish legislation to new information and communication technologies (ICT), carrying out the necessary digital transformations in the Spanish judicial system.

ADR mechanisms

Title I of the bill is devoted to ADR, comprising:

- private conciliation;
- confidential binding offers;
- independent expert opinions; and
- mediation – special emphasis is placed on enhancing mediation proceedings.

In addition, any other ADR mechanisms provided for in other rules may be used. The scope of application of these mechanisms covers civil and commercial matters. They are not applicable in criminal proceedings because the dispositive principle does not apply, although victims may have access to restorative justice services.

Reforms in procedural legislation

The bill addresses the reform of the legislation of the four jurisdictional orders mentioned above. This article focuses on the changes proposed in Criminal Procedure Law and the Civil Procedure Law.

Amendments to Criminal Procedure Law

Title II of the bill introduces some specific amendments to the Criminal Procedure Law. The explanatory memorandum clarifies the need

for a reform to update Spanish criminal procedure in line with the 21st century. The following amendments have been introduced:

- Article 655 has been modified to improve the compliance regime relating to defendants and to ensure that defendants receive the necessary information on the agreement reached. Also, if the defendants disagree only with their civil liability, the trial may be limited to the evidence and arguments regarding such liability.
- Article 771 has been modified to improve the information provided about the offers of actions by the judicial police. Regarding crimes against intellectual property, the citation or summons must be made to the legal representatives of the rights holders.
- Article 776 has been modified so that the court will make such offers of actions to the injured party if the judicial police has not already done so. If the judicial police has already informed the injured party, the court clerk will notify the injured party of the procedure, as well as the court that is processing it, and it will be unnecessary for them to appear in court.
- Articles 785, 786, 787 and 802 have been modified to introduce and regulate a preliminary hearing prior to the trial hearing. This hearing will introduce the possibility of settlement without the need to summon all witnesses and experts. The hearing will also be held even if the defendant does not attend (unjustifiably) and preliminary issues may be resolved in their absence. In addition, the parties may propose new evidence if they were not aware of it when they drew up their statement of qualification.
- Specifically, article 786 has been modified in relation to the preliminary hearing. If there is no agreement between the parties, the date and time of the oral trial hearing will be set, if possible, at that time. Another relevant change is that criminal settlements with regard to the ordinary and abbreviated procedures have been reformed, without establishing a penal limit.
- Article 988 bis has been introduced to unify procedures at the criminal enforcement phase. The eighth additional provision includes some rules for the holding of judicial proceedings via a videoconference system.

Amendments to Civil Procedure Law

Title II also includes modifications in the civil jurisdiction order, in relation to, among other things:

- "verbal trials";
- family proceedings;
- order for payment proceedings; and
- auction proceedings.

The following aspects apply particularly to the field of intellectual property:

- Costs need not be paid in provisional enforcements when there is voluntary compliance with the provisions of the enforceable title within 20 days from the notification of the enforcement order.
- Orders for the payment of costs have been removed in certain cases, except in cases of bad procedural faith.
- The admission and processing of appeals will be carried out by the *ad quem* court, freeing the first-instance courts from such task, since they are often busier.
- Cassation appeals have been modified in an attempt to resolve important shortcomings. The aim is for there to be a single appeal in cassation, regardless of the type or amount of the proceeding, focusing on the appeal of the interpretation of the substantive and procedural rules. It is also intended to strengthen the issue of cassational interest, which will exist when:
 - the appealed judgment is opposed to the case law of the First Chamber of the Supreme Court or of the Civil and Criminal Chamber of the High Court of Justice;
 - there is no case law on the matter; or
 - there are contradictory pronouncements from the provincial courts.

Finally, it is intended to simplify the admission phase in order to guarantee a speedy response time from the First Chamber of the Supreme Court, focusing efforts on the concurrence of cassational interest. In cases where the challenged decision opposes the jurisprudential doctrine on the matter, the appeal may be decided by means of an order.

New ICT

Title III contains amendments to the Law regulating the use of ICT in the administration of justice, awaiting a complete regulation overhaul with the Digital Efficiency Law. Changes are introduced to avoid citizens and professionals having to travel – in particular, hearings and statements may now be held via videoconference. Likewise, the regulation of the electronic registry of powers of attorney, which may be carried out online, is also addressed.

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