

## Major reforms to make Spanish courts more efficient

Royal Decree-law 6/2023 of 19 December introduces significant changes, such as the use of virtual hearings, the introduction of the pilot case (*pleito testigo*) mechanism, the extension of the effects of rulings handed down in these cases and the regulation of the suspension of judicial proceedings when a reference is made to the ECJ for a preliminary ruling. The full text can be found [here](#).

Royal Decree-law 6/2023 was published on 20 December. It approves urgent measures to implement the Recovery, Transformation and Resilience Plan for the justice system, civil service, local government and patronage ("RDL 6/2023").

Its main purpose is twofold: (i) to contribute to the **modernisation** and **digitalisation** of the justice system by adapting the Spanish courts to modern technology; and (ii) to implement **procedural efficiency** measures to **reduce litigation** and **streamline procedures**. The bulk of the modifications introduced by RDL 6/2023 come from draft laws that were already being processed when the Spanish Parliament was dissolved in May this year.

This Memo sets out the main procedural reforms, which are contained in Book I of RDL 6/2023. Books II, III and IV introduce amendments to the civil service, the local government system, tax measures relating to non-profit organisations and incentives for patronage.

### 1. NEW DEVELOPMENTS IN DIGITAL EFFICIENCY AND VIRTUAL HEARINGS

(i) In civil and criminal proceedings, the general rule will now be to hold **virtual hearings** by videoconference or similar systems, with some exceptions and specific situations provided for in the laws regulating the different types of courts.

So in civil matters, for example, judicial hearings in which parties, witnesses and experts are heard and examined will be held in person; but even in these cases virtual hearings may be requested in certain circumstances, such as when the person who has to intervene resides in a different municipality to that of the court.

(ii) Trials, hearings and other procedural acts that, in accordance with procedural laws, must be held in open court, can be **broadcast** when everyone taking part is doing so virtually.

(iii) All **procedural notifications** must be sent electronically, except in the case of individuals not represented by a court agent (*procurador*), who may choose to make and receive them in paper or electronically.

(iv) **Electronic judicial platforms** (*sedes judiciales electrónicas*) have been created to give parties access to different types of content using a **secure login system**. These include the "Justice Folder" (*Carpeta Judicial*), the "General Access Point to the Justice System" (*Punto de Acceso*

*General a la Administración de Justicia*) and the "Electronic Judicial File" (*Expediente Judicial Informático*).

- (v) The "Electronic Judicial File" (*Expediente Judicial Informático*) will be the focal point for digital justice going forward. In conjunction with the application of the general principle of data orientation, the intention is to open the door to **new technological solutions and the use of artificial intelligence**.
- (vi) Bodies and mechanisms have been created to ensure **cooperation between the authorities involved in the justice system**, and the "Judicial Interoperability and Security Scheme" (*Esquema Judicial de Interoperabilidad y Seguridad*) will be developed as a set of mandatory technical instructions.

## 2. MEASURES TO MAKE THE COURTS MORE EFFICIENT

### 2.1. Civil proceedings

#### A. Pilot cases (*procedimientos testigo*) and extension of the effects of the judgments in these cases

This procedure can only be used for **individual actions concerning general contract conditions (*condiciones generales de la contratación*)**, which is subject to the following rules:

- (i) A pilot case may be initiated **by a decision of the court or at the request of a party**. The order granting the stay of the proceedings **may be appealed** and will be given priority over other appeals.
- (ii) **Claims filed at a later date** will be **suspended** if **(a)** they make legal arguments similar to those made in earlier proceedings brought by other litigants; **(b)** there is no need for a review of the transparency of the contractual condition in question or to assess if consent was vitiated (*vicios en el consentimiento*); and **(c)** the general contract conditions being challenged are substantially identical.
- (iii) If this mechanism is applied, then subsequent proceedings shall remain suspended until the judgment in the pilot case **becomes final** (*sentencia firme*).
- (iv) The pilot case and its appeals **will be given priority ahead of other proceedings**.
- (v) After the judgment in the pilot case has become final, the court must indicate whether or not it considers it appropriate to **continue the stayed proceedings** on the ground that all the issues raised therein have or have not been settled in the judgment issued in the pilot case. The claimant in the stayed proceedings may request **(a)** that they be discontinued; **(b)** that they continue for a decision on the merits (in which case, if the court deems it unnecessary to continue the proceedings and gives an affirmative judgment that substantially concurs with the decision in the pilot case, each party may be ordered to pay its own costs and half of the common costs; and **(c) that the effects of the judgment in the pilot case be extended** so that the **judgment is enforced** without the need for declaratory proceedings.

A procedure is envisaged for requesting the **extension of the effects of judgments** handed down in proceedings in which individual actions have been brought regarding general contract conditions, and that have become final after having been appealed before the provincial court of appeal (*Audiencia Provincial*). To do this the following requirements must be met:

- (i) the persons concerned are in the same legal position as those favoured by the judgment;
- (ii) the proceedings involve the same defendant (or its successor in the proceedings);
- (iii) it is not necessary to assess the transparency of the clause or if the contracting party's consent was vitiated;
- (iv) the general contract conditions are substantially identical to those that were considered in the judgment being extended; and
- (v) the court that issued the judgment or that has jurisdiction to enforce the judgment being extended also has jurisdiction, by reason of its territory, to hear the claim.

The losing party in the earlier proceedings may accept or oppose the application, and the court shall decide on the amount and may extend its effects in whole or in part. If the judgment is not complied with voluntarily within 20 days, enforcement may be sought.

#### **B. Ordinary and expedited proceedings**

- (i) The following will be processed through **ordinary proceedings** (*procedimiento ordinario*): **(a)** lawsuits in which **collective actions** are brought relating to general contract conditions; and **(b)** lawsuits in which the amount claimed exceeds **EUR 15,000**.
- (ii) The following will be processed as **expedited oral proceedings** (*juicio verbal*): **(a)** lawsuits in which **individual actions** are brought relating to general contract conditions; **(b)** lawsuits in which actions relating to the **Horizontal Property Law** are brought, provided that they deal exclusively with claims for payment, regardless of the amount; **(c)** lawsuits in which **actions for partition of common property** are brought; and **(d)** lawsuits in which the amount claimed does not exceed **EUR 15,000**.

#### **C. Court notifications and the taking of evidence**

- (i) **Electronic notifications have now become the general rule.** All notifications to **persons obliged to communicate electronically with the justice system** who are not represented by a court agent (*procurador*) will now be carried out electronically, even in the case of **first summons**. If the addressee has not accessed the content of the communication within **three days**, the summons will be published on the *Tablón Edictal Único* notice board. A notification may also be effected through physical delivery if the person in question appears at the court.
- (ii) All **proceedings that have to take place outside the judicial district** where the seat of the court hearing the case is located must be carried out **electronically**, provided that the judicial offices have the technical means to do so.

The exceptions to this are when parties, witnesses or experts are to give statements or be examined, minors are examined or a person with a disability is examined. However, even in these cases, virtual hearings will be permitted in certain circumstances.

- (iii) The professionals, experts and witnesses who participate by videoconference will do so from the **judicial office corresponding to the judicial district** of their domicile or place of work, in the justice of the peace court (*Juzgado de Paz*) of their domicile or from their place of work. If they have adequate means to prove their identity, they can actually participate **from any location**, provided that the judge deems it appropriate.

The use of videoconferencing to take evidence must be requested sufficiently in advance and, in any case, **ten days before the date of the hearing**.

- (iv) **The time limit for submitting expert-witness reports in expedited oral proceedings** (*juicio verbal*) has been amended. The reports must be submitted within **30 days of the filing of the claim or the statement of defence**, unless the court extends this time limit when the nature of the expert evidence so requires and there is good cause for doing so.
- (v) After the expert-witness evidence has been examined by the court, the expert witness will submit his or her invoice or bill of fees, which will be processed in accordance with the rules governing challenges to the assessment of costs on the grounds of excessive fees.

#### D. Appeals

- (i) Second-instance appeals (*recursos de apelación*) **will be filed directly with the court of appeal (Audiencia Provincial)**, instead of before with the court of first instance that heard the case.
- (ii) Cassation appeals may not be withdrawn **after the date for deliberation, voting and judgment has been set**.

#### E. Costs orders

- (i) In **appeals**, the general rule that “costs follow the event” shall apply – i.e. the losing party will pay the costs of the successful one. In cassation appeals, if the appeal is dismissed in its entirety, the appellant will be ordered to pay the costs of the appeal, unless the court finds that there are special circumstances justifying otherwise. If a cassation appeal is upheld in whole or in part, there will be no order as to costs.
- (ii) In the context of **provisional enforcement**, the defendant will be exempted from paying the costs of the proceedings if they voluntarily comply with the order within **20 days** of it being notified.

#### F. Suspension of proceedings to allow for a request for a preliminary ruling from the ECJ

- (i) The court may, after hearing the parties and the public prosecutor, stay the proceedings if another court has made a request to the ECJ for a preliminary ruling on a connected issue that may affect its decision. An order rejecting the application may be challenged by way of a reconsideration

appeal (*recurso de reposición*) and an order granting the stay may be appealed with a second-instance appeal (*recurso de apelación*).

## G. Other changes

- (i) Measures have been taken to adapt the digital file of legal proceedings (*expediente digital*) to people over **80 years of age** automatically, and to people over 65 years of age at the request of a party. All proceedings in which one of the parties is **80 years of age** or older will be given **priority**.
- (ii) **Power of attorney** may now be granted to **court agents electronically**. The power of attorney must be granted at the time the first document is filed. An Electronic Register of Powers of Attorney of the Spanish Central Administration will be created and all powers of attorney registered in it will have effects in the judicial proceedings.
- (iii) If a **court agent or lawyer claims their fees from a client in default** and the client is an individual, the contract with the client must be provided to the court so it can analyse if the court's agent or lawyer is abusing their position in any way.
- (iv) Generally speaking, the prohibition on joinder of claims that have to be heard in different types of trials remains in place, but, as an exception to this rule, the joinder of an action for the liquidation of a **matrimonial property regime** and an action for the **division of an inheritance** will now be **permitted** if the dissolution of the marriage has occurred due to the death of one of the spouses and it is known who the heirs are. In such a case, both actions shall be conducted in accordance with the procedures for the judicial division of inheritances.
- (v) Joinder of **proceedings for the judicial division of an inheritance** with proceedings for the liquidation of the matrimonial property regime will also be permitted when one or both spouses have deceased.

## 2.2. Changes in criminal law

- (i) In criminal proceedings, the **general rule will also be that hearings should be held virtually and court notifications should be made electronically**. Thus, both in the investigation and trial phases, they will be carried out with the parties attending electronically through a secure access point, provided that the judicial or public prosecutor's offices have the necessary means, and unless the judicial court decides otherwise in view of the circumstances.
- (ii) The exception to the above is that **the accused party or parties must, as a general rule, appear in person**. The accused must appear at the offices of the court if he or she resides in the same district as it, unless there are justified reasons for not doing so or due to force majeure. If the accused does not reside in the same district as the judicial body, whether he or she is obliged to appear in person will depend on the nature of the offence that is the subject of the proceedings.

## 2.3. Changes in administrative litigation

- (i) The central government must send administrative files to the courts in electronic format and identify the administrative body responsible for complying with the court decision so as to speed up the enforcement of judgments.

- (ii) The file used in judicial proceedings is the same as that used in prior administrative proceedings.
- (iii) The prompt identification and bringing to the court's attention of the documents necessary to complete the file is encouraged. Thus, when the request to complete the file is made within the first ten days of the time limit for filing the claim or defence, the time limit for filing will be restarted as soon as the complete file is made available to the applicant.
- (iv) The range of judgments that can be appealed at second instance.
- (v) The reference to the cross-appeal mechanism has been replaced with the possibility of using the opposition brief to the corresponding appeal to, at the same time, challenge the judgment under appeal, thus at that point giving the opposing party the opportunity to oppose that challenge.
- (vi) It has been clarified that it is possible to file a motion to review a final judgment of conviction (*recurso de revisión*) against the decree of the official of the justice system ruling on a reconsideration appeal (*recurso de reposición*).
- (VII) The system for procedural costs has also been modified, obliging the losing party at first or sole instance to pay an amount not exceeding one third of the amount of the proceedings to each of the parties favoured by the ruling. For cases where the amount is undetermined, the value of the claim will be set at EUR 18,000, unless the court makes a reasoned decision to the contrary. For the appeal stage, the costs may be imposed in full, in part or up to a maximum amount.

### 3. APPLICATION OF RDL 6/2023 AND ENTRY INTO FORCE

All the provisions of Book I of RDL 6/2023 will apply exclusively to **judicial proceedings initiated after its entry into force**; therefore, it will not apply retroactively unless otherwise stipulated. It will enter into force **20 days** after its publication, except for the new provisions on procedural efficiency, which will enter into force **three months** after its publication in the Official State Gazette (20 March 2024).