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Organic Law 13/2015, of October 5, 2015, amending the Criminal Procedure Law to strengthen procedural guarantees and regulate technology-related investigation measures

Law 41/2015, of October 5, amending the Criminal Procedure Law to speed up the criminal justice system and strengthen procedural guarantees

1. Introduction

On October 6, 2015 the Official State Gazette (BOE, issue 239) published two laws amending the Spanish Criminal Procedure Law: an organic law, Organic Law 13/2015, of October 5, 20155, to strengthen procedural guarantees and regulate technology-related investigation measures; and another, ordinary, law, Law 41/2015, of October 5, 2015, to speed up the criminal justice system and strengthen procedural guarantees.

The reason given by the Spanish legislature for approving two separate laws amending the Criminal Procedure Law at the same time lies in the different types of matters covered: as opposed to those that have a direct impact on, complement or develop fundamental rights and public freedoms –which article 81.1 of the Constitution requires to be regulated by an organic law–, others are strictly procedural matters which are not, purely speaking, a necessary complement to organic matters and may therefore be regulated in an ordinary law; these two different types are as follows:

- Amendments to matters in the Criminal Procedure Law which need to be implemented by organic law (Organic Law 13/2015): provisions in which an attempt is made to strengthen the procedural rights of criminal defendants and of people who have been arrested or are held in custody -these provisions introduce new terminology such as "*investigado*" ("investigated" person) referring to a suspect under investigation in an examining phase and "*encausado*" to an accused person within criminal proceeding (once he or she has been indicted)–; and the laying down of specific rules for the restrictive technology-related investigation measures in article 18 of the Constitution.

- Matters not required to be implemented by organic law (Law 41/2015): provisions intended to speed up the criminal justice system to try to avoid unnecessary delays; the putting in place of a separate confiscation proceeding; the procedure resulting from acceptance of a decree; general establishment of the second instance; broadening of the cassation appeal; and reform of the special appeal for review.

2. Organic Law 13/2015, of October 5, 2015, amending the Criminal Procedure Law to strengthen procedural guarantees and regulate technology-related investigation measures

This reform transposes Directive 2013/48/EU of the European Parliament and of the Council of 2 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. This is done through the amendment of articles 118, 509, 520 and 527 and the addition of a new article 520 *ter* to the Criminal Procedure Law with the introduction of the provisions required by European Law, most notably the rules on the right of access to a lawyer in criminal proceedings for the detainee.

Furthermore, this Organic Law introduces specific rules on technology-related investigation measures to provide investigation tools to the public powers which will enable them to respond appropriately to the new types of offenses related to technology use.

In one component, a new article 579 revises the legal regime on the measure of detaining and opening written and telegraphic correspondence, by restricting its subject-matter, and determining time limits and exceptions to the need for court authorization.

In another, the other technology-related investigation measures are treated in Chapters V through X of Title VIII of Book II, and all of these –excluding safety measures in relation to data storage and protection (Chapter X of Title VIII)– are subject to the shared provisions inserted in Chapter IV. Additionally, the new subarticles 6 and 7 of article 282 *bis* define the new role of "cyber" undercover agent. Examples of the technology-related investigation measures provided in the reform include: the "cyber" undercover agent (new subarticles 6 and 7 of article 282); interception of phone and remote communications (Chapter V of Title VIII), including the incorporation of electronic data on traffic or associated data in the proceeding, and access to the data needed to identify users, terminals and connectivity devices; capturing and recording oral communications by using electronic devices (Chapter VI of Title VIII); use of technical devices for capturing images, or for tracking and locating (Chapter VII of Title VIII); searching mass storage devices (Chapter VIII of Title VIII); remote searching on computer systems (Chapter IX of Title VIII); and safety measures in relation to data storage and protection (Chapter X of Title VIII).

Lastly, in addition to an amendment of subarticle 967.1, and of certain articles of the Organic Law on the Judiciary to adapt this legislation to recent legislative reforms, Organic Law 13/2015 replaces terms used in numerous articles of the Criminal Procedure Law to change the term "*imputado*" (charged person) to ***"investigado"*** (suspect). It is also the case that the new term ***"encausado"*** (criminal defendant) can be used interchangeably with the term "*procesado*" (person on trial) or "*acusado*" (accused person) in the appropriate phases of the criminal proceeding concerned, all of the above with the aim to *"eliminate certain expressions used indiscriminately in the law, without any type of conceptual rigor, such as "imputado"* (charged person)*, used to refer to a person who is simply a suspect and is therefore being investigated, but in relation to whom there is not sufficient prima facie evidence for liability to be attributed formally to them by the courts for a punishable act"* (point number V of the preamble).

2.1 Procedural rights of the suspect (investigado), of the detainee or of the person provisionally held in custody

The current article 118 of the Criminal Procedure Law setting out rules on the right to defense of the person against whom the criminal proceeding is being conducted has been amended in the following terms:

- Suspects will be informed, without unnecessary delay, of the following rights: a) right to be informed of the acts that are attributed to them in sufficient detail to enable them to exercise their right of defense effectively, and of any material change to the subject-matter of the investigation and the attributed facts; b) right to examine the proceedings sufficiently in advance and, in all cases, before a statement is taken from them; c) right to act in the criminal proceeding; d) right to appoint the counsel of their choice; e) right to apply for free legal aid; f) right to translation and interpretation free of charge; g) right to remain silent and not to give a statement if they do not wish to do so and not to reply to any of the questions put to them; and h) right not to make an incriminating statement and not to admit guilt.

- The suspect may communicate and have conversations on a confidential basis with their counsel, even before a statement is taken by the police, the public prosecutor or the court authority, and the suspect's counsel will be present at all statements taken from the suspect and in all identification procedures, face-offs among witnesses and reconstructions of the facts.

- All communications between the suspect or defendant and their counsel will be confidential, unless factual prima facie evidence is found of the counsel's participation in the criminal act under examination or of the counsel's involvement together with the suspect or defendant in the commission of another criminal offense.

- The admission of a report of an offense or criminal complaint, and any procedural step resulting in the formal accusation of a crime against a specific person or specific persons, must be notified immediately to the persons purportedly liable.

New wording is given to subarticles 1, 2, 3, 4, 5, 6 of article 520 and new subarticles 2 bis, 7 and 8 have been added to the same article. The most notable amendments to that article 520 are:

- All persons deciding on the detainment and/or provisional remand to custody and those responsible for performing these steps, and for subsequent transfers, must oversee the constitutional rights of honor, privacy and personal portrayal of the person who has been detained or remanded to custody, with observance of the fundamental right to freedom of information.

- The police report must state where and when the person was detained and remanded to the courts, or released.

- In relation to the right to appoint counsel and to be assisted by counsel without an unjustifiable delay, it is stated that, if the geographical distance prevents such assistance by counsel from being provided immediately, the person will be allowed to communicate by phone or videoconference call with their counsel, unless such communication is impossible. The person who has been detained or remanded to custody may waive their right to be assisted by counsel if they are detained for acts defined exclusively as traffic safety offenses, and they may withdraw their waiver at any time.

- The rights expressly granted to a person who has been detained include the right of access to the elements of the proceedings that are essential to challenge the legality of the detainment or deprivation of liberty, and the right to be visited by the consular authorities for their country, to communicate and correspond with them.

- The lawyer nominated to assist the detainees must show at the place where they are held with the shortest delay, and in all cases within three hours from when they receive the case.

- The subject-matter and content of the legal advice to detainees include informing them of the consequences of giving or withholding their consent to the conduct of any procedures that may be requested from them. For example, if the detainee objects to the extraction of samples from buccal scrapes, the examining judge, at the request of the judicial (i.e. criminal investigation) police or of the public prosecutor's office, may impose mandatory enforcement by using the indispensable minimum coercion measures, which must be proportionate to the circumstances of the case and respectful of dignity.

- A detainee may have confidential conversations with his lawyers, even before a statement is taken by the policy, the public prosecutor or the court authority. These communications will remain confidential, with the exceptions set out in the law as referred to below.

In actual fact, the detainees (and the suspects, if applicable) may be deprived of certain rights, if justified by the circumstances of the case and only for the time strictly necessary, in the terms set out in the amended article 527 (appoint a counsel of their choosing, communicate with some or all of the persons with whom they have the right to communicate, have confidential conversations with their counsel and the right of access by the detainee or their counsel to the proceedings).

That deprivation of rights may only occur subject to the conditions in letter a) and letter b) of the also amended article 509; namely: urgent need to avoid grave consequences that could pose a risk to a person's life, freedom or physical integrity; or urgent need for immediate action by the examining judges to avoid posing a grave threat to the criminal proceeding.

Confinement with no communication or the restriction of any other right must be ordered in a duly founded judicial decision. Where the restriction of rights is requested by the judicial police or by the public prosecutor's office it will be considered to be ordered for 24 hours, within which the judge must give an opinion on that request, and effectively monitor the conditions in which the confinement with no communication takes place. In cases of confinement with no communication, medical examinations will be carried at least two every 24 hours. Confinement with no communication can never last for longer than five days or be applied to minors aged sixteen.

2.2 Detaining and opening written and telegraphic correspondence

Organic Law 13/2015 also provides new rules on the measure of detaining and opening written and telegraphic correspondence through the amendment of article 579 of the Criminal Procedure Law. The notable components of the new rules are:

- Private postal and telegraphic correspondence includes faxes, bureaufaxes and money orders.

- The judge may order this measure in connection with investigations into the following offenses: willful offenses punished with a custodial sentence of up to three years; offenses committed within a criminal organization or group; and terrorist offenses. The request and the subsequent proceedings in relation to this measure will be conducted in a separate and secret proceeding, meaning that no secrecy order for the case will be necessary.

- The time period for this measure will be up to three months, extendible for periods of the same or a shorter length subject to a limit of 18 months.

- In urgent cases, this measure may be ordered by the Ministry of the Interior or, failing that, the Secretary of State for Security, where the investigations are into offenses related to the activities of armed groups or terrorist elements and there are founded reasons making this measure absolutely necessary. In these cases, reasoned notification of the measure must be given within 24 hours to the judge with jurisdiction who, in a decision which must also be reasoned and made within 72 hours from when the measure was ordered, will withdraw or confirm it.

- No prior authorization by the courts will be needed for detaining and opening the following types of correspondence: postal deliveries used for the transportation and trading of goods or which on the outside state their contents; correspondence in the legal format of open communication in which it is mandatory to provide an external statement of content or which contain express specification that their inspection is authorized; or where such an inspection is carried out in accordance with customs legislation or is allowed under the rules governing postal deliveries.

In relation to this investigation measure, a new article 579 *bis* is created related to what are known as "chance discoveries" and their use in a different proceeding to the proceeding in which that investigation measure was ordered. They are expressly allowed to be used in another criminal proceeding and, for this purpose, a certificate will be drawn up of the particulars necessary to evidence the lawfulness of the intrusion. In any event, the continuation of the measure for the investigation of the offense discovered by chance will require authorization from the judge with jurisdiction to entertain any new criminal proceeding that is initiated.

2.3 Technology-related investigation measures

2.3.1 "Cyber" undercover agent (article 282 bis)

For certain types of cases (organized crime, terrorism, willful offenses punished with custodial sentences of up to three years, offenses committed using computer tools or using any other information or communication technology or communication service), the examining judge will be able to authorize the judicial police to act under an assumed identity in communications exchanged on closed communication channels. Additionally, with specific authorization, the "cyber" undercover agent may exchange or send illegal files and analyze the results of the algorithms used for the identification of those illegal files.

Similarly, the undercover agent ("cyber" or otherwise, in this case) may be authorized to obtain images and recordings of any conversations that may be held in face-to-face contacts with the suspect, even if they take place inside that person's home.

2.3.2 Interception of phone and remote communications (new Chapter V of Title VIII, article 588 ter a. through article 588 ter m.)

This new Chapter V of Title VIII sets out general provisions on the measures it contains, and specifies the various forms, subject-matters or communicative processes on which this type of measure may be taken (data contained in service providers' automated files, identification from an IP number, identification of terminals by capturing the identification codes of the apparatus or of its components, and identification of owners or connectivity terminals or devices).

The most important ***general provisions*** on this type of measure are:

- *Cases*: investigations having as their subject-matter any of the crimes referred to in article 579.1 (willful offenses punished with a custodial sentence of up to three years, offenses committed within a criminal organization or group and terrorist offenses) or offenses committed using computer tools or using any other information or communication technology or communication service.

- *Scope*: terminals, communication media and processes used ordinarily or occasionally by the suspect, or in which they participate, or of which they are the owner or user, the content of such communications and the electronic data on traffic or associated with the communication process (meaning any data that is generated as a result of the communication being relayed on an electronic communications network, or of it being made available to the user, together with the provision of an information society service or remote communication of a similar nature). Surveillance may also be carried out on the victim's terminals or communication media where a grave risk to the victim's life or integrity may be foreseen.

- *Affected third parties*: the measure may be ordered in relation to communications sent from a third party's terminals or remote media, if there is evidence that the suspect uses them to transfer or receive information, or that the owner aids the suspect in the suspect's unlawful aims, or benefits from the suspect's activity, or where the device under investigation is used with malicious intent by third parties remotely, without the owner's knowledge.

- *Request for court authorization*: the request for court authorization must contain, in addition to the information related to the scope of the measure as mentioned above, identification of the subscriber number, of the terminal or of the technical label; and identification of the connection subject to surveillance or the necessary data to identify the item of telecommunications media concerned. The purpose of the request may be to search and record the content of the communication, with specification of the form or type of communications it will affect; to know its origin or destination when the communication is made; the geographic location of the origin or destination of the communication; or to know other traffic data, associated or unassociated, but with added value to the communication.

- *Without prior court authorization*: in urgent cases, this measure may be ordered by the Ministry of the Interior or, failing that, the Secretary of State for Security, insofar as it is in connection with investigations of offenses related to the activities of armed groups or terrorist elements and there are founded reasons making this measure absolutely necessary. In these cases, reasoned notification must be given within 24 hours to the judge with jurisdiction who will render a decision withdrawing or confirming the measure; a decision that must be reasoned also, and made within 72 hours from when the measure is ordered.

- *Duty of cooperation*: there is a duty (under the threat of incurring an offense of disobedience) to provide the necessary assistance and cooperation to the judge, to the public prosecutor's office and to the judicial police assigned to carry out this type of investigation measure, placed on all the providers of telecommunications services, of access services to a telecommunications network or of information society services, together with anyone who otherwise contributes to providing, logical or virtual, communication services on a phone or on any type of media or remote communication system. These persons will be bound to secrecy over the activities requested by the authorities.

- *Monitoring of the measure*: the judicial police will hand over to the judge a transcription of the passages it considers to be significant and the entire recordings made, specifying the origin and destination of each of them and will ensure, using an advanced sealing or electronic signature system or other sufficiently reliable verification system, the authenticity and integrity of the information transferred from the central computer to the digital media on which the communications were recorded.

- *Length and application for extension*: a 3-month period is provided, extendible for successive periods of the same length subject to a maximum limit of 18 months. For the request for extension, the judicial police will produce a transcription of the passages of the conversations from which important items of information may be inferred to decide whether to continue with the measure, for which the judge may request further information or clarifications.

- *Parties' access to the recordings*: after secrecy has been lifted and the period for the investigation measure has ended, the parties will be allowed access to the recordings. If the recording contains data related to the private life of persons, only those portions of the recording not related to private lives will be delivered, and this fact must be expressly stated. After the recordings have been examined, the parties may apply for the inclusion of any communications they consider to be relevant and have been excluded, on which the judge will render the appropriate decision, after hearing the parties' submissions. The examining judge must inform any third parties affected by the intercepted communications of their intrusion, unless this is not possible, requires a disproportionate amount of effort or may be harmful to future investigations. If the affected third party so requests, a copy of the recording or transcription of those communications must be delivered to them, insofar as it does not affect the right to privacy of other persons or is determined to be contrary to the aims of the process in which the measure had been adopted.

Prior court authorization will be required for the disclosure and inclusion in the criminal proceeding of the ***data contained in the automated files*** –including a cross reference or smart search of them– ***of service providers***, or of persons who provide communication in compliance with the legislation on the retention of data related to electronic communications, or of anyone who does so on their own initiative, for commercial or other reasons, and are associated with communication processes.

Where the judicial police have access to an ***IP address*** which is being used to commit an offense, a request may be made to the examining judge to ask the service providers (or any of the other agents subject to the duty of cooperation described above) for data to be disclosed that will enable the identification and location of the terminal or of the connectivity device and the identification of the suspect for whom they only have an IP address.

If it proves impossible to obtain a given subscriber number and this has been determined to be absolutely necessary for the purposes of the investigation, the judicial police may use technical apparatus that that will give them access to the ***identification codes or technical labels of the telecommunications apparatus or of any of its components*** (such as the IMSI or IMEI number) and, generally, of any item of technical media able to be used to identify the communication system used or the card used to gain access to the telecommunications network. Once these codes have been obtained, the judicial police may ask the judge with jurisdiction to give them authorization to perform surveillance of the communications, specifying in their request, if applicable, which items of technical apparatus have been used to obtain those codes.

The public prosecutor's office or the judicial police, in performing their duties, may contact the providers of telecommunications services, or of services for access to a telecommunications network or of information society services directly (under the threat of incurring an offense of disobedience), to request information from them concerning the ***owner of a telephone number or of any other item of media***, or, in the opposite direction, the telephone number or identification data for any item of media.

2.3.3 Capturing or recording oral communications using electronic devices (new Chapter VI of Title VIII, articles 588 quarter a. to 588 quarter e.)

Court authorization may be given to place and use electronic devices that can ***capture or record any direct oral communications*** in which the suspect engages on a public thoroughfare or other type of open space, at home or indoors at another location, and this measure may be supplemented by obtaining images.

The court authorization for this measure must be related to communications that are expected to take place in specific face-to-face contacts between the suspect and others, and the measure may only be authorized where the following requirements are satisfied: they must be investigations into willful offenses punished with a custodial sentence of up to three years, offenses committed within a criminal organization or group and terrorist offenses; and the use of the devices may reasonably be expected to provide essential data with probative relevance. The court authorization must expressly mention the place or premises, and the face-to-face contacts with the suspect that are going to be placed under surveillance.

The judicial police will have to provide the authorizing judge with the original medium used or an authorized electronic copy of the recordings or images obtained, accompanied by a transcription of the conversations with significance, with identification of any agents who have participated in performing and monitoring the measure.

2.3.4 Use of technical image-capturing, tracking and location devices (new Chapter VII of Title VIII, article 588 quinquies a. through article 588 quinquies c.)

This Chapter includes measures consisting of the capturing of images in public places or areas, and the use of tracking and location technical media or devices.

The judicial police may obtain and record on any item of technical media ***images of the suspect in public places or areas***, if this is necessary to provide their identification, to locate the tools or criminal property related to the offense or obtain other pertinent information for the investigation in progress, even where it affects persons other than the suspect if there is founded prima facie evidence of the relationship of those third persons to the facts under investigation.

The court with jurisdiction may authorize the ***use of tracking and location technical media or devices***, and must specify the item of technical media that is going to be used. To ensure the proper execution of this measure, the service providers, agents and persons with a duty of cooperation will have to provide the necessary assistance. In urgent cases, the judicial police may proceed to carry out this measure, insofar as they give an account within 24 hours to the court, which will have to confirm or withdraw the measure. This measure may be in place for up to 3 months, although exceptionally extensions may be ordered subject to a limit of 18 months. The judicial police must deliver to the judge any original media or authorized electronic copies containing the gathered information, which must be held in safekeeping by the court clerk as required to prevent misuse of the evidence.

2.3.5 Searches on mass storage devices (new Chapter VIII of Title VIII, article 588 sexies a. through article 588 sexies c.)

Any access to content on computers, telephone or remote communication tools or mass storage devices for digital information, or to remote repositories of data, whether impounded in a home search or not, will need prior authorization from a court. This court authorization will have to set out the terms and scope of the search, whether the computerized data may be copied, the conditions that will have to be observed to ensure the integrity of the data and the required preservation safeguards to enable a subsequent expert analysis, if need be.

As with other investigation measures, in urgent cases and where there are founded reasons to consider that the sought data are in another IT system or in part of one, the judicial police or the public prosecutor may access them, providing that the judge with jurisdiction is notified within 24 hours, and within 72 hours after the measure was ordered the judge will have to render a decision on confirmation or withdrawal of the measure.

The authorities and agents in charge of the investigation may order any person (other than the suspect or criminal defendant, or any of the persons released from the obligation to make a statement by reason of a family relationship or professional secrecy) who is knowledgeable of how the computer system works, or the measures implemented to protect the computerized data it contains, to provide the information determined to be necessary to bring the measure into effect, insofar as it does not imply a disproportionate burden for the party concerned, under the threat of incurring an offense of disobedience.

2.3.6 Remote searches on computer systems (new Chapter IX of Title VIII, article 588 septies a. through article 588 septies c.)

A measure is provided consisting in the use of identification data and codes, together with the installation of software, to enable the examination, at a distance and without the knowledge of its owner or user, of the contents on a computer, electronic device, computer system, mass data storage tool or database. This measure may be ordered in investigations into the potential commission of a restricted list of offenses. Namely, those purportedly committed within criminal organizations; terrorist offenses; offenses against minors or persons with judicially modified capacity; offenses against the Constitution, of treason and related to national defense; or offenses committed using computer tools or using any other information or telecommunication technology or communication service.

The court decision authorizing the performance of this measure (which cannot last for longer than 3 months, although it may be extended for up to a further 3 months) will have to specify: the computers, electronic devices, computer systems or part of them, data

storage computer media or databases, data or other digital contents to which the measure relates; the scope, form of access and impoundment and software that will be used; the authorized agents; the ability to make copies; and the measures required to ensure the integrity of the stored data, together with those to make them inaccessible, or to eliminate them.

The authorities and agents in charge of the investigation may request from the service providers, from the persons with a duty of cooperation, and the owners or persons responsible for the computer system or database or, generally, from anyone (other than the suspect or criminal defendant themselves, or any of the persons who are relieved of the obligation to make a statement by reason of a family relationship or professional secrecy) who is knowledgeable of how the computer system works, or of the measures implemented to protect the computer data it contains, to provide the cooperation required for the performance of the measure, under the threat of incurring an offense of disobedience. Any of these persons whose cooperation is requested are bound to secrecy over the activities requested by the authorities.

2.3.7 Safety measures in relation to data storage (new Chapter X of Title VIII, article 588 octies)

The public prosecutor's office or the judicial police may ask any individual or legal entity (which will be bound to secrecy over the performance of the measure) to store and protect specific data or types of information including on any computer storage system available to them until the necessary court authorization for them to be disclosed is obtained. Those data must be stored for up to 90 days, extendible once only until the disclosure is authorized by the Court or 180 days have elapsed.

2.4 Shared provisions on technology-related investigation measures (new Chapter IV of Title VIII, article 588 bis a. through article 588 bis k)

A series of shared provisions on mandatory requirements for authorizing and ordering their performance are applicable in all cases to the technology-related investigation measures analyzed in this Commentary (excluding the "Cyber" undercover agent).

The court authorization concerned will have to be granted subject to a number of ***governing principles***; namely: relevance (the measure must be related to the investigation of a specific offense); suitability (it will serve to define the subject-matter and parties and length of the measure according to its usefulness); an exceptional and necessary measure (there are no other measures that are less burdensome on the rights of the suspect or criminal defendant and equally useful or the ability to obtain the information regarded as necessary for the investigation must be seriously impaired without the use of the measure concerned); and proportionality (the sacrifice to the rights and interests concerned cannot be higher than the benefit derived from adopting the measure to the public interest and the interests of third parties).

These measures may be ordered on his own initiative by the judge with jurisdiction or at the request of the public prosecutor's office or of the judicial police. In this latter case, ***the request by the public prosecutor or by the judicial police will have to contain the following***: description of the fact being investigated and the identity of the suspect; detailed explanation of the reasons justifying the need for the measure, together with the prima facie evidence of criminal conduct existing at that point; the identification particulars of the suspect or defendant and, if applicable, of the media used; extent, manner of performance, length and

content of the measure; the investigation unit of the judicial police that will take charge of the required formal procedures for the measure; and the party with a duty of cooperation who will carry out the measure, if known.

The ***court ruling allowing or refusing the measure*** (which will be obtained in a separate and secret proceeding) will take the form of a reasoned decision, after hearing the submissions of the public prosecutor's office when the request is made directly by the judicial police, which will be rendered within 24 hours from when the request is submitted, although this period may be tolled by a request from the judge for an extension or clarification of the terms of the request. Any court ruling must specify, at least, the following information: the punishable act under investigation, existing prima facie evidence and its legal characterization; identities of the suspects and of any other person affected by the measure; justification for the measure in accordance with the governing principles referred to above; extent, length, aim, manner of performance and frequency with which the applicant will have to inform it of the results obtained; and the party with the duty of cooperation, if known, expressly mentioning that duty of cooperation, under the threat of incurring an offense of disobedience and with a warning that they are bound to secrecy over the steps requested from them.

Investigation measures of this type ***will last*** for the time needed to clarify the facts, and may be extended, in a duly reasoned decision, rendered on the judge's initiative or following a reasoned request by the applicant, insofar as the grounds for adopting them continue to exist. That reasoned request, which must be sent to the judge with jurisdiction sufficiently in advance of expiry of the granted time limit and on which a decision must be rendered within two days after it is submitted, must include a detailed report on the outcome of the measure and the reasons justifying its extension.

To enable adequate ***monitoring of the measure***, the judicial police will have to inform the examining judge on its progress and the results obtained, in the manner and as often as is determined by the examining judge and, in all cases, when the measure is brought to an end. The judge will order the ***measure to end*** when the conditions that justified its adoption disappear or it has become clear that the intended results are not being achieved and, in all cases, where the time limit for which it was authorized has expired.

The investigation measures being discussed may be ordered even if they imply ***affected third parties***, insofar as the specific provisions set out for each type of measure concerned are observed.

Where the criminal proceeding in which the performance of any of these investigation measures has been adopted is brought to an end in a final decision, the original records used will be ***deleted and removed***, and only one copy of them will be preserved which will be held for safekeeping by the court clerk. Unless the court considers that it needs to be preserved, this copy will be ***destroyed***, after the end of 5 years from when the sentence is enforced, the offense or sentence becomes time-barred, dismissal without prejudice is decreed or a final acquittal judgment is rendered in relation to the suspect, for which the appropriate instructions to the judicial police will be issued.

2.5 New terminology: "investigado" (suspect) *and "encausado"* (criminal defendant)

The term *"investigado"* (suspect) will be used to identify the person under investigation for their relationship to an offense, whereas *"encausado"* (criminal defendant or accused person) will refer, generally, to anyone whom the court, after completing the preliminary examination of the case, formally charges with participation in a specific criminal act (indictment).

For the purposes of accommodating this new terminology in Spanish criminal procedural law amendments are made to articles 120, 141, 309 *bis*, 325, 502, 503, 502, 505, 506, 507, 508, 511, 529, 530, 539, 544 *ter*, 760, 762, 764, 765, 766, 771, 773, 775, 779, 780, 784, 797 and 798.

2.6 Amendments to the Organic Law on the Judiciary

Similarly, to adapt the Organic Law on the Judiciary to the reform of the Criminal Procedure Law made by the simultaneous Law 41/2015, together with other recent legislative reforms (related, among other matters, to the separate confiscation proceedings, to the new rules on a second instance in the Spanish appeals system, or the procedure resulting from acceptance of a decree), ***final provision two*** amends its articles 57.1, 65, 73.3, 82.1, 87.1, 87.*ter*. 1 and 89 *bis*. 2 y 3.

3. Law 41/2015, of October 5, 2015, amending the Criminal Procedure Law to speed up the criminal justice system and strengthen procedural guarantees

3.1 Measures to speed up the criminal justice system

The provisions aimed at avoiding unnecessary delays in the conduct of the proceedings may be grouped into four broad categories:

1. The rules on connectivity and their application in determining the jurisdiction of the courts are amended, by giving new wording to article 17 of the Criminal Procedure Law. Starting out from the principle that every offense will give rise to the formation of a single criminal process, the following are considered to be connected offenses:

    - Those committed by two more people assembled together.
    - Those committed by two or more people in different places or at different times if they followed a concert of action for them.
    - Those committed as a means to perpetrate other offenses or enable their performance.
    - Those committed to try and secure immunity from other crimes.
    - Offenses of concealing or destroying evidence and money laundering in relation to an earlier offense.
    - Those committed by more than one person where reciprocal injury or damage is caused.

    These connectivity requirements will be investigated and tried as part of the same case where the investigation and obtaining of evidence of the facts related to both offenses together is determined to be beneficial to clarify those facts and determine the persons with liability, unless this makes the proceeding too complex or causes too much of a delay to the proceeding.

It is also specified that if any unconnected crimes committed by the same person and bearing some analogy or relation between them fall within the jurisdiction of the same court, they may be examined as part of the same case, at the request of the public prosecutor's office, if the investigation and obtaining of evidence of all the facts together is determined to be beneficial to clarify them and determine the persons with liability, an option which is also precluded where it makes the proceeding too complex or causes too much of a delay to the proceeding.

2. Another new addition intended to speed up the conduct of criminal proceedings is related to the management of police reports where there is no known perpetrator. The wording of article 284 –and for the sake of consistency, of articles 295 and 964– has been amended to except from the general rule that judicial police officials, where they learn of a public offense or are requested to prepare for the performance of procedures by reason of a private offense must notify this to the court authority or to the representative of the public prosecutor's office, scenarios in which there is no known perpetrator, in which case –and this is the exception– the judicial police must keep the report to be able to be made available to the public prosecutor's office and to the court authority, without sending it to them, unless any of the following circumstances exist:

   - In cases involving offenses against life, against physical integrity, against sexual freedom and indemnity or related to corruption;
   - Where any formal procedures have been carried out after the end of seventy-two hours from the commencement of the report and they have produced a result; or
   - Where the public prosecutor's office or the court authority request referral of the case.

   It is provided, in consistency with the provisions in the Statute for Victims of Crimes, that the judicial police must notify the person reporting the offense that if the perpetrator is not identified within seventy-two hours, the proceedings will not be referred to the court, which does not preclude their right to repeat the report of an offense to the public prosecutor or the examining court.

   It is required that if weapons, tools or property of any type that might bear a relation to the offense have been found and are at the place where the offense was committed or in the immediate surroundings, or in the possession of the suspected offender or in another known location, a formal document must be drawn up, stating the place, time and occasion on which they were found, and including a police minute description to enable a complete idea to be gained of them and of the circumstances in which they were found, which may be substituted with graphic coverage. The document must be signed by the person in whose possession they were found.

   The seizure of any property that might belong to a victim of the offense will be notified to them, and the person affected by the seizure may appeal against the measure at any time to the examining judge.

3. A third category of measures directed towards speeding up the proceedings are those related to the reform of article 324. A distinction is established between noncomplex or normal, and complex proceedings. The examining procedures for noncomplex or normal proceedings ("fase de instrucción") must be completed within 6 months from the date of the decision commencing the preliminary proceedings or the preliminary investigations, whereas if the examination proceeding is held to be complex the length of the examination phase will be 18 months.

In cases of noncomplex proceedings, within 6 months the examining judge, at the request of the public prosecutor's office and after hearing the parties' submissions, may hold that the examination proceeding is complex if, due to supervening circumstances in the investigation, it cannot reasonably be completed within the stipulated time limit or some of the circumstances that make the examination phase complex occurred unexpectedly after it started.

For these purposes, an investigation will be considered to be complex, where:

- It is conducted on criminal organizations or groups.
- It is conducted in relation to numerous criminal acts.
- It involves a large number of suspects or victims.
- It requires the preparation of expert reports or assistance obtained by the court which implies the examination of abundant documentation or very demanding analysis processes.
- It implies the performance of procedures abroad.
- It requires a review of the management of private or public legal entities.
- It involves a terrorist offense.

In any examination proceeding held to be complex, the 18-month time limit may be extended by the judge examining the case for a period of the same or a shorter length at the request of the public prosecutor's office and after hearing the parties' submissions. The request for an extension must be made in writing, at least three days before the end of the maximum term, and the decision refusing the request for an extension may not be appealed although this petition may be repeated at the relevant stage in the proceeding.

The above time periods will be tolled if the secrecy of the proceedings is ordered, for the period in which that secrecy is in force, or if dismissal without prejudice of the proceeding is ordered. When the secrecy of the proceedings is lifted, or the proceedings are recommenced, the investigation will continue for the time remaining to complete the time periods set out above.

Exceptionally, before the end of the stipulated time periods or of any extension that may have been ordered, if so requested by the public prosecutor's office or any of the appearing parties, due to the existence of reasons justifying this step, the examining judge, after hearing the parties' submissions, may set a new time limit for the end of the examining proceeding. If the public prosecutor's office or the parties have not asserted this right, they cannot later request the supplementary investigation procedures under article 627 and article 780.

The judge will bring the examination proceeding to an end when the judge considers he has fulfilled his remit. After the end of the time limit or any of its extensions, the examining judge will render a decision determining completion of the preliminary proceeding or, in the "abbreviated" proceeding, the required ruling in accordance with article 779. If the examining judge has not rendered any of the rulings mentioned in this section, the public prosecutor's office will ask the judge to render the appropriate decision. In this case, the examining judge must render a decision on the request within fifteen days.

The investigation procedures ordered before the end of the statutory time limits will be valid, even if they are received after those limits have expired.

It is clarified that the mere lapse of the time limits set in this article cannot under any circumstances give rise to the dismissal of the proceedings unless the circumstances set out in article 637 or article 641 exist.

4. The fourth of the measures intended to speed up criminal proceedings consists in establishing the "process following acceptance of a decree" or simplified criminal proceeding which allows a sentence proposal made by the public prosecutor's office by decree to be converted into a final judgment if the subject-matter and personal requirements are satisfied and the criminal defendant gives his acceptance with the required assistance by counsel. The rules on this new proceeding are in article 803 bis through article 803 bis j, and in an amendment added to article 985.

   This proceeding may be commenced at any time after the investigation procedures by the public prosecution service have commenced or after a court proceeding has been instituted and until the end of the examining phase, even if the suspect has not been called to make a statement, if the following cumulative requirements are satisfied:

   - The offense must be punished with a fine at the stipulated daily rate or with community services or with a custodial sentence not longer than a year and which may be suspended in accordance with article 80 of the Criminal Code, with or without deprivation of the right to drive motor vehicles and mopeds.

   - The public prosecutor's office must consider that the specific sentence applicable is a fine at the stipulated daily rate or community services and, in eligible cases, a sentence consisting of deprivation of the right to drive motor vehicles or mopeds.

   - No group or private prosecution must have appeared in the proceeding.

   The procedure resulting from acceptance of a decree rendered by the public prosecutor's office, on criminal action brought to impose a fine at the stipulated daily rate or community services and, in eligible case, a sentence consisting of deprivation of the right to drive motor vehicles and mopeds, may also include in its subject-matter the civil action aimed at obtaining restitution or indemnification for the loss.

   The decree on the proposed sentence issued by the public prosecutor's office, which will be sent to the examining court for it to be authorized and notified to the suspect, must have the following content:

   - Identification of the suspect.

   - Description of the punishable act.

   - Specification of the committed offense and a succinct description of the existing evidence.

   - Brief explanation of the grounds on which they consider, if this is the case, that the custodial sentence must be substituted.

- Proposed sentences. For the purposes of this proceeding, the public prosecutor's office may propose a fine at the stipulated daily rate or community services, and, in eligible cases, deprivation of the right to drive motor vehicles and mopeds, reduced by up to a third with respect to the statutory sentence, even where it entails the imposition of a sentence below the lower limit stipulated in the Criminal Code.

- Petitions for restitution and indemnification, if applicable.

The examining court will authorize the decree on the proposed sentence where the cumulative requirements set out above are satisfied, and its failure to authorize the decree will render the decree invalid.

After the decision authorizing the decree has been rendered by the examining court, the examining court will notify it together with the decree to the defendant, who will be summoned to appear before the court on the specified date and day. In that notification, the criminal defendant will be informed of the aim of the appearance, of the required assistance by counsel for it to be held and of the effects of failure to appear or, if the defendant appears, of the defendant's right to accept or reject the proposal contained in the decree. The defendant will be informed that, if they are not assisted by counsel in the proceeding, they must seek advice from a lawyer of their choice or apply for a duty lawyer, who will be assigned to the case to provide advice and assistance, an application that must be made within the five business days before the date of the appearance.

For the acceptance of the proposed penalty the defendant will have to appear at the examining court, assisted by counsel. If the defendant fails to appear or rejects all or part of the proposal by the public prosecutor's office, in relation to the penalties or to restitution or indemnification, the proposal will be rendered invalid. If the defendant appears without counsel, the judge will suspend the appearance hearing and set a new date for it to be held.

At the appearance hearing, the judge, in the presence of the defendant's counsel, will ensure that the defendant understands the meaning of the decree on the proposed sentence and the effects of its acceptance. The entire appearance will be recorded on audiovisual media, or if this is physically impossible, documented pursuant to the general rules.

If, at the appearance, the defendant accepts the proposed sentence in all of its terms, the examining court will confer on it the status of a final court decision, which within three days it will document in the form and with all the effects of a convicting judgment, against which there will be absolutely no right to appeal.

If the decree on the proposed sentence is rendered invalid through not being authorized by the examining judge, failure to appear or the absence of acceptance by the defendant, the public prosecutor's office will not be bound by its content and continue with the proceeding through the appropriate procedures.

The enforcement of judgments rendered in the procedure resulting from acceptance of a decree, where the offense is minor, will be conducted by the court that rendered the judgment.

3.2 Adoption of a separate confiscation proceeding

Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union requires member states to set up procedures for its implementation, in particular to allow the effective execution of the new confiscation remedies. Now, in the new article 803 *ter* a)

through article 803 *ter* u) (new Title III *ter* of Book IV of the Criminal Procedure Law) a new separate or autonomous confiscation proceeding is defined which allows the deprivation of ownership of the proceeds of crime even if the perpetrator cannot be tried. These new rules must also be seen in the context of the amendments concerning confiscation recently added to the Criminal Code, as a supplement to those amendments.

This new title is divided into two chapters; a first chapter, related to the participation in the procedure of third parties who may prove to be affected by the confiscation, and a second chapter, devoted to the rules on the separate confiscation proceeding.

1. The first of these matters starts out from the general rule that the judge or court will order, on their own initiative or at the request of a party, the participation in the criminal proceeding of any persons who may prove to be affected by the confiscation where facts are present from which it may reasonably be inferred that:

   - The property to which the requested confiscation relates belongs to a third party other than the suspect or defendant, or

   - There are third-party holders of the rights over the property to which the requested confiscation relates, who may be affected by it.

   Although the participation of the affected third parties may be disregarded if the potential holder of the rights over the property to which the requested confiscation relates could not be identified, or there are facts from which it may be inferred that the information on which the petition for them to participate in the proceeding is not true, or that the purported holders of the rights over the property to which the requested confiscation relates are interposed persons related to the suspect or defendant or that they are acting in connivance with that person.

   The decision in which the judge disallows the third-party's participation in the procedure may be appealed to an immediately superior court and if the person affected by the confiscation has affirmed to the judge or court that they do not object to the confiscation the judge will not order their participation in the procedure, or end any participation that has already been ordered.

   If it is ordered to receive a statement from the person affected by the confiscation, they will be informed of the exceptions to the obligation to make a statement. That person may participate in the criminal proceeding, for which assistance by counsel will be required, from when their participation was ordered, although this participation will be restricted to any elements directly affecting their property, rights or legal status and cannot be made to concern any matters related to the criminal liability of the defendant. Any summons to appear served on them must specify that the trial may be held in their absence –their failure to appear will not prevent the proceeding from continuing– and that in the proceeding a decision may be rendered on the requested confiscation in any event, and that they may act through their legal representative without needing to be physically present.

   The judgment ordering the confiscation must be notified to the person affected by it even if they have not appeared in the proceeding, and that person may lodge the appeals allowed in the law against that judgment, although their appeal may only be against the parts of the judgment that directly affect the affected person's property, rights or legal status, and they cannot make their appeal refer to matters concerning the criminal liability of the defendant.

A failure by the third person affected by the confiscation to appear when they are summoned as required in this law will have the effect of that person being held in contempt of court; that contempt of court will be governed by the rules established in the Civil Procedure Law on a defendant in default, including those provided on notifications, on appeals against the judgment and the reversal of the final judgment at the request of the defendant in contempt of court/default, although, if the judgment is reversed, it will only be reversed in relation to the contents that directly affect the third party concerning their property, rights or legal status. In these cases, a certificate will be sent to the court that rendered the judgment at first instance, if it is a different court to the one that rendered the reversal judgment and, then, the following rules will be implemented:

- The third party will be given a ten-day period in which to file a written answer to the application for confiscation, with a proposal of evidence, in relation to the facts pertinent to the decision affecting them.

- After the written answer has been filed within the time limit, the court will rule on the admissibility of the evidence in a decision and, in accordance with the general rules, a date will be set for the trial, in which the subject-matter will only be to adjudge the civil action brought against the third party or on the criminal action affecting their property, rights or legal status. The appeals allowed in the law may be lodged against the judgment rendered.

If a written answer to the application is not filed in the time limit or the third party fails to appear at the hearing, represented as required, a judgment will be rendered with no further procedures, which will be the same as the reversed judgment in relation to the affected parts. The same rights are granted to any affected third party that did not have the chance to object to the confiscation due to being unaware of its existence.

2. In relation to the separate confiscation proceeding, its subject-matter consists of action in which an application is made for the confiscation of property, belongings or gains, or their equivalent value, where it has not been brought earlier. In particular, it will be applicable in the following cases:

   - Where in his charging instrument the public prosecutor only requests the confiscation of property and expressly reserves the determination of that property for this procedure.

   - Where it is applied for as a result of the occurrence of a punishable act and the perpetrator of that act has died or cannot be tried because that person is in contempt of court or does not have the capacity to stand trial.

   If the action has been reserved by the public prosecutor, the separate or autonomous confiscation proceeding may only be initiated where the proceeding in which a decision is made on the criminal liability of the defendant has already concluded with a final judgment. The confiscation action in this procedure may only be brought by the public prosecutor's office.

   The jurisdiction to entertain the proceeding, which will be governed by the rules on trials set out in Title III of Book II of the Civil Procedure Law insofar as they do not contradict these subsequent provisions, will be held by:

   - the judge or court that rendered the final judgment,

   - the judge or court that was entertaining the stayed criminal proceeding, or

- the judge or court with jurisdiction to adjudge the proceeding where it has not started.

The persons against whom the action was brought due to their relationship with the property to be confiscated will be called to the trial as defendants, and the rules on the right to assistance by counsel for a criminal defendant set out in the law will be applicable to anyone whose property or rights may be affected.

The criminal defendant who is in contempt of court will be summoned to appear in a notification addressed to their procedural representative in the stayed proceeding and in an official notice placed on the court's notice board, whereas the third party affected by the confiscation will be summoned as explained in the previous point.

If the criminal defendant held to be in contempt of court in the stayed proceeding fails to appear in the separate confiscation proceeding a court procedural representative and counsel will be appointed for the defendant automatically and will undertake the representation and defense of that defendant. The appearance of a criminal defendant with judicially modified capacity to appear in the stayed criminal proceeding will be governed by the rules in the Civil Procedure Law.

The application for a separate or autonomous confiscation proceeding must be filed in writing and express in separate, numbered, points:

- The persons against whom the application is directed.
- The item or items of property to which the petition for confiscation relates.
- The punishable act and its relationship with the item or items of property.
- The criminal law characterization of the punishable act.
- The position of the person against whom the application is directed with respect to the property.
- The legal ground for the confiscation.
- The proposed evidence.
- The application for injunctive or precautionary remedies, providing justification for the benefits to be obtained by their adoption so as to ensure the effectiveness of the confiscation, if applicable.

After the application has been admitted, the authority with jurisdiction will rule on the following:

- Whether or not to adopt the requested injunctive remedies.
- The application for confiscation will be notified to the parties satisfying the requirements to have their property confiscated, who will be granted a twenty-day period in which to appear in the proceeding and file a written answer to the application for confiscation.

After injunctive remedies have been adopted, the procedures for objection, modification, or lifting and for the provision of security to replace the confiscation will be conducted in accordance with Title VI of Book III of the Civil Procedure Law insofar as it does not contradict the provisions in this subsequent law.

The written answer to the application for confiscation must contain the respondent's pleadings in relation to the correlative elements in the written application. If the respondent fails to lodge its written answer within the time limit granted or withdraws from it, the authority with jurisdiction will order the final confiscation of the property, belongings or gains, or of a value equivalent to them.

The competent authority will rule on the proposed evidence in a decision, in which it will set the date and time for the hearing in accordance with the general rules. This ruling will not be appealable, although the request for evidence may be repeated in the trial.

The trial will be conducted in accordance with the provisions in article 433 of the Civil Procedure Law and the judge or court will render a decision in a judgment within 20 days after the trial has ended, making one of the following determinations:

- Upholding the application for confiscation and order the final confiscation of the property.

- Upholding the application for confiscation partly and ordering the final confiscation in respect of the amount concerned. In this case, any injunctive remedies that may have been ordered in respect of the other property will be rendered invalid.

- Dismissing the application for confiscation and holding that it is not allowable due to the existence of any of the grounds for objection. In this case, all injunctive remedies that may have been ordered will be rendered invalid.

If the judgment fully or partly upholds the application for confiscation, it must identify the injured parties and set the required amount of indemnification, which will have the practical effects of *res judicata* in relation to the persons against whom the action was brought and the case for a petition directed, consisting in the pertinent facts for adoption of the confiscation decision, related to the punishable act and the position with respect to the property of the respondent. Beyond the practical effect of *res judicata*, the content of the judgment on the separate confiscation proceeding will not be binding in the subsequent proceeding to determine the defendant's liability, if it takes place.

In the subsequent criminal proceeding against the defendant, if it takes place, the confiscation of property on which a decision has been rendered with the effect or *res judicata* in the separate confiscation proceeding can neither be requested or adjudged. The confiscated property will be used as determined in this law and in the Criminal Code.

If the confiscation was ordered in respect of a specific value, the person in relation to which it was ordered will be requested to proceed with payment of the amount concerned within the time limit determined for it; or, otherwise, specify the property with a sufficient value on which the confiscation order may be carried out. If the request is not fulfilled, the public prosecutor's office may carry out, itself, through the Asset Recovery and Management Office or through other authorities or through judicial police officials, any investigation procedures determined to be necessary to locate the property or rights owned by person in relation to whom the confiscation was ordered.

Any authorities and officials who have been requested to cooperate by the public prosecutor's office will have an obligation to cooperate under the threat of incurring an offense of disobedience, unless the rules governing their activities provide otherwise or set limits or restrictions that must be fulfilled, in which case they must convey to the public prosecutor the grounds for their decision. Where the public prosecutor considers it necessary to carry out any investigation procedure that must be authorized by the court, the public prosecutor must make a petition to the judge or court that entertained the confiscation proceeding. Additionally, the public prosecutor's office may contact financial institutions and public registries and individuals or legal entities for them to provide, subject to their specific legislation, a list of the property and rights of the enforced party of which they have proof.

The rules governing the applicable appeals in the abbreviated criminal proceeding and the appeals for review of final judgments are applicable.

A failure to appear by the criminal defendant in contempt of court and by the affected third party in the separate or autonomous confiscation proceeding will have the effect of their being held in contempt of court; that contempt of court will be governed by the rules set out in the Civil Procedure Law in relation to a civil defendant in default, including those provided for notifications, appeals against the final judgment at the request of the defendant in default/contempt of court, although, in the case of reversal of the judgment, it will only be reversed in relation to the points that directly affect the third party in relation to their property, rights or legal status.

If the proceeding brought against the criminal defendant in contempt of court or person with judicially modified capacity continues for the trial of one or more criminal defendants, the separate confiscation action against them may be joined in the same case.

The public prosecutor's office may request that the judge or court render a fresh confiscation order where:

- The existence of property, belongings or gains on which the confiscation must be implemented is discovered but their existence or ownership was not known when the confiscation procedure was initiated, and

- No previous decision has been rendered as to whether their confiscation is admissible.

3.3 General establishment of the second instance

The absence of procedural rules on appeals to a superior court against judgments rendered at first instance by the provincial appellate courts ("Audiencia Provincial") and by the criminal chamber of the National Appellate Court ("Audiencia Nacional"), which have already given rise to the addition to the Organic Law on the Judiciary of the appropriate provisions to achieve this generalization of the second instance in criminal proceedings, has finally been resolved now with the insertion in the Criminal Procedure Law of a new article 846 *ter* which generalizes the second instance, by establishing the same rules as are currently in place for appeals to a superior court of judgements rendered by the criminal courts in the abbreviated proceeding.

That article establishes that any decisions ending the proceeding due to lack of jurisdiction or dismissal with prejudice and the judgments rendered by the provincial appellate courts and by the criminal chamber of the National Appellate Court at first instance may be appealed to the

civil and criminal chambers of the high courts ("Tribunal Superior de Justicia") for their territory ("Comunidad Autónoma") and to the appeals chamber of the National Appellate Court, respectively, which will resolve the appeals in a judgment.

For these purposes, the civil and criminal chambers of the high courts and the appeals chamber of the National Appellate Court will assemble a panel of three judges to entertain the appeals. The appeals procedure will be governed by articles 790, 791 and 792 of the law, with a particular specification that the references made to the criminal courts must be understood to refer to the authority that rendered the appealed decision and the references to the appellate courts, to the one with jurisdiction to entertain the appeal.

In this respect, the reform has taken this opportunity to complete the rules on appeals to superior courts with new statutory provisions on errors in the assessment of evidence as a ground for the appeal and on the content of the judgment that the appellate judge may render in such circumstances, which serves the ultimate aim of making this matter subject to the constitutional doctrine, and, in particular, to the requirements determined by the principle of immediacy of evidence. The above is given shape in an addition to article 790 of a new paragraph three, and in new wording for article 792.

It is laid down that where the prosecution alleges error in the assessment of evidence to petition for the reversal of an acquittal judgment or for an increase in the sentence in a judgment of conviction, justification will need to be provided of the insufficiency or the absence of a reasonable basis in the factual grounds, a clear departure from the general principles derived from experience or the omission of any reasoning on one or more of the items of evidence taken which might have relevance or which have unlawfully been held null and void.

Furthermore, the judgment on the appeal cannot convict any criminal defendant acquitted at first instance or increase the sentence imposed on the defendant due to an error in the findings from the evidence in the terms mentioned above.

The judgment of acquittal or conviction may, however, be rendered invalid, and if this happens the proceedings will be returned to the body that rendered the appealed decision. The judgment on the appeal will specify whether the trial hearing has been rendered invalid and whether the principle of impartiality requires new members to be assembled for the body at first instance for the purpose of re-hearing the case.

It is added that the judgment must be notified to any parties aggrieved or injured by the offense, even if they have not appeared as parties in the proceeding.

3.4 Broadening of the cassation appeal

The inevitable flip side of the reform of the second instance in criminal proceedings is the need arisen to amend the rules on cassation appeals, which precisely to compensate for this absence of an appeal to a superior court against judgments rendered at first instance by the provincial appellate courts and by the criminal chamber of the National Appellate Court, had been taking a more relaxed view of the grounds able to be pleaded, although in doing so they were invalidating the Supreme Court's ("Tribunal Supremo") supreme power to interpret criminal law. The intention is that it will now properly be able to fulfill more efficiently its role of unifying criminal law principles. To achieve this the wording of articles 847, 849 and 889 has been amended.

It is now laid down that a cassation appeal ("recurso de casación") will be applicable in the following cases:

- Of infringement of the law and of violation of form against:
  - Judgments rendered in a single instance or on appeals to a superior court by the civil and criminal chambers of the High Courts.
  - Judgments rendered by the appeals chamber of the National Appellate Court.
- Of infringement of the law against judgments rendered on appeals by the provincial appellate courts and the criminal chamber of the National Appellate Court, where, in view of the facts held to be proven, an article of substantive criminal law or any other substantive rule of law which must be observed pursuant to criminal law has been infringed.

An exception is made to the above for judgments that simply hold to be null and void judgments handed down at first instance.

It is laid down that cassation appeals are only allowed for infringements of the law, against decisions for which the law expressly authorizes these appeals, and the final decisions, rendered at first instance and on an appeal, by the provincial appellate courts or by the criminal chamber of the National Appellate Court where they end the proceeding on the ground of lack of jurisdiction or dismissal with prejudice and the case has been brought against the criminal defendant in a court ruling that implies a founded charge.

To refuse admission of the appeal it will be necessary for the order to be adopted unanimously. The failure to admit a cassation appeal founded on an infringement of the law against judgments rendered on appeals by the provincial appellate courts and the criminal chamber of the National Appellate Court, where, in view of the facts that are held to be proven, a substantive rule of criminal law or another substantive rule of law has been infringed which should have been observed under criminal law, may be ordered in an interlocutory order succinctly founded, provided there is a unanimous decision as to the absence of cassational interest.

3.5 The reform of the special appeal for review

The need to provide Spanish law with legal procedures for compliance with judgments rendered by the European Court of Human Rights, until now covered only by the courts' interpretation, was behind the reform of the grounds for the *special or extraordinary appeal for review* ("recurso extraordinario de revision"), in the framework of the technical improvement of the various scenarios and with the inclusion also of the option to challenge any criminal judgments that may be determined to be contradictory to a judgment rendered later in another jurisdiction on a question referred for preliminary ruling by the same court with jurisdiction and judgments rendered in separate confiscation proceedings where the subsequent criminal judgment handed down in the main proceeding does not hold to be evidenced the criminal act in relation to which the confiscation was allowed. This is carried out through the amendment of article 954 which sets the rules on the appeal for review as follows:

A special review of final judgments may only be requested in the following cases:

- Where a person has been convicted in a final criminal judgment which assessed as evidence a document or witness statement later held to be false, a confession by the criminal defendant obtained through violence or coercion or any other punishable act

performed by a third party, provided those elements are affirmed in a final judgment in a criminal proceeding conducted for the purpose. A judgment of conviction will not be required where the criminal proceeding initiated for that purpose is dismissed on the ground of expiry of the limitation period, contempt of court, death of the criminal defendant or on any other ground does not imply an evaluation of the facts of the case.

- Where a final judgment has been handed down convicting any of the participating judges for criminal misfeasance in public office in a ruling handed down in the proceeding on which the judgment sought to be reviewed was rendered, without which a different ruling would have been rendered.

- Where two final judgments have been rendered in relation to the same act and criminal defendant.

- Where, after the judgment, facts or items of evidence come to light which, had they been produced, would have determined acquittal or a lighter sentence.

- Where, following a preliminary ruling by a criminal court, a final judgment is later rendered by a noncriminal court with jurisdiction to decide on the matter, and that judgment is contradictory to the criminal court's ruling.

Another ground for review of a final judgment will be a contradiction between the facts held to be proven in the proceeding and those held to be proven in the final criminal judgment that may be rendered.

An application for a review of a final court decision may be made where the European Court of Human Rights has held that the decision was rendered in violation of any of the rights recognized in the European Convention on Human Rights and its Protocols, provided that, according to its nature and gravity, the violation has effects that persist and cannot be removed other than by means of this review. In this case, the review may only be requested by a person with standing to lodge this appeal, who has taken their claim to the European Court of Human Rights. The application must be made within one year from when the judgment of the Court becomes final.

3.6 Additional Provisions

The reform adds two new provisions to the Criminal Procedure Law, provisions five and six.

Provision five relates to the Asset Recovery and Management Office, the administrative body responsible for the tasks of locating, recovering, storing, administering and realizing criminal property. It is specified that, where necessary for the performance of its tasks and accomplishment of its aims, the Office may seek the cooperation of any public or private entities, which will be under obligation to provide that cooperation in accordance with their specific legislation.

Any appeals it is requested to handle before a final court decision on confiscation is rendered may be managed through the account for deposits and payments into court where money obtained from an attachment or the advance realization of the criminal property is involved. For other assets, depending on the circumstances, the Office may manage them in any of the forms set out in the legislation applicable to the public authorities. The interest on the money and the income and proceeds from the assets will be used to pay the management costs, including those relating to the Office; the remaining amount will be kept according to the provisions that will be rendered in the final decision on confiscation.

When a final court decision is handed down on confiscation, the items obtained will be realized and the proceeds used in the manner set out in article 367 *quinquies* of the Criminal Procedure Law. The remaining amount, together with the proceeds obtained by managing the assets during the proceeding, will be transferred to the Treasury as a public law revenue. After deducting the operating and management expenses of the Asset Recovery and Management Office, covered in the budget for the Ministry of Justice, 50% of the remaining amount will be used to pay for the aims specified below. These funds will generate a revenue in the budget for the Ministry of Justice, pursuant to the General Budget Law.

The projected management costs and expenditure must be calculated as will be determined in the regulations.

The aims associated with the funds obtained by the Asset Recovery and Management Office as a result of the court decisions on confiscation will be the following:

- support for care programs for victims of crime, including driving and funding the activities of Victim Assistance Offices,
- support for social programs geared towards the prevention of crime and the treatment of criminals,
- intensifying and enhancing activities for the prevention, investigation, persecution and repression of crime,
- international cooperation in the fight against grave forms of criminality,
- any others that may be determined in the regulations.

The new additional provision six lays down that without precluding the provisions on special proceedings, any offenses which individually or combined are punished with a light sentence and another less serious offense will be conducted in the abbreviated proceeding or, if applicable, in the proceeding for fast-track trials of certain offenses or in the procedure resulting from acceptance of a decree.

4. Transitional law and entry into force

According to its ***single transitional provision*, Organic Law 13/2015** will apply to the criminal proceedings initiated after its entry into force, and also to any procedures by the police and the public prosecution and rulings and steps by the court that may be ordered after its entry into force in criminal proceedings in progress. Its ***entry into force*** (***final provision four***) will take place two months after its publication in the Official State Gazette (BOE), with the exception of subarticle one (article 118), three (article 509), four (article 520), five (article 520 *ter*) and six (article 527) of the single article, which will all enter into force on November 1, 2015.

And the ***single transitional provision*** of **Law 41/2015** determines that it will apply to any criminal proceedings initiated after its entry into force, with the following special provisions: article 954 (review of final judgments) which will apply also to any judgments becoming final after its entry into force and the case set out in subarticle 3 concerning the judgments of the European Court of Human Rights which become final after its entry into force; and article 324 (time limits for the maximum length of the examining phase) will apply to any proceedings in

progress on the entry into force of this law, for which purposes the date of entry into force will be taken as the start date for computing the time limits for the examining phase. The ***entry into force*** of this ordinary law will take place two months after its publication in the Official State Gazette (***final provision four***).

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