

DIRECTIVE 3/2003 OF THE PLENUM OF THE GENERAL COUNCIL OF THE JUDICIARY, OF 9 APRIL 2003, REGARDING DISTRIBUTION AND COMPUTER REGISTRATION OF DOMESTIC VIOLENCE.¹

With the aim of expediting the proceedings of criminal trials, Parliament passed Law 38/2002, of 24 October, concerning partial reform of the Law on Criminal Procedure, regarding proceedings for speedy and immediate trials for determined crimes and misdemeanours, and concerning modification of abbreviated proceedings. Section 4 of the First Additional Provision sets forth that “in the period of six months, the General Council of the Judiciary will issue the rules for the distribution of trial designations and the elaboration of duty services established by sections 769.2, 800.3, 962.4 and 965.2 of the Law on Criminal Procedure.”

Elaborating the aforesaid provision and in accordance with the Agreement of 26 February 2003, the plenum of the General Council of the Judiciary modified Regulation 5/1995, of 7 June, concerning incidental aspects of judicial proceedings, in relation to duty service. Article 47.6 of the aforementioned Regulation states that the “governing chambers and the committee of judges, in the performance of their normal attributions and subject to the terms of the present Regulations, will be able to approve additional regulations which, regarding distribution of matters, internal regime, substitution charts, or other matters in which they have competence, they deem legitimate.” Moreover, the First Additional Provision of the aforesaid Agreement sets forth that “the committee of judges and the administrative and disciplinary divisions of the higher courts will adopt the rules of distribution established in the present Regulations, so that the content of the rules will permit the commencement of speedy trials and immediate proceedings for offenses in police court.”

The present Directive contains a series of criteria for facilitating speedy trials for a crime and immediate proceedings for misdemeanours envisaged in Law 38/2002, of 24 October, regarding partial reform of the Law on Criminal Procedure, and which serve as a complement to the regulation of duty service in General Council of the Judiciary Regulation 5/1995, of 7 June. Said criteria should be considered by the committees of judges and administrative and disciplinary divisions of the higher courts in compliance with their obligation to adapt the rules of distribution set out in the aforementioned Law and in the regulatory orders concerning duty services.

Furthermore, this Directive also makes reference to those de facto assumptions where processing of proceedings of speedy trials for a crime is not possible, especially in de facto assumptions of physical or psychological violence envisaged in section 153 of the Penal Code. In these cases, it is advisable that competence for hearing criminal proceedings for infractions committed by the same subject against the members of the same family be vested in the same court, in the same sense as it was pronounced in the Report of the General Council of the Judiciary on Domestic Violence, approved by the plenum of 21 March 2001. The “Practical Guide of Conduct against Domestic Violence”, which forms an integral part of the aforementioned report, states that “in the absence of a specialised court, approval must be secured for the rules of distribution that assign competence for hearing the case to the court that first heard previous assaults perpetrated by the same subject against the members of the same family, independent of the present state of the proceedings.”

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The content of the present Directive has taken into serious consideration the result of the work carried out by the Observatory on Domestic Violence, constituted through the Agreement signed on 26 September 2002, by the General Council of the Judiciary, the Ministry of Justice, and the Ministry of Labour and Social Services, which in its first meeting adopted the agreement to create an advisory Group of Experts in the matter.

The Observatory has gathered the agreements of the different committees of judges regarding the rules of distribution of matters concerning domestic violence, verifying that only some towns have adopted specific rules that comply with the criteria established by the "Practical Guide of Conduct against Domestic Violence". Also verified is the fact that, where the rules exist, their content is frequently insufficient to answer to such a complex reality. Within this highly heterogeneous panorama, thus necessary is a Directive of the General Council of the Judiciary that will make possible, as set forth in the Report of the General Council of the Judiciary on Domestic Violence, approved by the plenum of 21 March of 2001, "approval of rules of distribution that will be effective in combating this criminal phenomenon."

Finally, this Directive contains a series of necessary provisions for optimizing criminal proceedings for acts of domestic violence, either in connection with registration of the proceedings through the corresponding computer application at the moment of its initiation or with regard to the establishment of a computerised Domestic Violence Registry in each court clerk's office. These measures will not only be useful with regard to statistical usage, but also will permit judicial organs to know expeditiously and immediately of the existence of other criminal proceedings against the same aggressor, facilitating in this way the accreditation of the habitualness of the violence and the speedy adoption of measures of protection for the victim on the part of the police court. And this without affecting the future creation, by general provision, of a Registry of Measures regarding domestic violence in the national sphere, with the powers and functions assigned it in the rule.

Pursuant to such, the plenum of the General Council of the Judiciary, taking into consideration what is set forth in articles 104.2 and 12.3 of the Organic Law 6/1985, of 1 July, of the Judiciary, in its meeting of 9 April of 2003, has agreed to issue the present Directive:

First.- Time period for adaptation to rules of distribution.

With the aim of responding efficaciously to criminal infractions of domestic violence, as well as for facilitating the processing of speedy trials for crimes and proceedings for misdemeanours in police court, the committees of judges and the administrative and disciplinary divisions of the higher courts will adapt the rules of distribution to what is set forth in the present Directive, prior to 28 April 2003.

In the period of one month from the entrance into effect of Law 38/2002, of 24 October, concerning partial reform of the Law on Criminal Procedure, the administrative and disciplinary divisions of the higher courts will report to the General Council of the Judiciary regarding implementation of the present provision.

Second.- Registration of matters.

At the moment of initiation of any criminal proceedings for a crime or misdemeanour perpetrated against any of the persons referred to in section 153 of the Penal Code, registration of the proceedings must be carried out using the corresponding computer application for court proceedings and in accordance with what is set forth by the Judicial Committee on Information of the General Council of the Judiciary, which will unify the registration criteria in this matter in the period of three months from the entrance into effect of the present Directive.

Third.- Criteria regarding distribution of matters.

The distribution rules must attribute hearing of proceedings concerning crimes perpetrated against any of the persons referred to section in 153 of the Penal Code in compliance with the following criteria:

1. In accordance with what is set forth in Law 38/2002, of 24 October, regarding partial reform of the Law on Criminal Procedure, regarding proceedings for the speedy and immediate trial of determined crimes and misdemeanours and modification of abbreviated proceedings, the Police Court will have competency for the proceedings envisaged in Title III of Book IV of the Law on Criminal Procedure as well as for the celebration of trials for offenses envisaged in sections 962.1, 964.2 and 965.1 2^a of the same Law.

In those cases where application of the aforesaid criteria is not possible, the Magistrates' Court that, for punitive acts perpetrated against any of the persons referred to in section 153 of the Penal Code, has initiated committal proceedings for a crime, a summary trial, or inquiries prior to indictment of abbreviated proceedings under the protection of section 774 of the Law on Criminal Procedure or section 798.21^o of the same Law will also hear the remainder of criminal proceedings for a crime or for a misdemeanour initiated subsequently by acts attributable to the same perpetrator against the members of the same family, and this despite the fact that in the initial proceedings an order of filing, dismissal or opening a trial has been entered, or if a conviction or sentence of not guilty has been found.

The Magistrates' Court that enters the order of initiation of inquiries prior to indictment, a summary trial, or committal proceedings will thus inform the Distribution Office of this as soon as possible, which, in turn, will make note of it, unless the matters against the same perpetrator have previously been attributed to another Magistrates' Court in application of the rule referred to in the previous paragraph. In such an event, the Distribution Office will inform that court of this at once so that it can remit it to the aforesaid Magistrates' Court as soon as possible, making the corresponding notes in its books.

2. Each court, with regard to those matters assigned to it in application of the previous section, will initiate the criminal proceedings appropriate for the application of sections 300, 17 and 18 of the Law on Criminal Procedure.

3. The Police Court will do what is necessary for the application of article 40 of General Council of the Judiciary Regulation 5/1995, of 7 June, regarding incidental aspects of judicial proceedings, especially those which seek protection of the victim. It will also hold the proceedings indicated in Title III of Book IV of the Law on Criminal Procedure, as well as the summary trials indicated in sections 962.1, 964.2 and 965.1, 2^a of the same Law.

Fourth.-Summary trials in judicial districts with eight or more Magistrates' Courts

In the summary trials referred to by articles of 48, 53, 55 and 57 of General Council of the Judiciary Regulation 5/1995, of 7 June, the rules of distribution must attribute hearing of offenses set forth in sections 617 or 620 of the Penal Code, as long as the offended party is any one of the persons referred to in section 153 of the same Code, in compliance with the following criteria:

1. The statement made in accordance with sections 962 or 964 of the Law on Criminal Procedure will be delivered to the Magistrates' Court constituted for duty service in misdemeanour proceedings, to which the rules of distribution must attribute their proceedings.

Once the statement is received, if the court constituted in duty service for misdemeanour proceedings considers that the events constitute a crime, it will enter the corresponding order and remit the matter to the ordinary Police Court.

However, if the court deems that the acts constitute a misdemeanour, it will proceed to celebrating the summary trial in the terms of section 963 of the Law on Criminal Procedure. When, after attempting the immediate holding of a trial, and this is not possible, the rules of distribution must envisage that the proceedings correspond to the same court that received the statement acting in duty service for misdemeanour proceedings, which must hold the trial within the period of time referred to in section 965.1, 2^a of the Law on Criminal Procedure.

2. When there is a formal complaint by the injured party presented directly before the ordinary Police Court, or when there is knowledge of the act through other proceedings, and if the aforementioned court orders the initiation of a summary trial, it will remit the proceedings at

once to the Magistrates' Court constituted in duty service for misdemeanour proceedings, which will act in the manner indicated in the final paragraph of the previous section.

3. In accordance with what is stipulated in article 86 d) of General Council of Judiciary Regulation 1/200, of the governing bodies of the courts, the senior judge will resolve as quickly as possible questions concerning application of the rules of distribution between the ordinary Police Court and the Police Court for misdemeanour proceedings.

Fifth.- Summary trials in judicial districts with seven or less Magistrates' Courts, or with two or more first instance civil and criminal courts.

In the judicial courts referred to in article 58 of General Council of the Judiciary Regulation 5/1995, of 7 June, the rules of distribution must attribute hearing of the offenses envisaged in section 617 or 620 of the Penal Code, as long as the offended party is any one of the persons referred to in section 153 of the same Code, in compliance with the following criteria:

1. When the Police Court initiates a summary trial under the protection of what is set forth in section 963.1 of the Law on Criminal Procedure, or by section 964 of the same Law, it will proceed to hold the corresponding trial in duty service in accordance with what is envisaged in article 58 of General Council of Judiciary Regulation 5/1995, of 7 June, regarding incidental aspects of judicial proceedings.

2. When, after attempting the immediate holding of a trial, and this is not possible, the rules of distribution must envisage that the trial corresponds to the same court that received the statement in duty service, which must then hold the trial in accordance with what is stipulated by section 965.1, 2^a of the Law on Criminal Procedure.

Sixth.- Domestic Violence Registries

1.- In each court clerk's office there will exist a computerized Domestic Violence Registry in which the following information gathered from criminal proceedings for crimes or misdemeanours perpetrated against the persons referred to in section 153 of the Penal Code will be made note of:

a) All distributions carried out under the protection of the special distribution rules regarding domestic violence passed in accordance with the present Directive. For this purpose, the Distribution Office must inform the Domestic Violence Registry of each of the aforementioned distributions.

b) All designations of speedy trials carried out by Magistrates' Courts under the protection of section 800.3 of the Law on Criminal Procedure.

c) All rulings issued by criminal courts in accordance with section 802 of the Law on Criminal Procedure.

d) All resolutions passed by Magistrates' Courts which order precautionary measures and other protective measures for the victim, as well as their lifting or modification, and those others which may affect the victim's safety, issued during the preliminary or intermediate phase of criminal proceedings.

e) All rulings in accordance with the charge issued by Magistrates' Courts in criminal proceedings under the protection of section 801 of the Law on Criminal Proceedings.

f) All rulings issued by Magistrates' Courts in summary trials covered in sections 617 or 620 of the Penal Code.

g) All rulings issued by the criminal courts and provincial courts which may affect the safety of the victim issued in execution of a conviction for a crime committed against any one of the persons referred to in section 153 of the Penal Code. This stipulation will also be applicable when the criminal court executes a consent ruling under the protection of section 801 of the Law on Criminal Procedure.

h) All rulings issued by provincial courts in appeals covered in section 800 of the Law on Criminal Procedure, as well as appeals covered in section 976 of the same Law.

2.- Magistrates' Courts, criminal courts, and provincial courts will remit immediately to the Domestic Violence Registry the resolutions enumerated in the previous section.

3.- The Domestic Violence Registry will be confidential and must be consulted, in accordance with this Directive, by criminal courts or tribunals. At the same time, it may be consulted by any jurisdictional organ and by the Attorney General's Office. The consultation will be carried out in all cases through the remission of the appropriate standardized official letter which will be approved by the General Council of the Judiciary.

Access to the Registry must conform, in any case, to what is set forth in the Organic Law 15/1999, of 13 December, regarding Protection of Information of a Personal Nature, and in Article 85 of Regulation 5/1995, of 7 June, regarding incidental aspects of judicial proceedings.

4.- Remission of information to the Domestic Violence Registry will be carried out through standardized documents which will be approved by the General Council of the Judiciary.

5.- The administrative and disciplinary divisions of the higher courts will ensure the creation of the corresponding Domestic Violence Registries in accordance with what is set forth in the three previous sections, and they will report to the General Council of the Judiciary within the period of one month from the entrance into effect of Law 38/2002, of 24 October, regarding partial reform of the Law on Criminal Procedure.

6.- With the aim of facilitating homogeneity and communication among the different computerized registries, as well as, where appropriate, their integration in the computer systems of court proceedings obtaining in judicial organs, the plenum of the General Council of the Judiciary, at the suggestion of the Judicial Committee on Information, will determine the criteria for homogenization and the formal and security requirements such registers must encompass.

Seventh.- Coordination between criminal and civil jurisdictions.

The administrative and disciplinary divisions will approve the necessary criteria for coordinating criminal and civil jurisdictions in the area of domestic violence.

Eighth.- Collaboration protocol.

The collaboration protocols set forth under the protection of Article 47.4 of General Council of the Judiciary Regulation 5/1995, of 7 June, may refer to the specific area of domestic violence, and in these protocols may participate the public organs responsible for social services or the health of citizens.

Ninth.- Review of its application.

The review referred to by the Second Additional Provision of the Agreement of 26 February 2003, of the plenum of the General Council of the Judiciary, which modified Regulation 5/1995 with regard to duty services, will be extended as well to the application of the present Directive.

Tenth.- Diffusion and publication.

Inform the presidents of the high courts and senior judges of such, and proceed to their publication in the Boletín Oficial del Estado ("Official Bulletin of the State") and notification of the Information Protection Agency.

Eleventh.- Entry into force

This Directive will enter into force the day after its publication in the "Official Bulletin of the State".