

INDUSTRIAL PROPERTY

BARCELONA COUNTY COURT CHANGES THE CRITERION RELATING TO DIRECT DOWNLOAD LINKS

On 7 July 2011, Barcelona County Court dismissed the SGAE appeal against Indice-web, when it ruled that a link, irrespective of whether it is to P2P networks or direct download services such as *megaupload* or *rapidshare*, does not under any circumstance constitute an infringement of intellectual property rights. In this sense, the ruling states that:

Specifically, the appeal does not question the fact that the defendant's site does not house the files that are the object of the so-called "direct downloads". The dynamics of these links on the defendant's indice-web.com site would be that when they click on them, the user would be able to access the large-capacity server's website (megaupload or another) and, once there, by clicking again start downloading the content that they are interested in(...). Therefore, the file is downloaded from a different website from that of the defendant's and the user can see this. Despite their name, these are not direct downloads from the link website, as this redirects – as stated in the action – to a different site.

We will need to see now which type of case law to follow due to this ruling and how the members of the commission set up by the Sinde Law react in terms of closing websites.

CIVIL

SUPPORT MEASURES FOR MORTGAGE DEBTORS

Royal Decree-Law 8/2011, of 1 July 2011, relating to support measures for mortgage debtors, public spending and the cancellation of debts with companies and the self-employed taken out by local agencies, fostering business activity and promotion, was published on 7 July. This Royal Decree, the aim of which is to foster social protection for the public, the sustainability of public finances and support for entrepreneurs, amends a number of laws, including the Code of Civil Procedure. This introduces two measures, which prevent the embargo from affecting minimum incomes. The first is the raising of the minimum threshold – which rises from 110% to 150% of the minimum interprofessional salary – of salary immunity in situations where the price obtained for the mortgaged property does not cover the credit; the second measure consists of the disposal of the mortgaged property not being less than 60% of the rated value, whereas prior to the reform, it could not be less than 50%. The mandatory deposit for participating as bidder in auctions is also reduced, dropping from 30% to 20% of the value of the assets. The aim of this is to facilitate the presence of bidders and provide the best adjudication of the mortgaged assets.

CRIMINAL

THE CABINET APPROVES THE DRAFT BILL WHICH REFORMS THE CODE OF CRIMINAL PROCEDURE

On 22 July, the Cabinet approved the Draft Bill of the Fundamental Rights Act linked to the Criminal Process and the Draft Bill for the Code of Criminal Procedure. This is the first integral reform to our Procedural Criminal Law – of 1882 – since the Spanish Constitution came into effect

One of the most important changes to the criminal process proposed by the Draft Bill of the Code of Criminal Procedure is that investigation of the crime is no longer the responsibility of the Examining Judge and is entrusted to the Public Prosecutor's Office, the activities of which will be controlled legally and to which the Criminal Investigation Department will report. The aim of it is, on the one hand, to safeguard the independence of the Judge and prevent their participation in the investigation stage from contaminating their impartiality and, on the other, give full content to the right to defence and the principle of presumed innocence.

The investigation stage, in which the current suspect will become known as the investigated party and a new procedural regulation will be recognised in them, calls for the *ex novo* creation of different legal operators, such as the so-called Prosecutor in charge of the investigation, the Guarantor Judge – who should safeguard the fundamental rights of the investigated party – and the Preliminary Hearing Judge, responsible for deciding whether to bring charges against a specific person.

The aim of the new law is also to provide greater protection for both the victim or injured party of the criminal act, for those whom a catalogue of rights has been recognised that constitute the Victim's Charter in the Criminal Process, and the detainee or investigated party, by minutely regulating investigation procedures, which were not regulated sufficiently, and providing them with a complete legal system with greater guarantees. This occurs in cases of body examinations and inspections, the interception of communications (the interception of conversations between lawyer and client is prohibited), sound and police monitoring and entries and searches.

Finally, the reform is waiting to be sent to the General Council of the Spanish Judiciary, the General Council of Spanish Advocates and the Public Prosecution Council for them to issue the corresponding mandatory reports and subsequently follow the relevant parliamentary procedures. It remains to be seen whether the new Code of Criminal Procedure will see the light at the end of this term of office.

ENTRY INTO EFFECT ON 30 JUNE OF THE NEW IMMIGRATION ACT REGULATION

On Thursday 30 June, the new Regulation which develops the Immigration Act (Constitutional Law 4/2000) came into effect, repealing the former Regulation approved by Royal Decree 2393/04, of 30 December 2004. The main features of the new text includes greater accuracy and clarity regarding the types of procedures and requirements needed to obtain different authorisations. In terms of family regrouping, common-law couples are included as a situation that may allow for the regrouping of a family member and the economic parameters are set out to establish the solvency or economic means in cases of visas or non-earning residences. In terms of exceptional circumstances, of particular note is the inclusion of a new case of settlement, called family, which allows the parents of minors, who hold Spanish nationality and who are dependants of the applicant, to obtain a residence permit. It remains to be seen how the competent immigration Administration will interpret many of the new features developed by the new regulation, primarily the new cases for obtaining residence permits.

LEGAL PROFESSION**REGULATION OF THE LAW GOVERNING ADMISSION TO THE PROFESSIONS OF LAWYER AND SOLICITOR**

On 16 June, the Regulation of Law 34/2006, governing admission to the professions of Lawyer and Solicitor, which will come into effect on 30 October, was published in the BOE State Gazette. The Regulation develops the requirements to apply for admission to these professions and the design of the specialist training courses and external practicals and the format of the final assessment. This system is common on most European countries, which distinguish the academic and the professional qualification. The aim with this is to try to put the Spanish qualification system on the same footing as the European one and so be able to compete on an equal basis in a free service provision market.

The government has taken nearly five years to approve the text so that students who began studying for a law degree could complete their courses before the development of the regulations and students who enrolled afterwards would have time to get to know it properly.

On 9 June, José Juan Pintó, a partner in our firm, gave a lecture to mark the 18th Integra International EMEIA Conference, which was held in Milan. His paper was entitled "The independence of members: one of the reasons that Integra must remain an 'association', not a 'network'."

SPORTS

Last 15 and 16 July saw the annual General Assembly of the Rex Sport International Association of Sports Advisors held in Playa del Carmen (Mexico). This association comprises specialist sports law lawyers from a number of countries worldwide. It is also chaired by José Juan Pintó, a partner in our firm, who also chaired the General Assembly.

CIVIL**SYSTEM OF INCOMPATIBILITY OF THE RETIREMENT PENSION WITH SELF-EMPLOYED PROFESSIONAL ACTIVITY**

Last 26 May saw the publication of Order TIN/1362/2011, relating to the system of incompatibility of receiving a retirement pension from the Spanish Social Security system with the self-employed work carried out by collegiate professionals who have exempted themselves from registering in the RETA, regardless of whether they are in one of the Social Pension Mutual Societies referred to by the Private Insurance Administration and Supervision Act 30/1995, of 8 November 1995, with the amendment that this law made to the Social Order Fiscal and Administrative Measures Act 50/1992, of 30 December 1992. This way, Social Security retirement pensioners will not be able to make compatible the provision of this pension with exercising a professional activity, whereas retirement pensioners with a Social Pension Mutual Society will be able to do so. The Order contains an additional provision whereby it will not apply to posts in which the retirement pension was already compatible with the professional activity prior to the entry into effect of this order – 1 July – nor will it apply to anyone who had already turned 65 on that date.

BANKRUPTCY

On 21 July, the Barcelona Bar Association (ICAB) hosted the Bankruptcy Conference to mark the presentation of the issue of the Revista Jurídica de Catalunya (Legal Journal of Catalonia) devoted to bankruptcy case law (2004-2010). Of note among the papers given was the one by Juan Carlos Noguera de Erquiaga, a partner at Pintó Ruiz & Del Valle and Vice President of the Bankruptcy Law Section of the ICAB, on "The problem of credits against the mass".

BARCELONA

Beethoven 13, 7^o
08021 Barcelona
Tel: +34 93 241 3020
Fax: +34 93 414 38 85 / 11 57
ben@pintoruizelvalle.com
www.pintoruizelvalle.com

MADRID

Guadalquivir, 22
28002 Madrid
Tel: +34 91 745 49 58
Fax: +34 91 411 50 45
ma@pintoruizelvalle.com
www.pintoruizelvalle.com

PALMA

Sindicato, 69-7^o
Edificio Banco Santander
07002 Palma de Mallorca
Tel: +34 971 71 60 29
Fax: +34 971 71 90 75
palma@pintoruizelvalle.com

ALICANTE

César Elguezábal 39, pp1 dcha
03001 Alicante
Tel: +34 96 514 39 28
Fax: +34 96 51453 53
ali@pintoruizelvalle.com
www.pintoruizelvalle.com