

THE PUBLIC PROSECUTOR'S OFFICE AND THE POLICE COORDINATE IN ORDER TO EXPEDITE THE REMOVAL OF SQUATTERS

The Public Prosecutor's Office ("PPO") and the Ministry of Internal Affairs have issued instructions that underline the importance of gathering evidence at the start of an illegal occupation of property, making it possible to immediately remove the squatters by means of the adoption of interim injunctions in criminal proceedings.

BACKGROUND

To date, the vast majority of owners of illegally occupied property have opted for the civil jurisdiction rather than the criminal courts when seeking to have squatters removed, the former being faster and more effective.

The reason for this was the question of identifying the squatters and the impediment that the failure to identify them could represent in criminal proceedings, in addition to how infrequent interim injunctions are in this area. However, this is an approach that the Instructions from the Public Prosecutor's Office and the Ministry of Internal Affairs are now seeking to promote.

THE INSTRUCTION FROM THE PPO

The PPO, conscious of the insecurity that illegal occupation generates in society, and the highly negative effect it has on the Spanish real estate market and investors, has issued Instruction no. 1/2020, of 15 September, on criteria for action when applying for interim injunctions in the offences of housebreaking¹ and usurpation of real estate (the "**PPO Instruction**").

The PPO Instruction is of particular interest as it orders the representatives of the Prosecutor's Office to apply for interim injunctions in criminal proceedings involving housebreaking and usurpation, thus seeking the immediate removal of the squatters.

What is essential, as the PPO Instruction underlines, is that evidence be gathered before registering a complaint with the police, so that the police report prepared thereafter can be as well-documented as possible, and the court can grant the interim injunction without further delay, at the request of the Public Prosecutor's Office.

In this regard, the PPO Instruction does not state what specific means of evidence the complainant should be able to invoke, and establishes that any means of evidence may be valid, as the aim is celerity in the judicial action in order to avoid the offence continuing over time, while the full criminal procedure is in progress.

While the PPO Instruction considers it preferable to hear the person under investigation, it does not rule out the adoption of interim injunctions *ex parte*, if the person under investigation deliberately prevents identification or summons.

Key issues

- Encouragement of the use of the criminal jurisdiction for clear cases of illegal occupation.
- The injured parties and the police are urged to carry out inquiries and gather evidence before or simultaneously to filing the complaint.
- The Prosecutor's Office is obliged to apply for interim injunctions designed to achieve the immediate removal of the squatters.

¹ The PPO Instruction expressly states that the concept of "residence" also includes secondary residences.

The Instruction does not address the payment of a bond, in the case of such interim injunctions. However, our understanding is that it will not be necessary, provided it is the Public Prosecutor who applies for the interim injunctions.

THE INSTRUCTION FROM THE MINISTRY OF INTERNAL AFFAIRS

The Ministry of Internal Affairs, following the PPO Instruction, has published Instruction 6/2020, from the Secretary of State for Security, which establishes the protocol for action by the State Security Forces ("**SSF**") in the case of the illegal occupation of properties (the "**Ministry of Internal Affairs Instruction**").

The Ministry of Internal Affairs Instruction also insists on obtaining evidence that enables the SSF to proceed with the removal of squatters, and even their arrest, depending on the circumstances of each case. It is also important to highlight that it refers to the need to prevent the consolidation of criminal structures and organisations, increasingly prevalent, that have made illegal occupation their way of life, by exerting pressure on the owners of the properties.

WHAT DO THESE TWO INSTRUCTIONS ENTAIL?

Prosecutors are obliged² to apply for interim injunctions (i.e. removal of squatters) following the filing of the complaint.

In the event interim injunctions are not granted, the prosecutors are obliged to appeal the decision.

In the case of the police, they are likewise obliged to gather data and evidence that enables the Prosecutor's Office to assert grounds for the interim injunctions application.

CONCLUSION

Both the PPO Instruction and the Ministry of Internal Affairs Instruction represent a step forward in the recovery of illegally occupied properties, via the criminal jurisdiction, in a more expeditious manner than has been the case until now.

Both instructions insist on the need to obtain evidence (both the injured party and the police) before filing a complaint that would enable the illegally occupied property to be immediately vacated.

While many of the recommendations had already been adopted by the agents affected by the illegal occupation of properties, they will now become more important, even if this may entail minor delays in filing the complaint in order to ensure that the desired interim injunction is actually adopted. Proper adaptation to internal protocols will be essential to that end.

Finally, neither of the instructions refer explicitly to how the problem that arises when the removal involves vulnerable people must be addressed. These cases will have to be analysed individually, in coordination with social services.

² Being instructions, not mere circulars interpreting rules, they are of a binding nature.

CONTACTS



Alexandra Borrallo
Senior associate

T +34 91 590 94 06
E alexandra.borrallo
@cliffordchance.com



Fernando Irurzun
Partner

T +34 91 590 41 20
E fernando.irurzun
@cliffordchance.com



Iñigo Villoria
Partner

T +34 91 590 94 03
E inigo.villoria
@cliffordchance.com



Carlos Zabala
Counsel

T +34 91 590 94 74
E carlos.zabala
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, Paseo de la Castellana 110,
28046 Madrid, Spain

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