



GENERAL COUNCIL OF THE JUDICIARY

**CELSO RODRÍGUEZ PADRÓN, SECRETARY GENERAL OF THE  
GENERAL COUNCIL OF THE JUDICIARY,**

**HEREBY CERTIFIES THAT THE PLENARY OF THE GENERAL  
COUNCIL OF THE JUDICIARY, IN ITS MEETING ON THIS DAY, HAS  
APPROVED THE REPORT ON THE DRAFT BILL ON THE  
COMPLEMENTARY LAW OF THE CIVIL REGISTRY MODIFYING  
JUDICIAL POWER ORGANIZATION ACT 6/1985 OF 1 JULY, WHICH  
READS AS FOLLOWS**

**I.**

**BACKGROUND**

On 15 January 2009, the text of the Draft Bill of the Complementary Law of the Civil Register Act modifying Judicial Power Organization Act 6/1985 of 1 July (herein "the draft bill"), sent by the Ministry of Justice for the purpose of issuance of the mandatory report by this Council, was received in the Registry of the General Council of the Judiciary.

The Studies and Reports Commission decided to appoint the Honourable Margarita Robles Fernández as rapportuer, and in its meeting on 22 January 2010, approved this report, agreeing to its remission to the plenary of this Council.



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## II.

### **GENERAL CONSIDERATIONS REGARDING THE ADVISORY ROLE OF THE GENERAL COUNCIL OF THE JUDICIARY.**

The aim of the advisory role of the CGPJ referred to in article 108 of the Judicial Power Organization Act is assessment of draft bills and general provisions of the State and Autonomous Communities that affect totally or partially, among other matters expressed in the abovementioned rule, *“rules of procedure or that affect legal-constitutional aspects regarding protection in ordinary courts of the exercise of fundamental rights and any others that affect the formation, organization operation and government of courts and tribunals.”*

In light of this legal provision, the opinion of the Council regarding the remitted draft bill shall be limited to substantive rules or procedures specifically included therein, avoiding consideration of issues alien to the judiciary or to the exercise of the jurisdictional role entrusted to it.

However, the CGPJ reserves the right to express its opinion on aspects of the draft bill which affect fundamental rights and freedoms, due to the prevalent position and immediate effectiveness they enjoy under the express provision of article 53 of the Spanish Constitution. On this point, the basis should be the pronouncements of the Constitutional Court, as the supreme interpreter of the Constitution, whose rulings in all kinds of procedures constitute the direct source of interpretation of constitutional rules and principles, linking all judges and courts, in accordance with article 5.1 of the Judicial Power Organization Act.

Lastly, and in accordance with the principle of collaboration among constitutional bodies, the CGPJ has been indicating the opportunity of carrying out other considerations in its reports related, in particular, to



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questions of legislative technique or terminological order, with the aim of contributing to improving the correctness of regulatory texts and, consequently, their effective applicability in judicial proceedings, for its the courts themselves who, once they are approved by the competent body, must ultimately apply the rules submitted to report by this Council.

### **III.**

#### **STRUCTURE OF THE DRAFT BILL.**

Given the complementary nature of the draft bill, its content is necessarily a tributary of the draft bill on the Registry Act. Its brevity is notable, as it consists of only one article, which is broken down into four numbers and two final provisions.

### **IV.**

#### **GENERAL CONSIDERATIONS REGARDING THE DRAFT BILL.**

The explanatory memorandum underscores the importance of the changes introduced by the draft bill on the Civil Registry Act, particularly regarding non-judicial procedures for positions of persons responsible for the civil registry.

This modification requires a parallel reform of the Judicial Power Organization Act, which, specifically, is limited to articles directly related to performance of functions of the civil registry by judges and magistrates and which concerns the situation of special services regarding court clerks, given that the draft bill on the Civil Registry Act also foresees that court clerks will occupy positions of responsibility in the Civil Registry.



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## V.

### **ANALYSIS OF THE CONTENT OF THE DRAFT BILL.**

As indicated in the section on the structure of the draft bill, the sole article is broken down into four numbers. For methodological reasons it is appropriate to analyze the content of the modification in a manner different from simple enumeration of the cardinal points of its points, which, to wit, is the following: A) Courts and Tribunals; B) Judges; C) Court Clerks; D) Other bodies of civil servants.

#### **A) COURTS AND TRIBUNALS.**

Number one of the sole article eliminates the term "Civil Registry" from the current draft of article 2.2 of the Judicial Power Organization Act. In the wake of this elimination, the aforementioned article is worded in terms practically identical to the terms of article 117.4 of the Constitution, stating that: *"Courts and Tribunals shall not exercise more functions than the ones indicated in the previous paragraph, and those expressly attributed to them by law in guarantee of any right."*

The modification at issue leads, at least theoretically, to avoiding any mention whatsoever of judges and magistrates in regard to performance of the functions of the civil registry. The reasons are the same for justifying the modification of section 1 of article 100, the purpose of which is to reflect the elimination of the responsibilities held by justices of the peace regarding the civil registry.

This is without prejudice to recognition of the judicial protection of control and qualification of documents that affect rights related to marital status, protection that falls outside the administrative management regime of the registry office that intends to introduce the draft bill on the Civil Registry Act.



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## **B) JUDGES**

Point two of the sole article repeals the totality of article 86 of the Judicial Power Organization Act. This rule states that *"1. The civil registry will be the responsibility of judges of first instance and, by delegation of said judges, justices of the peace in accordance with the law, without prejudice to what is set forth in it for other civil registries where appropriate. 2. The Judicature Act shall determine the towns or cities where one or several judges will exclusively perform the functions of the civil registry and, in cities where there is more than one court of first instance, which judge or judges will perform the functions of the civil registry."*

The consideration made in the previous section does not require further commentary, except for reiterating that the non-judicial procedure resulting from what is envisaged in the draft bill on the Civil Registry Act results in the provision of performance of the functions of the civil registry by judges of first instance being without effect.

## **C) COURT CLERKS**

Point 4 of the sole article adds a new paragraph to number one of article 445 of the Judicial Power Organization Act and is worded as follows: *"Likewise, court clerks designated as being in charge of the registry might find themselves in a situation of special services, in accordance with the Civil Registry Act and its rules of development."*

The administrative situation of special services is also considered for court clerks, article 445.1 of the Judicial Power Organization envisaging that: *"The administrative situations in which court clerks may find themselves, as well as their retirement, will be the same and shall*



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*adjust their declaration and with the effects established in this substantive law for judges and magistrates."*

In order to determine the legal regime of the administrative situation of special services, mention must first be made of what is set forth in article 351 of the Judicial Power Organization Act. This rule, in the sections between letters a) and f), includes all the cases in which the appointment of an individual for performing the duties indicated therein or for fulfilment of an international mission, in certain bodies, for a period of more than six months gives rise to this administrative situation.

Article 354 of the aforementioned Judicial Power Organization Act envisages that: *"Judges and magistrates in this situation will receive the remuneration of the post or for the functions they perform, without prejudice to the right to remuneration on the grounds of their seniority in the legal profession; 2- For judges and magistrates in the situation of special services, the time that they remain in this situation will be calculated for the purpose of promotions, seniority and passive rights. They will have the right to reservation of the place they held prior to the situation or one they could have obtained during the time that they held it."*

The possibility of court clerks occupying positions of responsibility in civil registries entails recognition of the effective work of these civil servants in registry tasks and, in addition, permits civil servants especially linked to the exercise of public faith to select these positions in the future. Seen in this way, the administrative situation of special services will make members of this civil service body more inclined towards the option they are offered, as it guarantees the calculation of seniority and reservation of place.



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As to what this section refers to, it only remains to make an observation about the wording of the new paragraph added to article 445.1 of the Judicial Power Organization Act. As can be seen, the terms "they may find themselves" are used following, on this point, the wording of the first paragraph of the article. However, the use of this terminology, in the second paragraph, may give rise to doubts regarding its actual meaning and suggest that the situation of special services is discretionary or potestative or non-formal, as proper understanding of the rule suggests. Therefore the words "*may find themselves in the situation of special services*" should be replaced by the words "*will be declared in the situation of special services*", as the absolute and categorical meaning of this option, which, in addition, is worded the same way as the first subparagraph of article 351 of the Judicial Power Organization Act that includes the situation of special services for judges and magistrates.

### **D) BODIES OF CIVIL SERVANTS - JUDICIAL STAFF.**

#### **1. Forensic Doctors.**

As envisaged in article 479.1 of the Judicial Power Organization Act, forensic doctors are career staff constituting a national corps of higher education graduates of the judicial staff. Their relationship to the civil registry is regulated as follows:

- Obligation of offering technical assistance, both in the area of forensic pathology and medical examiner's duties and in the area of optional attendance or supervision (article 479.2).
- Acting at the direction of persons responsible for the civil registry, performing their duties independently and under strict scientific criteria (article 479.2, third paragraph).
- Exceptional attachment to the offices of the civil registry when service necessities require it.



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In addition to the provisions of the Judicial Power Organization Act, article 378 of the Civil Registry Act states that: *"The duties that the Civil Registry Act attributes to doctors of the civil registry will be performed by staff of the corps of forensic doctors. As a general rule, these functions will be performed together with other functions of this corps, but, in exceptional cases, there may be positions attributed exclusively to functions of the civil registry."*

As can be inferred from the aforesaid rule, forensic doctors carry out their duties in the civil registry, both due to their being part of a body attached to the judicial staff in view of positions of responsibility being held by judges and magistrates and as a result of the express provision in the RRC. This situation gives rise to an analysis of the extent to which it is appropriate to maintain intact the functions of the members of this body. For the draft bill on the Civil Registry Act, on the one hand, excludes judges and magistrates from holding positions of responsibility in this regard while, on the other, makes no mention whatsoever of forensic doctors.

It is expected that the absence of a provision in this respect is the result of a desire to keep the status quo unchanged and in this way continue using the resources offered by members of this body of workers.

This being the legislative option, it is nonetheless appropriate to make specific reference in the Civil Registry draft bill to forensic doctors, at least in order to ensure that they will continue performing the duties that the Judicial Power Organization has entrusted them with. In this way, the connection between forensic doctors and the civil registry will not be dependent on compulsory collaboration with the administration of justice but on the basis of an express provision of registry legislation.





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**2- Other staff:**

In this subparagraph, it is appropriate to make reference to the content of number three of article 521 of the Judicial Power Organization Act. Envisaging the specifications that the lists of positions of the different units that make up the structure of the judicial offices must contain, number 3 of said article mentions as a centre of destination the Central Civil Registry and the Sole Civil Registries of each place, where they exist.

It is evident that in light of the removal from the judicial process procedure being carried out and the new structure of Civil Registry Offices, the mention made above is ill-founded, especially if it is taken into account that the Third Final Provision of the draft bill on the Civil Registry Act anticipates the Government, through the appropriate regulatory provision, defining the positions of the Central Office and the General Offices of the Civil Registry, as well as the form of provision for them. Thus, express repeal of this section of the aforesaid article is advisable.

Thus concludes the report of the General Council of the Judiciary.

**In witness whereof and for all pertinent purposes, I hereby sign and issue this document in Madrid, on the twenty-fifth of February of 2010.**