

REGULATION number 1/1998, of December 2nd, on the Processing of Complaints and Reports relative to the functioning of the Courts.¹

I

In accordance with Article 110, section m), of the Bodyic Law of the Judiciary, in the drafting given by the rule through Bodyic Law 16/1994, of November 8th, the General Council of the Judiciary is entitled to the regulatory authority in matter of inspection of the Courts and processing of complaints and reports. The regulation of the latter aspect can be framed within the necessity to establish citizen care services and channels through which those complaints and reports considered convenient can be efficiently formulated, as well as to collaborate with the best provision of the service through initiatives and suggestions, this way responding to the increasing concern that can be appreciated in this matter in the group of powers and public administrations. In the Administration of Justice this need has to be satisfied taking into account the peculiarities deriving from the exercise of the jurisdictional legal authority, in accordance with the regulations of the Bodyic Law of the Power of the Judiciary, such as the constitutional order of executive power attribution in matters of the administration of Justice.

In the White Book of Justice, approved by Plenary session of this General Council of the Judiciary on the 8th of September 1997, the need of giving a new treatment to the complaints of citizens and informative procedures are highlighted, as well as the fact that the citizens must be able to contact the different governmental and jurisdictional bodys in demand of information or in order to formulate their complaints. The White Book itself reminds that the regulation of this type of activities and services has been recently dealt with in the different spheres of the Public Administration. Such is the case of Decree 208/1996 of February 9th, through which the Services of Administrative Information and Citizen Care and Royal Decree 2458/1996, of December 2nd, through which the Council for the Defence of the taxpayer is created, as well as Law 6/1997 of April 14th in the legislative field, of Bodyization and Functioning of the State's General Administration (article 4) and Law 1/1998, of February 26th of Rights and Guarantees of the Taxpayers.

The Plenary Session of the General Council, in its reunion of May 6th 1998, agreed to entrust the Commission of Studies and Reports of the General Council the start of the procedures foreseen in article 110 of the Bodyic Law of the Judiciary for the development of the corresponding statutory text, in accordance with section m), final digression, of such rule.

On the other hand the Commission of Studies and Reports, having previously requested the necessary record, including a number of reports of the Inspection Service, drew up the initial text of the project, that was approved by the Commission in its reunion of September 8th 1998, agreeing at the same

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time the opening of the period of reports and hearings foreseen in the aforementioned article 110 of the

Bodyic Law of the Judiciary. The procedure of public information and allegations has been provided with a wide range in order to obtain a bigger number of elements of knowledge thus reinforcing the opportunity and the efficacy of the rule. For that matter, in addition to requesting, accordingly to the legal regulations, the reports coming from professional associations of Judges and other professional corporations referred to in article 110.3 of the Bodyic Law of the Judiciary, the intervention of the State Administration as well as the Autonomous Communities with competencies in matters of Justice and the report of the Attorney General, the Supreme Court, the National High Court, the High Courts of Justice, the Deans of the Courts referred to in article 166.1 of the Bodyic Law of the Judiciary, and the professional associations of the Fiscal Career and the Judicial secretaries have been transferred through the corresponding governmental bodys.

II

Through the text subjected to report it is intended to carry out the statutory development of article 110.1, section m) of the Bodyic Law of the Judiciary in order to cover the current statutory gap and create in the field of Justice Administration, as well as in the rest of public administrations and institutions, efficient procedures of citizen care when it comes to lodge claims, as well as to obtain previous information that could resolve the citizens' problems in their relation with the Justice Administration, in advance or avoiding the claim, or that it would result necessary in order to make a complaint and to lodge initiatives and suggestions on the functioning of the judicial bodys, all of it through the appropriate regulation of a supporting nature, developing the same rules of the Bodyic Law of the Judiciary with a strict subjection to its rules, both in the activity of the government bodys of the Judiciary and in its relation in this matter with the jurisdictional bodys of its respective field. Though during the information procedure the project the existence of a general opinion could be ascertained in favour of the creation of more complete and improved services of citizen care in order to improve the efficacy of the Justice Administration and to reinforce the confidence in it of the citizens as well as the public opinion, considering both the legal limitations, such as the novelty of the present regulation, a minimum regulatory content has been chosen in order to allow in the future, especially through the development of the common services anticipated in article 272 of the Bodyic Law of the Judiciary, to improve and complete the total care of the receivers of the service. In this Regulation the processing and resolution of complaints and reports are established dealing with the functioning of the Courts, lodged before the mentioned jurisdictional bodys, independently from the specific channels of lodged complaints or reports through other institutional means, such as the right of petition recognized in article 29 of the Spanish Constitution or, in connection with the Justice Administration, such as those established in Bodyic Law 3/1981, of the Ombudsman and the related Bodyisation and Operation Regulations of April 6th 1983 (article 25).

III

The text of the rules contains one first chapter, titled "General Regulations", where, through separate articles, the object of the rule and its material scope,

the competencies in this matter of the Presidents of the Courts and High Courts and of the Deans and the functions of the General Council of the Judiciary are regulated, in order to allow the greatest effectiveness of the presentation process of complaints and claims, including the assignment of the governmental bodies and judicial offices of the appropriate information materials and forms.

Chapter II, relating to general processing rules, regulates first of all previous information to those interested, accordingly to the rules of the Bodyic Law of the Judiciary and to the statutory regulations on the supplementary access of the judicial proceedings and with the obligatory reservations that are derived from the procedural regulations on the secret of the proceedings or the personal data protection requirements. The text makes a difference between general information and specific information, thus following the generally accepted criteria in this matter, as stated by the regulation contained in articles 2 and 3 of Royal Decree 208/1996, of February 9th, through which the services of administrative information and citizen care are created, respecting the requirements derived from the distinct nature and regulation of the jurisdictional bodies and the government, respectively, and in particular to the rules of the Bodyic Law of the Judiciary on information to those interested regarding to the processing state of a certain proceeding (article 234). Further, the possibility of presenting complaints, reports or suggestions of the interested parties is established within the governmental bodies or in the judicial body itself, with as much amplitude as possible, in order to avoid unnecessary nuisances and displacements in the situation of potential offense when lodging a complaint. Afterwards, the processing of such requests is regulated in a simplified manner, depending on if dealing with initiatives or suggestions, complaints or reports. The obligation to acknowledge receipt to the interested parties is established, in order to inform them of the processing needed to receive their requests and the body that will receive them.

In the final part, through the corresponding regulations, the possibility of establishing common services of citizen care is contemplated, in accordance with the provisions of article 272 of the Bodyic Law of the Judiciary. The Ministry of Justice or, where appropriate, the Autonomous Communities with executive power in the matter, are in charge of the decision of the structure of such services.

In addition, Agreement 1/1986 of April 22nd is added, by the Plenary Session of the General Council of the Judiciary, through which the Rules of Bodyisation and Functioning of the General Council are approved, a text through which the Unity of Citizen Care is created within the Inspection Service, with the aim of coordinating the functioning of the services and to centralize the information relating to the proceedings foreseen in the present statutory text. Also, the procedure to develop the texts and forms needed for their use by the interested parties is established. Likewise, the provisions contained in article 2.2. of the Agreement of June 7th 1995 are carried out, on the publication of an updated frame of the current statutory rules and, finally, it is established that the regulation will have to come into force on the date of its publication in the Official State Bulletin.

By virtue thereof, the Plenary Session of the General Council of the Judiciary, in its meeting on the aforementioned date, has agreed to approve the following regulations:

CHAPTER I

General Provisions

Article 1. Purpose.

These Regulations have the aim of controlling, according to the provisions within article 110, number 2, section m), of the Bodyic Law of the Judiciary, the processing of complaints and reports of the citizens relating to the functioning of the Courts and the previous information and citizen care.

Article 2. Executive powers of the Court and High Court Presidents and of the Dean Judges.

1. The Presidents of the Courts and High Courts are in charge of hearing the complaints made by the interested parties in the lawsuits, adopting the necessary precautions within its executive power, in accordance with the provisions of articles 160 and 162 of the Bodyic Law of the Judiciary.

2. Likewise, the Judge Deans and, in case that role did not exist, the Judges will take care of the complaints lodged by the interested parties in the different proceedings, adopting the necessary precautions, in accordance with the provisions of article 168 of the Bodyic Law of the Judiciary.

Article 3. Functions of the General Council of the Judiciary.

1. The arrangement of the activities of processing of complaints and reports and of the previous information to the citizen is the responsibility of the General Council of the Judiciary, accordingly to the function of superior research and surveillance of all Courts and High Courts that, when proving and controlling the functioning of the Justice Administration, assumes article 171 of the Bodyic Law of the Judiciary.

2. For the effectiveness of the provisions of the paragraph above the General Council will proceed to the development of the corresponding information materials, forms and registries of service and of processing of complaints and reports, according to the provisions in the present Regulation and in the Bodyic Law of the Judiciary.

3. The drawn-up forms will be completely available to the interested parties. In these forms it will be specified that the setting-up of the complaint or demand does not suspend the terms established by the laws for exercising an appeal, action or right that could attend the interested party.

4. The General Council of the Judiciary will provide all the governmental bodys and the judicial offices with the aforementioned forms and information materials, sending them to the requesting interested parties.

CHAPTER II

General Rules of Procedure

Article 4. Information for the interested parties.

1. Previously to the presentation of a complaint or a report, general information may be requested on the composition, executive powers and bodyic regulation of the Court or High Court, as well as on the characteristics of a certain process or procedure. The information that will be provided will not affect the content of the legal authority that originally belongs to the Courts and High Courts, in accordance with the provisions of article 117 of the Spanish Constitution, nor will it affect the functions of legal advice, representation and defense in the process legally conferred to the competent Legal professionals.

2. Likewise, at the request of the interested parties and in the terms established within article 234 of the Bodyic Law of the Judiciary, the Presidents and the Deans may urge from the jurisdictional body to provide those who, through the Secretary or the competent personnel of the Courts and High Courts, information on the state of the procedure of certain proceedings, and in no case the information obtained this way, according to the provisions of article 5 of Regulation number 5/1995, of june 7th, on the Supplementary Aspects of the Judicial Proceedings, could refer to the proceedings declared secret according to Law, or to data relating to honor, privacy or self-image of persons.

Article 5. Presentation of complaints and reports.

1. The interested parties may submit their complaints or reports, as well as in general initiatives and suggestions relating to the functioning of the Courts and High Courts, in the General Council of the Judiciary, in any of the bodies to which article 2 of the present Regulation refers to, or in the jurisdictional body itself, through a writing in which the identifying data of the interested party is indicated, the motive of his or her reason for lodging a complaint or a report, the body addressed, and the jurisdictional body and the procedure referred to. The presentation shall be made within the registry of the body, receiving in such act a receipt or a sealed copy, in any of the offices mentioned in article 38.4 of Law 30/1992, of November 26th, on the Regulation of the Public Administrations and Common Administrative Procedure, or through the technical means to which article 230.4 of the Bodyic Law of the Judiciary refers to.

2. In the secretary's office of each jurisdictional body, the corresponding forms will be available for the interested parties in a clearly visible and adequately indicated, the corresponding forms for their facultative use by the aforementioned, taking into account the previous information requests received. In those places where several judicial bodies have their headquarters, this activity will be centralised in a certain building.

3. Such writings, once submitted, will be sent for their procedure and resolution to the Dean's Office, when it is a Court, or the Presidency of the Court or the High Court, when dealing with a governing body, within the following forty eight hours, preserving a copy to add it to the corresponding book and another one to be sent to the General Council of the Judiciary within the same period, to the purposes established in article 423.2 of the Organic Law of the Judiciary, all of it without prejudice to adopt, whenever established the complaint or suggestion and always within the executive powers of the receiving body, the necessary measures in order to correct abnormalities that were in the origin of the complaint or suggestion, participating such extremes in the governmental body. The resolution will be adopted as soon as possible and, in any case, within the period of one month from its reception by the body that shall resolve it.

Article 6. Processing of initiatives or suggestions, complaints and reports.

1. When in the writing an initiative or suggestion is expressed, and it is considered to be founded, the necessary precautions to deal with it will be adopted, within the competences of the organ. In another case, the initiative or suggestion will be subjugated to the criteria of the competent body, together with a concise statement, when appropriate, on its implications and possible origin.

2. When a complaint is lodged in the writing, the procedure will be to determine its possible grounds, requesting, when appropriate, the corresponding records and files. Thereupon the necessary precautions will be adopted in order to correct abnormalities or situations of origin of such complaint, within the competences of the acting body, or the jurisdictional organ will adopt the appropriate measures, with strict respect in any case to the legal authority of the Court or High Court.

3. When the submitted writing exposes facts that could concern a disciplinary infraction, or from the proceedings carried out possible responsibilities of the same nature would follow, the corresponding disciplinary proceeding will proceed in the manner provided by article 423.1 of the Organic Law of the Judiciary. When the competence for the knowledge of the possible offences does not correspond to the governmental bodies of the Judiciary, we will proceed to send the report to the competent administration, body or professional corporation, informing them at the same time of the corresponding resolution.

4. The Inspection Service will receive and prove the reports and complaints addressed to the General Council of the Judiciary on the functioning of the diverse judicial bodies, accordingly to the provisions of Rule 1/1986, of Organisation and Operation of the General Council of the Judiciary.

Article 7. Acknowledgement of receipt.

Within the following forty eight hours after receiving the writing, the competent body will inform the interested party of the appropriate acknowledgement of receipt that will necessarily contain the indication to which the final digression of article 3.3 of this Regulation refers to, informing the

body that it will have to resolve the claim, as well as the procedure established to that effect.

Article 8. Notification and transfer of the agreements.

1. The interested party will be informed of the appropriate resolution, that will have the right to know at all times the state of the procedure of his/her complaint or report.

2. The body that will have to resolve on the complaint or report will send a copy of the different resolutions adopted to the Inspection Service of the General Council of the Judiciary, for statistical and other purposes.

First additional provision. Unity of Citizen Care².

1. Article 118 of the Agreement on date April 22nd 1986, through which Rule 1/1986 is approved, of Organization and Functioning of the General Council of the Judiciary, is added with a number 4 quoting: “4. Unity of Citizen Care”.

2. Agreement 1/1986, as article 122 bis, adds the following text: “Article 122 bis. The Unity of Citizen Care is in charge of the coordination and functioning of the services of reception and complaints and reports and the attention and information of the citizen regulated in the present Rule...”.

Second additional provision. Documentation of an informative nature, forms and service protocol.

Within the period of two months from the publishing of this Regulation, the General Council of the Judiciary will proceed to approve the corresponding informative documents, forms and registry service and complaints and reports procedure, for their use in the lodging of complaints and reports and in the previous information to the citizen, through the corresponding general instruction, that will be published in the “Official State Bulletin”.

Third additional provision. Common Services of Citizen Care.

In accordance with the provisions of article 272 number 1 of the Organic Law of the Judiciary and in the established conditions of such rule, the corresponding common services shall be established for citizen care by the Ministry of Justice and, if appropriate, by the Autonomous Communities with competence in the matter, the structure, templates and other aspects to which the number 4 of the same rule refers to. Such common services will assume the activities of reception of complaints and reports and of information and attention to the citizen in the terms resulting from the agreement of creation of these, without prejudice of the attributed legal authorities in the Organic Law of the Judiciary to the Presidents of the Courts and High Courts and to the Judge Deans in the matters to which this Regulation refers to and the functions attributed to the legal orientation services wherever established.³

² See the text of provisions added in the § 3 of this work.

³ According to the established in the sole additional provision, of the Agreement of April 14th 1999, of the Plenary Session of the General Council of the Judiciary, through which Regulation 5/1995, of June 7th, on Accessory Aspects of the Judicial Proceedings, adding to it Title VII “On Common Services” found in the § 26.6 of this work, the forewarned under Title VII will be applied to this Regulation, especially in the aspects referring to the respective competences for the creation of Common Services corresponding to the Administration and the Judiciary,

Fourth additional provision. Updated frame of regulatory provisions in force.

In accordance with the provisions of article 2.2. of the Agreement of June 7th 1995, of the Plenary Session of the General Council of the Judiciary, through which the Rules of the judicial career are approved, of the Judicial School, of the Justice of the Peace of the Governmental Bodies of the Courts and of the Supplementary Aspects of the Judicial Proceedings, the updated chart of the Regulations in force are attached as an appendix to this statutory agreement, with the new approved rules or the modification of the previous ones.

Derogation Provision

The provisions of equal or less rank will oppose to the provisions of this Regulation.

Last Provision. Enforcement.

This Regulation will come into effect on the day of its publication in the "Official State Bulletin".

considering that their field of application can be framed in the the wider regulated in the mentioned Regulation.