



GENERAL COUNCIL OF THE JUDICIARY

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

**HEREBY CERTIFY: THAT THE PLENARY SESSION OF THE  
GENERAL COUNCIL OF THE JUDICIARY, DURING THE MEETING  
ON THE DAY OF THE DATE, HAS APPROVED THE DRAFT ORDER  
ON THE RULING OF THE OPERATION OF THE LAND REGISTRY  
VIRTUAL OFFICE AND THE LAND REGISTRY INFORMATION  
POINTS.**

**I**

## **BACKGROUND**

On the 18<sup>th</sup> of April of 2008, the Draft Order of the Direction General of the Land Registry approving the operation regime of the Land Registry Virtual Office and the Land Registry Information Points, was filed in this Service of Studies and Reports, delivered by the Central Services of the General Secretary, for the purposes of issuing the mandatory report.

The Commission of Studies and Reports met on the 6<sup>th</sup> of May of 2008 and agreed to appoint the member Mr. Javier Laorden Ferrero as the rapporteur. This report was approved by the Commission in the meeting of the 21<sup>st</sup> of May of 2008.



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## II

### **GENERAL OVERVIEW ON THE ADVISORY FUNCTION OF THE GENERAL COUNCIL OF THE JUDICIARY**

The advisory function of the General Council of the Judiciary is covered by article 108.1 of the Statutory Law of the Judiciary; specifically, its subparagraph e) refers to the power to make reports on law drafts and general provisions of the State and the Autonomous Communities affecting totally or partially to: *“procedural rules or rules affecting legal-constitutional aspects of the judicial protection of the fundamental rights in the ordinary Courts, and any other rule affecting the constitution, organisation, working and governance of Courts and Tribunals”*.

In the light of this legal provision, and if we correctly construe the scope and sense of the reporting power of the General Council of the Judiciary recognised therewith, the report to be issued on the delivered draft must be limited to the substantive or procedural rules specifically included therein, avoiding any consideration on issues alien to the Judiciary or the exercise of the jurisdictional function entrusted to it.

Notwithstanding the alleged limitation on the issues related to the reporting power of the General Council of the Judiciary, the advisory function of this constitutional body is understood, in principle, in its wide sense. Therefore, the General Council of the Judiciary has define the scope of its reporting power starting from the difference between a strict scope, coinciding in literally terms with the scope of issues defined in the above-mentioned article 108.1.e) of the Statutory Law of the Judiciary, and a wider scope, originated in the position of this Council as the constitutional body governing the Judiciary. Within the first scope, the report to be issued must refer to, mainly, the issues covered by the quoted provision and avoid, at least generally, considerations related to the contents of the Draft in any issues not quoted by article 108 of the



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Statutory Law of the Judiciary. With regards to the wider scope, the General Council of the Judiciary reserves the power to express its opinion on those aspects of a draft law affecting fundamental rights and freedoms, on the basis of its prevalent position and of the immediate efficacy granted by the express provision of article 53 of the Constitution. In this point, we should particularly start from the decisions of the Constitutional Court, given its condition of supreme interpreter of the Constitution, the decisions of which, entered for all sort of proceedings, constitute the direct source of interpretation of the constitutional provisions and principles. These decisions are binding for all the judges and courts, pursuant to article 5.1 of the Statutory Law of the Judiciary.

Furthermore, and pursuant to the cooperation principle among all the constitutional bodies, the General Council of the Judiciary has pointed out several times the opportunity to provide other considerations in its reports related, in particular, to issues of legislative technique or terminology, to help improving the correctness of the ruling texts and, consequently, its effective applicability in judicial proceedings, since the jurisdictional bodies will be, ultimately, the ones eventually applying the rules being reported by this Council, once they have been approved by the competent body.

## II.

### **EXAMINATION OF THE ORDER UNDERGOING A REPORT**

#### **1.- Background**

By means of the Orders of the Direction General of the Land Registry issued on the 28<sup>th</sup> of April of 2003 and the 29<sup>th</sup> of March of 2005, it was decided which were the software and applications needed for the consultation and validation of information of the land registry by electronic



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means, and both the Virtual Office of the Land Registry (OVC) and the Information Points of the Land Registry (PIC) were ruled.

This Order consolidates in a single order the other two mentioned in the foregoing and adapts the rules to the decisions contained in the Consolidated Text of the Land Registry Law, approved by the Royal Legislative Decree 1/2004, of 5<sup>th</sup> of March, and by the Royal Decree 417/2006, of 7<sup>th</sup> of April, covering the rules for the implementation of the first one.

The Draft Order undergoing examination has as main purpose, pursuant to the first section, “the ruling of the conditions to render the services offered by the Virtual Office of the Land Registry directly to the user, as well as those services rendered through the Information Points of the Land Registry located in the authorised administrations, entities and public corporations”.

The Second section of the Order specifies the services rendered by the Virtual Office, fed on the data of the Land Registry National Data Base. The services are the following:

1. Consultation of non-protected land data
2. Consultation and certification of protected land data
3. Supply of information on real state of the land registry
4. Registration and processing of proceedings within the land registry
5. Consultation of the processing status of proceedings within the land registry
6. Request of provisional reference number of the land registry
7. Checking up of land registry certifications
8. Access consultation
9. Consultation of the date of changes in the land registry



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## 10. User registration

The Third section covers the requirements to access those services, both in the case of free consultation, by the land holders, by the judicial bodies and the Administration, entities, and public corporations, by the public notaries and registrars of deeds, as well as in the case of access by means of the Information Points of the Land Registry.

The Fourth section rules the authorisation of services and the user registration; the Fifth section covers the regime of responsibilities and the Sixth, the control of accesses. The order concludes with an additional provision; three transitory provisions; a derogatory provision and a final provision stipulating that the order will enter into force within a month, starting from the day following to its disclosure in the State Official Bulletin.

After performing the examination of the Draft Order and pursuant to the exposition above related to the scope of the advisory function corresponding to the General Council of the Judiciary, we must highlight that there are only two sections in the draft that can affect the exercise of the jurisdictional powers or the operation of Courts and Tribunals.

Therefore, paragraph 2 of the Second section, under the name of "Service of consultation and certification of the protected data of the land registry" stipulates: *"b) The judicial bodies and particularly the judges and tribunals, as well as the State Prosecutor Office, may have access to the protected information of the Land Registry without the consent of the affected holder and in the exercise of their granted functions, pursuant to paragraph c) of article 53.2 of the Law of the Real State Registry, and pursuant to the stipulations of the Statutory Law 15/1999, of the 13<sup>th</sup> of December, on the Protection of Personal Data"*. As a supplement to the foregoing, the subsequent paragraph f) remarks the following: *"The*



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*Direction General of the Land Registry, at their own initiative or requested by the corresponding land holder, may request the judicial bodies, Administrations, entities, public corporations, notary public offices or land registries to justify their access to protected data”.*

The Third section, on “Requirements to access the services” stipulates in its paragraph 3 that *“The access to the Virtual Office of the Land Registry will be performed by courts and tribunals through the Judicial Neutral Point in the conditions agreed by the General Council of the Judiciary, without the need to make a user registration in advance”.*

## **2.- Considerations on the contents of the Draft**

The effective protection of the citizens rights and the speeding up of judicial processes is favoured by the fact that Courts and Tribunals have access to updated land information on the land and real state holders, avoiding the need that the parties in the different judicial proceedings have the need to provide those data and avoiding also the consent of the affected holder. Such access is particularly helpful in those proceedings of voluntary jurisdiction of declarations of title to land or proceedings the efficient processing and resolution of which requires the knowledge of data related to land holders and value of the real state of the holders, to indicate the economic profile thereof.

Article 95.1.a) and h) of the General Tax Law 58/2003, of 17<sup>th</sup> of December, generally stipulates the transfer or communication of reserved data, if they have tax importance, among others, to the Courts and Tribunals.

With regard to the land data, article 51 of the Consolidated Text of the Law of the Land Registry stipulates that the protected character of some data, among which we have those related to the identification of the



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land holder and the value of the real state. The legal regime which these data are subject to restricts the possibilities of accession to the land holders themselves, and conditions in any case the access to the consent of the affected holder. With regard to those data, article 53.2 of the same Consolidated Text establishes that the Courts and Tribunals may access those protected land data without the consent of the affected holder.

This possibility of accession respects the provisions of the Statutory Law 15/1999, of 13<sup>th</sup> of December, on the Protection of Personal Data, which in its article 11 stipulates that the consent of the affected holder is not needed when the communication of the data is addressed, among others, to Courts or Tribunals.

The usefulness and convenience of establishing an electronic way of communication of the land data to the Courts and Tribunals, created an Agreement between the State Secretary for Taxes and Budgets (Direction General of the Land Registry) and the General Council of the Judiciary, with regard to the management of the Land Registry, dated on the 9<sup>th</sup> of July of 2007, by means of which the mechanisms for the electronic access by the judicial bodies to the land registry data are implemented, making effective the provisions now collected in the Order undergoing the examination.

Thus, the object of the Agreement is *“the accession to land accurate information for the quick processing of judicial proceedings, using the electronic transfer of data as a means of substituting the paper certificates”* (First Clause). Moreover, the Agreement refers, specifically, to the stipulations of the Order now being approved, appointing that *“the access to such information by the Courts and Tribunals will be performed through a Judicial Neutral Point managed by the General Council of the Judiciary, avoiding the consent of the land holders, and will be subject to the stipulations of the Order of the Direction General of the Land Registry*



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*approving the software and applications for the consultation of land data and the obtaining of electronic land registries (Second Clause)”.*

With regards to the access control, the stipulations contained in the Order undergoing the examination, are object of specific concretion by the Agreement itself, which covers that *“It corresponds to the General Council of the Judiciary the control of the accesses performed by the users of the web services of the Direction General of the Land Registry, which shall be performed pursuant to the provisions of the Consolidated Text of the Law of the Real State Registry and the Statutory Law 15/1999; nevertheless, the Direction General of the Land Registry, if duly reasoned, may deny the access if it is considered that it is not pursuant to the Law, and can also perform controls over such accesses and require any clarification or justification that may consider necessary”* (Third Clause).

### **3.- Conclusion**

In view of the foregoing, we conclude that the Draft Order de facto transfers the text of a general provision, and the stipulations were already contained in the quoted Agreement of the 9<sup>th</sup> of July of 2007, for the electronic access to land information by the Courts and Tribunals; the rule performed is adapted to the provisions of the Statutory Law for the Protection of Personal Data, the General Tax Law, the Consolidated Text of the Law of the Real State Registry and the Royal Decree approving the Rules of implementation thereof, therefore the text does not originate fundamental objections.

Notwithstanding the foregoing, and from a pure formal perspective, we do not consider technically correct the expression used in the Second section, subparagraph 2.b), referring to *“The judicial bodies, and in particular judges and tribunals”*; since this expression confuses the





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judicial bodies with the holders thereof. Thereof, if the reference is related to the judicial bodies, it should refer to the “Courts and Tribunals” and, if is related to the holders of judicial bodies, then it should refer to “Judges and Magistrates”.

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

**In witness whereof, I hereby issue and sign this for all pertinent intents and purposes in Madrid, on the twenty-eighth of May of two thousand and eight.**