

Organic Law 7/2015, of July 21, 2015, amending Judiciary Organic Law 6/1985, of July 1, 1985

Organic Law 7/2015, of July 21, 2015, amending Judiciary Organic Law 6/1985, of July 1, 1985, and approved by the lower house of the Spanish parliament on July 8, 2015, was published in the Official State Gazette on July 22, 2015.

The Law will come into force on October 1, 2015, except for paragraphs one, two and five of Final Provision three (amending Judicial Review Jurisdiction Law 29/1998, of July 13, 1998), which is set to enter into force one year after its publication (Final Provision ten).

This reform, laid out in a single article containing one hundred and sixteen paragraphs, ushers in a series of structural and organizational measures intended to bring enhancements to the efficiency and flexibility of the Spanish judicial system.

The new measures enacted include the following:

1. Military courts

Article 3.2 is amended to definitively incorporate military courts into the judiciary and do away with the Ministry of Defense's privilege enabling it to submit short lists for the appointment of senior judges to the Military Chamber of the Supreme Court.

In this connection, changes are made to Military Procedure Organic Law 2/1989, of April 13, 1989 (Final Provision two), and the Government is required to submit to the Spanish Parliament, within two years from the entry into force of the new Law, a Bill to reform Organic Law 4/1987, of July 15, 1987, on the Jurisdiction and Organization of Military Courts, a Bill which must be in line with the Law.

2. European Union law and international cooperation

The reform inserts a new article 4 *bis* to reflect in the Judiciary Organic Law the principle that judges and the courts are bound to apply European Union law in accordance with the case law of the Court of Justice of the European Union and that where they submit a question to be referred for a preliminary ruling, they must do so in conformity with that case law and, in all cases, by order, after hearing the parties.

An amendment is made to article 21, concerning the scope and limits of the Spanish courts, in order to require Spanish civil courts to apply European Union law, in addition to Spanish law and other international treaties.

Articles 276 and 277 are amended to make it clear that European Union law applies to requests for international cooperation, as is article 278, which sets out the circumstances under which the provision of international cooperation may be refused.

3. A new ground for application for judicial review of final decisions to the Supreme Court

A new article 5 *bis* is inserted which provides for the option of lodging an appeal to the Supreme Court against a final court decision, in accordance with the procedural rules of each court, where the European Court of Human Rights has held that the decision interferes with any of the rights recognized in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, provided that the interference, due to its nature and seriousness, produces effects which persist and which cannot be neutralized other than by means of an appeal for judicial review of a final decision.

This new provision entails amendments to the following articles of the Civil Procedure Law (Final Provision four): article 510 on the grounds for reviewing final judgments; article 511, providing that any person who has been an applicant before the European Court of Human Rights will have *locus standi* to seek a review in these cases; and article 512 concerning the time limit for filing an appeal for judicial review of a final decision on these grounds, a time limit which will be one year from the date on which the judgment of the European Court of Human Rights becomes final.

4. Revision of the rules on allocating jurisdiction to the Spanish civil courts

The Law revises the rules on the allocation of jurisdiction to the Spanish civil courts by amending article 22 of the Judiciary Organic Law and inserting eight further articles (up to article 22 *nonies*), which govern the matters over which the Spanish courts have exclusive jurisdiction; jurisdiction by tacit or explicit submission; jurisdiction in the absence of tacit or explicit submission; jurisdiction when the plaintiff is domiciled in Spain; and jurisdiction in insolvency cases, among others.

The rationale behind this amendment is the gradual internationalization of relations since the current wording of article 22 of the Judiciary Organic Law was approved, as well as the fact that not even then was Spain a fully-fledged partner in the EU.

5. Measures to expedite and specialize judicial responses

The reform includes a package of measures designed to improve the distribution of cases among the courts, provide specialized decisions on cases which, owing to their volume, demand specific responses, and speed up the investigation of cases which so require on account of their complexity. Notably the following:

- Measures concerning the civil courts of first instance, whereby these courts will have jurisdiction to hear insolvency proceedings involving individuals who are not traders within the meaning of the relevant legislation (new paragraph 6 of article 85 and amendment to article 45 of the Civil Procedure Law). It is also provided that the specialized panels of the civil provincial appellate courts will also hear any appeals that the law makes available against the decisions handed down by the courts of first instance in insolvency proceedings involving individuals and in individual actions concerning general contract terms (paragraph 2 of article 82).
- Measures concerning domestic violence courts, broadening the option for extending the jurisdiction of those courts to two or more judicial districts (paragraph 2 of article 87 bis), giving the government the power to implement these measures by royal decree without

having to amend the Court Areas and Supply Law; extension of the jurisdiction of domestic violence courts to hear crimes against the private life, right to self-portrayal and honor of women (paragraph 1 of article 87 *ter*).

- Measures enabling the governing chambers to make the necessary amendments to the rules on allocation in commercial, criminal, juvenile, prison supervision, judicial review and labor courts, to balance out the distribution of cases (articles 167 and 269.3).
- A new mechanism has been added alongside the existing specialization mechanism, by amending article 98. This will enable the governing body of the judiciary to make one or more courts specialize in a case, temporarily and exclusively if a decision is taken to that effect based on the number of issues that have piled up, in order to hear and dispose of the specific lawsuits that will be determined, including the associated enforcements. This will enable cases to be conducted in a specific way, thereby making it easier for uniform criteria to be applied (matters which, by statute, are allocated to a different type of court, even within the same jurisdiction, and to the examining courts are excluded).

Another new development in this respect is the option for these specialized courts to have provincial scope (paragraph 2 of article 98).

- Measures enabling the General Council of the Judiciary to assign judges or legal officers of the justice system to the examining courts so that, under the direction of the presiding judge, they can perform support, assistance and proposal functions (a new Additional Provision twenty-one has been inserted)
- Amendments are made to the rules on plenary sessions held to unify the decisions taken by courts on specific matters. These amendments provide that senior judges with knowledge of the subject-matter on which there is a divergence of opinion will sit in on those sessions and the court panels must found their reasons for departing from the adopted view at any of these sessions (article 264).
- Amendments are made to the rules on seconded judges, including amendments to article 347 *bis*, to make the organization of the judiciary more flexible.
- An amendment is made to paragraph 2 of article 199, governing the participation of supply judges when there are not enough senior judges to convene a chamber at the National Appellate Court or Supreme Court, by deleting reference to the Supreme Court. Paragraph 2 of article 200 is amended, by deleting reference to the Supreme Court insofar as it is provided that senior supply judges who are not career judges can be called to form a chamber. This will now only be possible at the National Appellate Court, high courts and provincial appellate courts. Paragraphs 4 and 5 of article 200 are deleted, thereby eliminating the title of judge emeritus which applied to members of the judiciary who had retired on account of age and senior judges of the Supreme Court who so requested.
- The maximum age until which members of the judiciary can remain in active service is set at seventy-two (article 386.1), in line with the abolition of the concept of judge emeritus (Transitional Provision three).
- As regards the criminal courts, paragraph 6 of article 73 is amended to allow, if the number of cases so recommends, one or more panels or even a criminal chamber to be created with jurisdiction over a specific territorial area in capital cities which already host other high court chambers. Their sole purpose will be to hear appeals against judgments handed down at first instance by provincial appellate courts and other appeals allocated to the high courts by statute.

- Courts are required to publish their case schedules to allow the date and time of proceedings to be consulted (paragraph 2 of article 232 is amended, a new paragraph 3 is inserted into article 232, and a new paragraph 4 is inserted into article 138 of the Civil Procedure Law). And there are new provisions on matters relating to access to information (article 234 and new article 235 bis).
- Measures to enhance the efficiency of the document deletion process, so that the authorities can destroy files once six years have elapsed from the date on which the judgment bringing an end to the proceedings becomes final, after hearing the parties (article 458).

6. Personal data protection

The reform inserts a new Chapter I bis into Title III of Book III (new articles 236 bis to 236 *decies*) which covers data protection in the justice system, providing that data processing will be governed by Personal Data Protection Organic Law 15/1999, of December 13, 1999, and the special provisions set out in this new chapter.

A distinction is drawn between court and non-court filing systems (based on the nature of the processing of the data they contain). The courts will be the data controllers for the court filing systems, which will be governed by the procedural laws in relation to rights of access, rectification, cancellation and objection. The authority supervising those filing systems will be the General Council of the Judiciary. The offices of court will be responsible for non-court filing systems, headed by a legal officer of the justice system (formerly court clerk). These filing systems will be governed by the existing legislation on data protection and the authority supervising them will be the Spanish Data Protection Agency.

A new article 235 *bis* is inserted which provides that access to the wording of judgments, to certain aspects of them, and to other decisions handed down in the course of proceedings may only be permitted after any personal data they might contain therein has been de-identified. In all cases, the necessary measures must be adopted to prevent judgments and other decisions being used for unlawful purposes and in this connection an amendment is also made to paragraph 2 of article 212 of the Civil Procedure Law.

7. Abolition of direct civil liability of judges

The direct civil liability of judges – which was hardly ever invoked in practice – is abolished, bringing them into line with other public employees and implementing the recommendations of the Council of Europe in this respect. The reform deletes article 297 and amends article 296 to provide that any damages or losses caused by judges in the discharge of their functions shall result, if applicable, in the State being liable for any judicial error or malfunctioning of the justice system. Under no circumstances may the injured parties take direct action against judges.

If the damages or losses are the result of willful misconduct or serious negligence on the part of a judge, the Government may, after paying compensation to the injured party, demand reimbursement of the compensation from the judge in question, in addition to any disciplinary liability which the judge might incur.

In this connection, an amendment is also made to article 266 of the Civil Procedure Law, which governs the documentation that must be attached to a claim for civil liability against a judge for damages or losses caused in the exercise of office, by removing that reference and deleting paragraph 2 of article 403 which laid down the grounds of inadmissibility applying to such claims.

8. Institutional reforms

The Law also includes certain institutional reforms.

These include the following:

- A series of amendments are made to the rules governing the General Council of the Judiciary. Particularly notable is: (i) paragraph 5 of article 579, which requires the President, Members and General Secretary of the General Council of the Judiciary to submit a declaration of assets and rights and makes their financial assets subject to monitoring and management within the meaning of Law 3/2015, of March 30, 2015, on holders of senior office in central government; and (ii) paragraph 2 of article 601 increases the number of members of the Permanent Committee from five to seven: four appointed from judicial ranks and three from the ranks of lawyers with recognized authority.
- More detailed rules are made concerning the functions, members and procedures of the Technical Bureau of the Supreme Court – as the body that assists the Presidency and the different chambers with procedures for the admission of cases and the drawing up of studies and reports – through the insertion of articles 61 bis to 61 sexies.

These matters relating to the Technical Bureau entail the amendment of Court Areas and Supply Law 38/1988, of December 28, 1988, specifically articles 8.2 and 23 and Annex III.

9. Legal officers of the justice system

Amendments are made to Book V concerning court clerks and offices of court (articles 440 to 469 *bis*), notably: (i) the Court Clerks Service becomes the Justice System Legal Officers Service, thereby addressing a long-standing complaint that the previous name was misleading as to the work actually performed; (ii) the functions are adjusted to reflect those currently carried out by the Service and new powers are added, such as in relation to mediation and procedural formalities and, where appropriate, the disposal of order for payment procedures; (iii) decrees are included as a standalone type of decision relating to the admission of claims or completion of proceedings, or where it is necessary or appropriate to state reasons for a decision, in addition to the power they continue to have to deliver the decisions necessary for the proceedings to follow the procedural steps; (iv) rules on rights and duties are established; (v) a substitution system is set out whereby substitute legal officers now may only be called in exceptional circumstances; and (vi) a special disciplinary system for them is created.

In this connection, changes are also made to the Civil Procedure Law, specifically articles 116, 117 and 118 on the procedure to object to court clerks, now known as legal officers of the justice system.

10. Amendments to provisions relating to public officials in the service of the justice system and other persons and institutions that cooperate with the justice system

In the reform of Book VI (articles 470 *et seq.*), the main elements are: (i) the insertion of the requirement to hold a specialist qualification in forensic medicine in order to enter the Forensic Medicine Service and the revision of its functions; (ii) the adaptation of the system of Legal Medicine and Forensic Science Institutes as technical bodies attached to the Ministry of Justice or the Autonomous Communities with powers over these matters, the role of which is to assist the justice system in its scientific and technical disciplines; (iii) conferral of the status of authorized officer on members of the Procedural Management Service where they perform documentary functions in attachments, dispossessions and other acts whose nature so requires; and (iv) various amendments to the legal rules applicable to other public officials in the service of the justice system.

Book VII (articles 544 *et seq.*) includes amendments in order to expressly incorporate labor professionals since, by providing technical representation in the employment sphere, they are able to act as assistants to the justice system.

11. Additional, Transitional and Final Provisions

The reform includes six Additional Provisions covering the following: (i) references in earlier legal provisions; (ii) the determination of the career scale for members of the Justice System Legal Officers Service; (iii) specialist knowledge tests among members of the judiciary; (iv) the mandatory use of new technologies by judges, with the result that citizens, professionals and authorities may not be required to submit documents in paper form, except as necessary to determine the authenticity of their content or as expressly authorized under primary or secondary legislation; (v) retirement pensions for judges, prosecutors, legal officers of the justice system, university lecturers and property, commercial and movable property registrars; (vi) extension of the period of active service of prosecutors and legal officers of the justice system.

Nine Transitional Provisions cover: (i) the legislation applicable to court proceedings which are already underway; (ii) the rules on the Technical Bureau of the Supreme Court; (iii) matters relating to judges and prosecutors emeritus; (iv) governance secretaries and coordination secretaries; (v) annual supply personnel and substitute plans; (vi) Legal Medicine Institutes; (vii) delay in the implementation of the requirement to hold a specialist qualification in forensic medicine in order to enter the Forensic Medicine Service; (viii) retirement pensions from January 1, 2015; (ix) the deadline for applying for the extension of the period for remaining in active service.

Lastly, the reform includes ten Final Provisions, including:

- (i) Final Provision one on the amendment made to Court Areas and Supply Law 38/1988, of December 28, 1988.
- (ii) Final Provision three, which amends Judicial Review Jurisdiction Law 29/1998, of July 13, 1998, in relation to cassation appeals before the judicial review courts, to increase the use of those appeals as an instrument to ensure the uniform application of the law. It is provided that cassation appeals may be admitted for consideration if the appellant pleads an infringement of procedural, material or substantive law or of the case law and the Judicial Review Chamber of the Supreme Court holds, in a reasoned decision, that the appeal has an objective cassation interest for the creation of case law. A mechanism

for the admission of appeals is laid down setting out the circumstances under which a case may be admitted for consideration by the Supreme Court owing to the existence of the abovementioned objective cassation interest. The appeal must also be admitted in cases where there is a presumption in favor of the existence of such a cassation interest on the terms set out in the Law.

- (iii) Final Provision four, which amends Civil Procedure Law 1/2000, of January 7, 2000, in order to bring it into line with the new provisions of the Judiciary Organic Law.

In particular, amendments are made to the following articles, some of which have already been discussed in other sections of this Commentary: article 45 conferring jurisdiction on the courts of first instance to hear insolvency proceedings involving individuals who are not traders; articles 115 to 118 on objections to legal officers of the justice system; article 138 inserting a new paragraph 4 requiring publication of the case schedule and article 140 on access by the parties and third parties with a legitimate interest to the status and documentation of the process; article 147 providing that oral proceedings and hearings that are recorded and documented in digital format may not be transcribed except in the cases specified by law; paragraph 2 of article 212 on the publication of judgments and personal data; articles 266 and 403 removing references to the civil liability of judges; article 483 inserting a new paragraph 4 providing for a new ground on which cassation appeals may not be admitted for consideration – where the appeal is patently unfounded or its merits have already been decided on in other substantially similar appeals; and articles 510, 511 and 512 on the new appeal for judicial review by the Supreme Court where a decision has been handed down which infringes the European Convention on Human Rights and Fundamental Freedoms and the European Court of Human Rights has upheld the infringement.

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