



TRIBUNAL CONSTITUCIONAL

Gabinete del Presidente

Oficina de Prensa

NOTA INFORMATIVA Nº 70/2013

THE CONSTITUTIONAL COURT OUTRIGHT REJECTS THE ANCILLARY SUIT FOR NULLIFICATION OF PROCEEDINGS FILED BY RAFAEL VERA

The Second Chamber of the Constitutional Court has outright rejected the ancillary suit for nullification of proceedings filed by Rafael Vera last 31 July. The appellant requested the nullification of the Constitutional Court judgment which, on 18 July 2011, rejected his appeal for constitutional protection against his conviction in the so-called “*reserved funds case*.” In his writ, he alleged that, if he had known at that time about the prior political membership of today’s Constitutional Court’s President, he would have filed for his recusal based on the cause established in Article 219.10 of the LOPJ (“*holding a direct or indirect interest in the suit or case*”).

The decision of the Second Chamber points out that the appellant’s claim is rejected for both “*reasons of procedure and foundation*.” First of all, it explains that, in constitutional proceedings which, as in the case at hand, have already ended, “*it is not feasible, in general, to make any request for review or nullification, because once the ruling which put an end to the corresponding suit has become final, not even this Court may make it ineffective (...)*.” In fact, the Organic Act of the Constitutional Court “*does not foresee the ancillary suit for nullification of proceedings amongst the means for appeals which may be filed against this Court’s rulings,*” rulings which “*hold the force of a final decision,*” against which “*no appeal whatsoever may be filed.*”

The reasons of foundation which are explained in the decisions are the same with which the Constitutional Court argued for the rejection of the recusals sought by the Government and the Parliament of Catalonia, Arnaldo Otegi and Rafael Díez Usabiaga, as well as the ancillary suit for nullification of proceedings filed by Baltasar Garzón. In this sense, the Constitutional Court reminds that “*the Constitution does not prohibit constitutional court magistrates from membership in political parties or labour unions, but rather only establishes that the status of member of the Constitutional Court is incompatible with the performance of management functions in a political party or in a labour union, and with employment in the service thereof,*” a regulation which is “*comparable*” to those of Germany, France, Italy and Portugal and conformant with the case-law of the European Court of Human Rights.

Madrid, 28 October 2013