



CONSTITUTIONAL COURT OF SPAIN
Office of the President
Press Office

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THE CONSTITUTIONAL COURT DISMISSES THE SECOND REQUEST FOR CONSTITUTIONAL PROTECTION PRESENTED BY JUANA RIVAS DUE TO IT BEING LODGED OUT OF TIME

The Section of the Constitutional Court that is providing cover over the holiday period has dismissed the second request for constitutional protection presented by Juana Rivas against the judgment of the Provincial Court of Granada, delivered on 21 of April (and served on the 26th of the same month), ordering her to return her two children, who are minors, to her former husband. The Court holds that the appeal is out of time as it was presented outside the 30-day period established by the Organic Law on the Constitutional Court (LOTC), counted from the date of service of the challenged resolution.

The decision explains that the deadline for the lodging of the appeal for constitutional protection has expired as a result of the procedural actions of the appellant. Indeed, initially, the plaintiff lodged an extraordinary appeal on the grounds of a breach of procedure before the Supreme Court, against the aforementioned judgment of the Provincial Court of Granada. However, reiterated doctrine of the Civil Chamber of the Supreme Court has established that the only possible gateway to the cassation appeal is the appeal seeking annulment (and not the extraordinary appeal on the grounds of a breach of procedure, which, in any event, may be lodged along with or following an appeal on the grounds of a breach of procedure). Subsequently, the appellant lodged complaint proceedings against the resolution of the Supreme Court dismissing the aforementioned extraordinary appeal on the grounds of a breach of procedure.

Before the Supreme Court resolved the complaint proceedings, the appellant lodged her first request for protection before the Constitutional Court. On 31 July, the Second Chamber of the Constitutional Court dismissed this appeal as prior judicial channels had not been exhausted (the Supreme Court had not resolved the complaint proceedings). Subsequently, the appellant withdrew the complaint proceedings before the Supreme Court and lodged her second appeal for constitutional protection, which is today resolved by the Holiday-Cover Section of the Constitutional Court.

The decision issued today affirms that *“the manifestly inadmissible nature of the manner in which the extraordinary appeal on the grounds of a breach of procedure was presented and the fact that she voluntarily withdrew from her stated intention of lodging complaint proceedings prevents us from considering her challenge in terms of calculation of the deadline for the lodging of an appeal for constitutional protection, which is to be considered out of time, as it was presented on 10 August 2017, beyond the period of 30 working days”* envisaged in the LOTC, to be counted from the date of service of the challenged resolution.

Madrid, 16 August 2017