



PRESS RELEASE No. 50/2019

THE PLENARY OF THE CONSTITUTIONAL COURT REFUSES TO EXAMINE THE PREMATURE *AMPARO* APPEAL BROUGHT BY COMÍN AND SERRET AGAINST THE DECISIONS OF THE SUPREME COURT THAT REJECTED THEIR MOTION TO DISQUALIFY JUDGE LLARENA

By a judgement drafted by Magistrate Fernando Valdés Dal-Ré, the Plenary of the Constitutional Court has unanimously resolved to refuse leave to proceed, due to its premature nature, to the appeal for constitutional protection (*“recurso de amparo”*) brought by Antoni Comín and Meritxel Serret. They had both challenged a decision (*“auto”*) of the Supreme Court dated June 13th 2018, whereby the investigating judge of that court charged with special case no. 20907-2017 had refused *in limine* the motion to disqualify him. They had also challenged a subsequent decision, dated July 4th 2018, which had rejected their appeal against the former decision.

The *amparo* appeal of the plaintiffs invoked their rights to an effective jurisdictional protection and to a fair trial with full guarantees, in particular concerning its aspect related to an impartial judge.

The judgement explains that, in this case, just as in the other disputes resolved by judgements 129/2018, 130/2018 and 131/2018, dated December 12th 2018, and 20/2019, dated February 12th, it is important to focus on the procedural stage at which the appeal has been brought. Indeed, *“once again, we are dealing with a situation in which, before the relevant criminal proceedings have reached its end, the appellants resort to the Constitutional Court invoking a violation of a fundamental right which has allegedly taken place in the framework of that criminal proceeding. However, at the moment of bringing the claim, the jurisdictional procedure at stake has still not been resolved by a definitive judgement”*.

Consequently, the Constitutional Court further indicates that the *amparo* appeal may not be granted leave to proceed since, according to article 44.1 a) of the Organic Law of the Constitutional Court, its admission requires that, when they challenges a jurisdictional decision, *“the appellants must have exhausted all previous jurisdictional remedies established by the applicable procedural laws”*.

Therefore, the judgement concludes that the *amparo* appeal is premature due to the lack of exhaustion of previous jurisdictional remedies.

Madrid, 5 April 2019