



CONSTITUTIONAL COURT OF SPAIN

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THE PLENARY OF THE CONSTITUTIONAL COURT DECLARES THE FIRST PARAGRAPH OF ARTICLE 454 BIS (1) OF THE CIVIL PROCEDURE ACT UNCONSTITUTIONAL AND VOID FOR PREVENTING THE APPEAL OF CERTAIN DECISIONS MADE BY COURT CLERKS

The Plenary of the Constitutional Court has upheld the internal question of unconstitutionality raised by the Criminal Division and, consequently, it has declared the first paragraph of article 454 bis (1) of the Civil Procedure Act (LEC), in the wording given by Act 3/2011, on measures to expedite proceedings, unconstitutional and void.

The ruling, whose rapporteur was Judge Juan Antonio Xiol Rios, states that this provision *“infringes the right to effective judicial protection (article 24.1 of the Spanish Constitution) because it has created a system of challenges to the decisions of court clerks that generates an area which is immune to judicial control”*.

The legal provision in question, when regulating the appeal for review that must be resolved by court clerks, establishes that no appeals whatsoever may be lodged against a ruling on appeals for reconsideration, without prejudice to the issue necessarily arising again at the first hearing held before the court after the decision is taken and, should this not be possible due to the state of the proceedings, it may be sought by means of a written statement before the definitive decision is issued so that it may be resolved in such decision.

Indeed, the first paragraph of article 454 bis (1) of the LEC does not allow to affirm that there cannot be cases in which the decision of the Court Clerk relates to relevant questions in the framework of the proceedings regarding the jurisdictional function exclusively reserved to judges and magistrates. However, the lawmaker excludes these cases from the direct appeal for review before the holders of the jurisdictional power.

In this sense, the Constitutional Court considers that *“until the lawmaker takes a decision on the matter, the appropriate judicial appeal against the decree of the court clerk that decides on the reconsideration appeal must be the direct appeal for review referred to in article 454 bis LEC”*.

Madrid, 5 February 2020.