

The reform of the appeal in cassation in the different jurisdictional orders.

Last 29th of June, Royal Decree-Law 5/2023 of 28 June was published in the Official State Gazette (“BOE”), introducing various reforms to the rules regulations proceedings in the different jurisdictional orders.

Criminal appeal in cassation. Reform of the Criminal Procedure Act. Chapter I.

The following precepts are reformed in relation to the criminal cassation appeal: Articles 855, 858, 882 and 889 of the “Lecrim”.

Pursuant to the first of those provisions, the appellant, in the case of an appeal for infringement of law, is required to state, in separate paragraphs, clearly and concisely, the existence of the requisite requirements, identifying the substantive provision or provisions that are considered to have been **violated**, explaining the reasons for such **violation**.

Article 858 broadens the powers of the Court, since it may reject, by reasoned order, the appeal, when certain requirements aren’t met, such as the allegation of grounds other than an error of law, failure to identify the precept infringed, failure to include a brief extract or when the content of the appeal departs from the provisions of Article 849.1 of the Lecrim, that is, when it departs from the error of law.

The period of 3 days granted to the other parties to make allegations **relating to make the pertinent allegations** that could have been made by the other parties or by the Public Attorney (“*Ministerio Fiscal*”) is abolished.

The possible grounds for non-admissibility of the appeal have been extended. In addition to the case provided for in Article 847.1.b) (infringement of law, Judgments of

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the “*Audiencias Provinciales*” and “*Audiencia Nacional*”, by virtue of which it is possible to dismiss the **cassation** appeal by means of an order due to a lack of interest in the appeal, the case provided for in Article 847.1.a) (**violation** of the law and breach of form “*Tribunal Superior de Justicia*” and “*Sala de lo Penal de la Audiencia Nacional*”, by virtue of which the Chamber may decide to dismiss the appeal when there is unanimity due to lack of relevance to the case and the sentence imposed or the sum of those imposed doesn’t exceed five years, or when any other single, joint or alternative custodial sentence has been imposed, whatever its duration or quantity.

In accordance with the Tenth Transitional **disposition**, these amendments will apply to appeals filed since the entry into force of the aforementioned “*RDL*”. Those filed prior to that date will be governed by the previous legislation.

Contentious-administrative cassation appeal. Reform of the Law regulating Contentious Jurisdiction. Chapter II.

Chapter II regulates the reform of the contentious cassation appeal. Specifically, Article 37.2 of the “*LJCA*”, Article 56, Article 88, Articles 89 and 90 are amended.

In accordance with the second section of Article 37 of the LJCA, the possibility is included of **group** by categories or groups those appeals that raise an analogous controversy, preferentially processing one or several groups, after hearing the parties for a period of 5 days, suspending the course of the others in the state in which they are, until such time as a ruling is handed down in those preferentially processed.

Article 58 of the aforementioned legal text is amended, introducing a new paragraph 5, by virtue of which, once the **lawsuit and reply to the lawsuit** have been filed, if the Court becomes aware of the admission of an appeal with legal identity to the previous

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one, it could order the suspension of the proceedings, after hearing the parties those who made their appearance in the hearing. If there is full identity and the decision is relevant to the decision on the appeal, the Court shall **suspense** the proceedings until the appeal has become final.

Once it has become **firm**, the parties shall be notified so that they may submit their **allegations** on the possible impact of that judgment on the outcome of the appeal, and the proceedings shall continue, unless the parties withdraw or accept the appeal.

Article 88 is modified, specifically section 3.b), indicating that there is interest of the appeal in the case, when there is a deliberate departure from the previous judgments on the grounds that it is erroneous or unmotivated, despite it having been cited or being established doctrine.

Article 89 section 5 is amended to reduce the time limit for the parties to appear before "*Sala de lo Contencioso-Administrativo del Tribunal Supremo*" from 30 to 15 days.

Article 90 is modified in the same way as the previous one, this is, by reducing from 30 to 20 days the time-limit for the parties to allege whether the appeal is in the interest of the court for the formation of case-law.

Paragraph 2 is likewise amended, requiring, in the event of dismissal of the appeal, a succinctly reasoned resolution.

Article 94, which regulates the "*witness*" appeal, is again amended, providing for the possible preferential processing, with suspension of the rest, of those appeals that raise

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a substantially identical legal question, which will be resolved preferentially, provided that there is an objective **cassation** interest of the appeal.

Once judgment has been given in such preferential proceedings, it will be notified to the other **suspended** proceedings, in which the parties will make allegations on whether or not to continue or discontinue the appeal.

If the judgement handed down coincides with the judgement already handed down, a ruling of inadmissibility will be issued.

In the event that the judgment does not coincide, reasoned resolution will be issued, agreeing to continue the proceedings, in accordance with the provisions of Articles 88 and 89 of the “*LJCA*”. The Chamber will decide whether to continue with the proceedings or whether to issue a ruling without further proceedings.

In accordance with the transitional regime, this regulation will apply to decisions issued after the publication of this “*RDL*”. Only in the case of witness litigation is it feasible to apply these regulations from the publication of the “*RDL*”.

Civil cassation appeal. Reform of the Civil Procedure Act. Chapter III.

The following provisions relating to civil cassation appeals are amended.

Article 477 of the LEC, which sets out the decisions that may be appealed in cassation and the grounds for appeal.

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The extraordinary appeal for procedural infringement is eliminated and abolished, and the regulation is limited to the appeal in cassation, which may be based on infringement of procedural or substantive rules, provided that there is an **cassation** interest of the appeal.

It is understood that there is a cassation interest when the decision appealed against opposes the **jurisprudential doctrine** of the Supreme Court or resolves points and questions on which there is contradictory case law of the “*Audiencias Provinciales*” or applies rules on which there is no **jurisprudential doctrine** of the Supreme Court.

Paragraph 4 of the aforementioned precept adds the so-called notorious cassation interest, which will exist when the contested decision has been dictated in a process in which the disputed question is of general interest for the uniform interpretation of state or autonomous community law. It will be understood that there is general interest when the question potentially or effectively affects a large number of situations, either in itself or by transcending the case that is the object of the proceedings.

The possible access to the cassation appeal for amounts exceeding €600,000 is therefore eliminated.

The law now establishes that an appeal in cassation cannot be based on the assessment of evidence or the establishment of facts, except in the case of an error of fact, patent and immediately verifiable from the proceedings themselves.

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Article 478 section 1 is amended, assigning the “*Sala de lo Civil y de lo Penal del Tribunal Superior de Justicia*” to hear appeals in cassation against decisions of the civil courts sitting in the Autonomous Community, provided that the appeal is based, exclusively or together with other grounds, on **violation** of the rules of civil, foral or special law specific to the Community, and when the corresponding Statute of Autonomy has provided for this attribution.

Article 479 of the “*LEC*” regulates the following amendments:

In the case of an appeal on the ground of **violations** of procedural rules, the infringement must first have been alleged in the previous instance(s).

Provision is made for the preferential processing of appeals in cassation against **definitive** judgements handed down in the course of witness proceedings, as provided for by law.

Article 481 of the “*LEC*” is modified, relating to the content of the appeal, which must state the grounds on which the appeal is based and, if this is the appeal in the interest of the court, the type of appeal invoked and the justification, with the necessary clarity, of the concurrence of the appeal in the interest of the court invoked must also be identified. In addition, the procedural or substantive rule infringed shall be stated, specifying, in the petitions, the jurisprudential doctrine that is sought from the Chamber, if applicable, and the corresponding pronouncements on the subject matter of the case.

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Certain specialities are regulated in relation to the form of the pleading, such as the content of the heading, the need to attach a copy of the resolution, establishing that the Supreme Court, by means of an agreement to be published in the “ *Official State Gazette*” o “*Boletín Oficial del Estado*”, the maximum length and other extrinsic conditions, including those relating to the format in which they must be presented, of the pleadings in interposition and opposition of the appeals in cassation.

Article 482 provides for a period of 30 days for the summons of the other parties.

Article 483 of the LEC suppresses the hearing of the parties in the case of grounds of inadmissibility of the appeal, proceeding directly to the issuance of a succinctly reasoned resolution (“*Providencia*”), admitting by means of an reasoned resolution (“*Auto*”), establishing the motive or reason that justifies an express pronouncement by the Supreme Court.

Article 484 of the LEC is amended, which provides that the Admissions Section of the “*Sala Primera del Tribunal Supremo*” o “*la Sala de lo Civil o de lo Penal del Tribunal Superior de Justicia*” shall examine its competence to hear the appeal before ruling on its admissibility. If it does not consider itself competent, it shall, after hearing the parties and the Public Attorney within ten days, order the transfer of the proceedings and summons the parties to appear before the Chamber that appears to be competent within ten days.

Once admitted, Article 485 of the LEC allows the other parties to file a notice of opposition within a period of 20 days.

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Article 486 of the LEC provides for the possible holding of a hearing. Otherwise, the Chamber will set a date and time for the deliberation, vote and judgment.

Finally, Article 487 of the LEC establishes a specific regulation of the Judgment, which must establish a specification of the alleged infringements, whether substantive or procedural, taking into account the modification made.

Judgments that consider opposition to the jurisprudential doctrine on the question raised will be decided by means of an reasoned resolution, which will order the case to be sent back to the court of origin so that it may adapt its decision to the jurisprudential doctrine.

These rules shall apply to appeals lodged as from the entry into force of these rules. In the case of appeals in progress, they will be governed by the previous legislation, except in the case of appeals pending admission, which should be decided in accordance with the new rules.

In the case of an extraordinary appeal for procedural infringement, it will follow its course, and if it is upheld, it will be resolved by means of reasoned resolution, agreeing to return the case to the court of origin, so that it may issue a new decision in accordance with the aforementioned jurisprudential doctrine.

These amendments will enter into force one month after the publication of the “*RDL*”, i.e. on 29 July 2023.

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Social cassation appeal. Reform of the Law regulating Social Jurisdiction.
Chapter IV.

Articles 224, 225 and 225 bis of the said legislation are amended.

Specifically, a new ground of inadmissibility of the appeal is created, namely the lack of connection between the judgments compared.

The transfer to the appellant on the possible cause of inadmissibility is eliminated, giving transfer only to the Public Attorney so that it may report on its admission or inadmissibility.

Only in the event of the cause of inadmissibility of the “*RCUD*” consisting of the lack of **cassation** content of the claim or the fact that other appeals in substantially the same cases have been rejected on the merits, a hearing is established for the appellant for a period of five days, with a subsequent report from the Public Attorney for another five days, if the appeal has not been lodged.

If it is found that the parties lack functional competence to know about the case, the parties and the Public Attorney shall be heard for a period of three days. At the end of this period, deliberation, voting and judgement shall be scheduled within ten days thereafter, and judgment shall be delivered within ten days of the holding of the vote.

A new Article 225 bis is included which regulates the “*witness procedure*”, with the possibility of agreeing to the suspension of one procedure and the preferential processing of others when they deal with a substantially identical issue.

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Once a decision has been taken in these “*witness proceedings*”, the parties shall be given notice to present their case or to withdraw.

Once these arguments have been made and if the withdrawal isn’t admissible, if the impugned judgment coincides, in its operative part and reason for deciding, with the ruling or rulings of the Supreme Court, the pending cassation appeals shall be dismissed by reasoned resolution.

if the impugned judgment doesn’t coincide, in its operative part and reason for deciding, with what was decided in the previous judgment or judgments, an reasoned resolution of admission will be issued, if the corresponding requirements are met, the Chamber will then decide whether to continue with the proceedings or whether to issue a judgment without further proceedings, referring to what was agreed in the reference judgment and adopting the other pronouncements that it considers necessary.

These provisions shall apply to judgments rendered after their entry into force.

In the case of the witness procedure introduced by Article 225 bis, it shall apply to appeals pending admission. Therefore, the suspension of the admission procedure for other appeals may be agreed on the grounds that any of those that have already been admitted for processing on the date of entry into force of the rule are declared to be preferential in terms of processing and resolution.

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