
Royal Decree-Law 5/2023: Reform of cassation appeals in civil law

Royal Decree-Law 5/2023 modifies the regime for extraordinary appeals based on procedural infringements and cassation in the Code of Civil Procedure

Spain - Legal flash

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Key aspects

- › End to the duplicity of appeals: extraordinary appeals on the basis of procedural infringements are eliminated.
- › Cassation interest is the main focus of the new cassation reform, both for substantive and procedural infringements.
- › The Supreme Court will decide on admission, without hearing the parties.
- › In cases alleging infringement of its consolidated doctrine, the Supreme Court may rule by order and assign the case to a provincial court of appeals to issue a new judgment.



General aspects

1. New regulation of civil cassation

- › Royal Decree-Law 5/2023, published in the Official Gazette of the Spanish State on June 29, 2023 (“**RDL 5/2023**”), makes several changes to the regulation of civil proceedings, under Book V, Title VII, Chapter III. The most significant of these changes affects cassation appeals in civil law. This new regulation recovers the text of the Draft law on measures on the procedural efficiency of the public service of justice, resulting from the [report by the panel](#), the processing of which was suspended in May this year due to the dissolution of the Spanish Parliament.

2. Entry into force and transitional regime

- › The reform of cassation in civil law will enter into force one month after its publication in the Official Gazette of the Spanish State (i.e., on July 29, 2023).
- › Under the transitional regime, the new regulation of cassation appeals in civil law will only apply to appeals filed against decisions handed down after it enters into force.

Extraordinary appeals based on procedural infringements are eliminated

- › The main development of the reform is that it eliminates appeals for procedural infringements. To a certain extent, it returns to the situation prior to the 2000 Code of Civil Procedure (the “**CCP**”), and all infringements, whether procedural or substantive, will be heard by the Supreme Court (and also, if applicable, by the High Courts of Justice) through a single appeal, namely, one of cassation.
- › Although RDL 5/2023 does not contain a specific repealing provision of articles 468 to 476 of the CCP, or of final provision 16, which regulated the extraordinary appeal for procedural infringement, they can be considered repealed due to their manifest incompatibility with the new regulation on cassation appeals (which applies to substantive and procedural matters alike), in accordance with the sole repealing provision.



Clarification of appealable decisions

- › The reform embodies the case law of the First Chamber of the Supreme Court regarding appealable decisions, limiting them to (i) judgments that put an end to the second-instance issued by the provincial courts of appeals when, according to the law, they must act as a collegiate body; and (ii) orders and judgments issued on appeal in proceedings on the recognition and enforcement of foreign judgments in civil and commercial matters under international treaties and conventions, or European Union regulations, or other international rules, when the right to recourse is recognized in the corresponding instrument.

Cassation interest is the focal point of the new cassation reform

- › Instead of the three ways to bring a cassation appeal in force until now, the new cassation regulation provides for two: (i) the appeal (regardless of whether substantive or procedural infringements have been denounced) has cassation interest; and (ii) the appealed resolution has been handed down for the judicial civil protection of fundamental rights that may be appealed in cassation, even where there is no annulment interest.
- › Moreover, the appeal will be simplified and broadened, as an appeal will be considered of cassation interest when the appealed ruling is opposed to the Supreme Court case law, or it resolves points and issues on which there is contradictory case law of the provincial courts of appeals, or it applies rules on which there is no Supreme Court case law (even if they have been in force for more than five years, a possibility that was excluded until now in the CCP).
- › RDL 5/2023 also introduces a new concept of “manifest cassation interest.” Thus, it will be considered that cassation interest exists when the appealed decision has been handed down in proceedings involving a legal dispute of general interest for the uniform interpretation of the laws of Spain or its autonomous regions. A matter will be considered of general interest when it potentially or effectively affects a significant number of situations, whether in itself or by transcending the case that is the object of the proceedings.
- › In regional cassation, it will be considered that cassation interest exists when the appealed decision is opposed to case law from the Hight Court of Justice, or it applies



rules of the corresponding autonomous region on which there is no High Court of Justice case law, or it resolves points and issues on which there is contradictory case law of the provincial courts of appeals.

This regulation of cassation interest is in contrast with that provided for in some regional regulations, which do not accept the existence of contradictory case law of the provincial courts of appeals as a basis for cassation interest. Notably, Act 4/2012, of March 5, on cassation appeals in civil law in Catalonia, does not recognize the contradictory doctrine of provincial courts of appeals as one of the grounds for cassation interest. Moreover, the High Court of Justice of Catalonia clarified in its Resolution of March 22, 2012, *“The fact that contradictory judgments have been handed down by the different courts or sections of the same provincial court of appeals on a legal issue cannot alone trigger the cassation appeal, although this may be used to justify the annulment interest of the appeal when there is no case law of the High Court or the Court of Justice on the issue under debate.”*

The parties will not take part in the admission stage of the appeal

- › RDL 5/2023 also provides that the basic formal requirements of the appeal (filing in due time and form, prior reporting in the instance in the case of procedural infringements, the arrangement of deposits to file an appeal, and compliance with the requirements of article 449 of the CCP) must be monitored by the court clerk of the First Chamber of the Supreme Court, in addition to the monitoring carried out by the provincial court of appeals (under art. 479 CCP). If the requirements have not been fulfilled, the court clerk will dismiss the appeal through a judicial order. Although RDL 5/2023 does not specify as such, it can be assumed that this order can be challenged in review according to the general rule of article 454.bis of the CCP.
- › Admission is now a procedure in which the parties will have no part, meaning that they can no longer make any allegations during this stage (only the appealed party, when appearing before the Supreme Court, will be able to make allegations against the admissibility of the appeal filed by the appellant). The Supreme Court will decide whether the appeal is inadmissible or admissible (in full, or on one or several grounds). The decision cannot be challenged.
- › Preference will be given to cassation appeals against final judgments handed down in the processing of the so called “leading case” procedures” (*procedimientos testigo*). This is, however, an oversight of the legislator, since the provision will have no practical effect



until the CCP is reformed to introduce the “witness-procedure” (envisaged in the Draft law on measures on procedural efficiency).

Form of the appeal

- The articles of the CCP now include the formal requirements that the Supreme Court had repeatedly been seeking to impose in successive resolutions on admission criteria in cassation appeals and extraordinary appeals based on procedural infringements, the last dating back to January 27, 2017. We list some of these requirements below:
 - The application for the appeal must specify the way of accessing cassation. If it is of cassation interest, it is necessary to identify the type being invoked and the existence of the cassation interest.
 - The procedural or substantive rule infringed must also be stated, specifying, in the petitions, the case law the decision should be based on, if applicable, and the corresponding rulings on the matter in dispute. The appellant may ask the Court to hold a hearing, although the decision on whether it is necessary is now a matter left to the court’s discretion.
 - The cassation appeal must be based on specific pleas. Different infringements cannot be accumulated in the same plea.
 - Actions can only be brought against infringements relevant to the judgment, provided they have been invoked in the proceedings or considered by the provincial court of appeals.
 - Each plea must begin with a heading, which will contain the precise citation of the rule infringed and a summarized description of the infringement.
 - The grounds for each plea must be stated, without diverging from the essential content of the heading and providing the necessary clarity of exposition to allow the legal problem posed to be identified.
- Also, the First Chamber of the Supreme Court is empowered to determine, through a resolution to be published in the Official Gazette of the Spanish State, the maximum length of the appeals and statements of opposition, as well as other extrinsic conditions, such as the format they must take to be presented. It is to be expected that, in general and with the appropriate amendments, the new resolution adopted by the Supreme Court will preserve the rest of the requirements contained in the 2017 Resolution, and



will limit the maximum length of the appeals (as is the case with contentious-administrative cassation appeals).

Decision of the appeal

- › Another development of the reform is that it enables cassation appeals to be resolved by means of an order when a plea is brought against an infringement of the Supreme Court's consolidated doctrine and it is found that, in fact, that infringement has occurred. The order issued will grant the cassation of the decision appealed and the case will be remanded to the lower court to ensure that its decision reflects the position of the Supreme Court case law.
- › If substantive or procedural infringements are alleged, the Supreme Court will first resolve the plea or pleas the ultimate acceptance of which could lead to a reinstatement of the proceedings.



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