

**Spain, Supreme Court, 2039/2016, supreme, 10 May 2016**

Member State

 Spain

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Topic

Accountability (Councils of the Judiciary, effectiveness of judicial decisions)

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Deciding Court Original Language

Tribunal Supremo

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Deciding Court English translation

Supreme Court

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Registration N

1033-2016

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Date Decision

10 May 2016

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ECLI (if available)

ES:TS:2016:2039

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National Follow Up Of (when relevant)

N/A

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EU legal sources and CJEU jurisprudence

The Decision of the Constitutional Court of 13 November 2018 referred to the following EU law sources and CJEU case law:

Art. 157.4 TFEU

Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal

treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Article 2(1) and (4))

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Articles 3 and 4)

C-450/93, Eckhard Kalanke contra Freie Hansestadt Bremen, 17 October 1995

C-409/95, Hellmut Marschall contra Land Nordrhein-Westfalen, 11 November 1997

C-158/97, Georg Badeck y otros contra Hessische Ministerpräsident y Landesanwalt beim Staatsgerichtshof des Landes Hessen, 28 March 2000

C-407/98, Katarina Abrahamsson y Leif Anderson contra Elisabet Fogelqvist, 6 July 2000

C-319/03, Sege Briheche contra Ministre d l'Interieur, Ministre de l'Éducation Nationale y Ministre de la Justice, 30 September 2004

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### ECtHR Jurisprudence

The decision of the Constitutional Court of 13 November 2018 referred to several ECtHR judgments on Article 6(1) ECHR:

Hornsby contra Grecia, 19 March 1997

Di Pede contra Italia y Zappia contra Italia, 26 September 1996

Inmobiliaria Saffi contra Italia, 28 July 1999

Ruianu contra Rumanía, 17 June 2003

Gjonbocari y otros contra Albania, 23 October 2007

Vidal Escoll y Guillán González contra Andorra, 29 July 2008

Jafarov contra Azerbaiyán, 11 February 2010

García Mateos contra España, 19 February 2013 § 38

Flores Quirós contra España, 19 July 2016

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### Subject Matter

General Council of the Judiciary - Judicial appointment to court's presidency - margin of discretion - judicial review - effectiveness of judicial decisions - discrimination on grounds of sex

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### Legal issue(s)

Accountability of the General Council of the Judiciary regarding judicial appointments. The main legal issue refers to the review by the Supreme Court of the decisions of the General Council of

the Judiciary regarding judicial appointments to the presidency of high courts and the effectiveness of that review.

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## National Law Sources

Regulation 1/2010, on discretionary judicial appointments, enacted by the Plenary of the General Council of the Judiciary on 25 February 2010

Organic Law 3/2007, 22 March, for the effective equality of men and women (Art. 16)

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## Facts of the case

On 14 October 2014, the General Council of the Judiciary issued a call for the appointment of the President of the High Court of Justice of Murcia. Out of three candidates, the General Council appointed Mr. Pasqual del Riquelme by Resolution of 29 January 2015. Ms. Alonso Saura, who had been ranked in the second position, filed a complaint against the Resolution of the Council before the Supreme court.

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## Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Supreme Court annulled the Resolution of the General Council. While the Court acknowledged that General Council had a margin of discretion, the Supreme Court found that the objective merits of the applicant were superior to those of the appointed candidate, and that the reasoning of the Council was not enough in order to justify its decision. Also, under those circumstances, the fact that the rejected candidate was a female required that the Council gave explicit reasons to select the male.

On 26 May 2016, the Council issued a new resolution explaining the reasons why the "action project" submitted by Mr. Pasqual de Riquelme made him a better candidate to fulfill the position of President of the High Court of Justice.

Ms. Alonso Saura filed an appeal before the Supreme Court against the Council's resolution for failure to enforce the previous judgment, and for discrimination on grounds of sex. On 27 June 2017, the Supreme Court declared that its previous judgment had been correctly executed, since the Council had provided the reasons to justify its decision.

The applicant submitted an individual complaint before the Constitutional Court for violation of the right to a fair trial (Article 24 Constitution), in particular the right to the execution of sentences; and the right to non-discrimination on grounds of sex (Article 14 Constitution). Although the Constitutional Court declared the complaint inadmissible, it developed an exhaustive reasoning to explain why the violation of the alleged rights was manifestly inexistent. The Constitutional Court profusely quoted the CJEU and the ECtHR regarding both fundamental rights.

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## Relation of the case to the EU Charter

N/A

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## Relation between the EU Charter and ECHR

EU and ECHR sources were quoted to strengthen the interpretation of constitutional rights

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## Use of Judicial Interaction technique(s)

Consistent interpretation

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## Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

The Constitutional Court made reference to EU law sources to build the interpretation of the principle of equality and the right to non-discrimination on grounds of sex. The Court examined the content of several CJEU judgments regarding affirmative action measures.

The Constitutional Court also referred to Article 6 ECHR and several ECtHR judgments to reinforce the interpretation of Article 24 of the Constitution regarding the effectiveness of judicial decisions as taking part of the right to a fair trial.

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## Strategic use of judicial interaction technique (purpose aimed by the national court)

The references to EU law and ECHR sources contributed to strengthening the interpretation given to constitutional rights.

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## (Link to) full text

<http://www.poderjudicial.es/search/indexAN.jsp>

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## Author

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## History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. Judgment of the Supreme Court, of 10 May 2016
  2. Judgment of the Supreme Court of 27 June 2017
  3. Decision of the Constitutional Court of 13 November 2018
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