

Spain, Supreme Court, 3341/2011, supreme, 20 May 2011

Member State

 Spain

Topic

Impartiality

Deciding Court Original Language

Tribunal Supremo

Deciding Court English translation

Supreme Court

Registration N

391/2011

Date Decision

20 May 2011

ECLI (if available)

ES:TS:2011:3341

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

Subject Matter

Impartiality

Legal issue(s)

Impartiality - judges

The applicant challenged the impartiality of a judge who was an associate professor of the University that brought the complaint against him, who was also a professor at that University.

National Law Sources

Organic Law on the Judiciary (Article 219, 223(1))

Facts of the case

On 27 July 2010, Mr. Blesa Rodríguez, a professor at the university's Faculty of Pharmacy, was found guilty of forgery, for having presented a falsified curriculum vitae in the framework of a public tender for the allocation of pharmaceutical establishment licenses.

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

The applicant appealed to the Supreme Court complaining, *inter alia*, of lack of impartiality on the part of two of the judges sitting on the Audiencial Provincial bench. The applicant claimed that Judge A., president of the chamber, had previously sat on the bench that had heard the appeal introduced by the private prosecutor against the suspension of the criminal investigation. The applicant further claimed that Judge Sa. had participated as a substitute judge in the proceedings brought by La Laguna University, while being at the same time an associate professor and an employee with administrative duties at that university.

On 20 May 2011 the Supreme Court ruled in the following terms. As regards Judge A., the Supreme Court found that the applicant had failed to challenge the judge, even though he had had an opportunity to do so, having been informed of the composition of the bench when it was constituted on 8 June 2010. The Supreme Court pointed out that section 223(1) of the Organic Law on the Judiciary laid down the condition that the disqualification of a judge shall be requested as soon as the grounds for removal were known, failing which the application would be inadmissible.

As regards Judge Sa., the Supreme Court held that the circumstances alleged by the applicant did not fall within any of the grounds for challenging the composition of the trial bench prescribed by section 219 (9) (10) (16) of the Organic Law on the Judiciary, nor did they fall within the incompatibility grounds prescribed by section 389. In particular, the Supreme Court found that the applicant had failed to demonstrate that Judge Sa. had any interest in the outcome of the proceedings. The fact that the judge was an associate professor at the university was not sufficient in that regard.

The Constitutional Court found the individual complaint inadmissible on 13 March 2012. The Constitutional Court found, in particular, that the applicant had failed to raise his complaints of lack of impartiality in the previous judicial proceedings.

Finally, the ECtHR ruled the complaint inadmissible as regards Judge A; and that there had been a violation of Article 6(1) as regards to Judge Sa. The ECtHR held that since the judge had had regular, close and remunerated professional relations with the university while performing his duties as a judge of Santa Cruz de Tenerife Audiencia Provincial, these circumstances serve objectively to justify the applicant's apprehension that Judge Sa. lacked the requisite impartiality.

Relation of the case to the EU Charter

N/A

Relation between the EU Charter and ECHR

N/A

Use of Judicial Interaction technique(s)

None.

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

The Supreme Court did not refer to the ECtHR case law, even though there was a previous decision in which Spain had been condemned for violation of Article 6 in a very similar case (Pescador Valero v. Spain, 17 June 2003).

Also, in a similar case, the Constitutional Court had declared the violation of Article 24 of the Constitution from the perspective of the right to an impartial judge (306/2015, 12 December).

(Link to) full text

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

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

1. Judgment of the Audiencia Provincial of Santa Cruz de Tenerife, of 27 July 2010
 2. Judgment of the Supreme Court, of 20 May 2011
 3. Decision of the Constitutional Court of 13 March 2012
 4. Judgment of the European Court of Human Rights *Blesa Rodríguez v. Spain*, 1 December 2015
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