

Spain, High Superior Court of Catalonia, 949/2020, appellate, 2 March 2020

Member State

 Spain

Topic

Independence (reduction of salaries)

Deciding Court Original Language

Tribunal Superior de Justicia de Cataluña

Deciding Court English translation

High Superior Court of Catalonia

Registration N

249/2011

Date Decision

2 March 2020

National Follow Up Of (when relevant)

C-49/18 Carlos Escribano Vindel, EU:C:2019:106,

EU legal sources and CJEU jurisprudence

Article 19(1) TFEU

Article 21 EU Charter of Fundamental Rights

Directive 2000/78/EC (Articles 2(1) and (2)(b))

Subject Matter

Budgetary austerity measures — Reduction of remuneration in the national civil service — Equal treatment in employment and occupation — Directive 2000/78/EC — Article 2(1) and (2)(b) — Article 21 of the Charter of Fundamental Rights of the European Union — Judicial

Legal issue(s)

Judicial independence

The main issue was whether the reduction of the salaries of judges as a consequence of the adoption of austerity measures that targeted all civil servants was discriminatory and whether it infringed judicial independence.

National Law Sources

Spanish Constitution (Articles 14, 9(3), 31, 33(3))

Royal Decree-Law 8/2010, of 20 May 2010 (Article 1), which amended Article 32 of Law 39/2010, on the National Budget.

Facts of the case

In the context of the economic and financial crisis, salaries of the Spanish judiciary were reduced as a measure aimed at eliminating an excessive budget deficit. The reduction of salaries was applied differently based on the categories of the Spanish judiciary. Mr. Escribano Vindel was a judge of the Barcelona Social Court nº 26 and contested these measures before the High Court of Justice of Catalonia.

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

On 30 March 2015, the High Court of Justice of Catalonia referred the issue to the Spanish Constitutional Court. The Constitutional Court on 15 December 2015 declared the referral inadmissible for being notoriously unfounded since judges are in different categories and posts and, therefore, they are not in a comparable situation.

On 28 December 2017, the High Court decided to send a preliminary reference to the Court of Justice. In the case C-49/18 Carlos Escribano Vindel, the CJEU addressed two issues. First, the possible discrimination on the grounds of age in light of Article 21 of the EU Charter on Fundamental Rights. The Court declared that it is possible to cut off salaries based on categories. However, to avoid indirect discrimination on age (because the cut off was more severe for inferior categories) it is the task of the national judge to make verifications about the nature of the categories and whether the cut off affects in a greater percentage younger judges.

Second, the CJEU also analyzed the impact of the cut off on judicial independence under Article 19(1) TEU. Again, the Court declared that it is the task of the national judge to verify whether the reduction of the salary impacts on their duties and, therefore, impinges on their independent judgment.

Relation of the case to the EU Charter

The EU Charter (Article 21) was referred to question the compatibility between national legislation and the right to non-discrimination.

Use of Judicial Interaction technique(s)

Preliminary reference

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

The High Court of Justice of Catalonia made two successive references to discern whether the national legislation was compatible with the right to non-discrimination and the principle of judicial independence. First, the domestic court referred the case to the Constitutional Court. Only after the Constitutional Court declared the referral inadmissible, did the High Court turn to the CJEU.

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

The High Court of Justice used the referrals to the Constitutional Court and the CJEU to ascertain whether the national legislation violated any fundamental rights.

Notes on the national implementation of the preliminary ruling by the referring court

The CJEU gave some margin to the referring court to take the final decision as to whether national legislation was compatible with the right to non-discrimination and judicial independence. The High Court of Justice judgment was consistent with the guidelines offered by the CJEU to interpret the rights at stake.

The domestic court referred to the Commission's arguments in that case, as well as to the Advocate General Opinion. Also, the court referred to C-64/16, Associação Sindical dos Juízes Portugueses regarding the interpretation of Article 19(1) TEU.

Also, the High Court of Justice quoted constitutional court case law.

Author

Aida Torres Pérez, UPF

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

1. Decision of the Constitutional Court 224/2015, 15 December 2015
 2. C49/18, Escribano Vindel, 7 February 2019
 3. High Court of Justice of Catalonia 949/2020, 2 March 2020
-