

Spain, Constitutional Court, 162/1999, constitutional, 27 September 1999

Member State

 Spain

Topic

Impartiality

Deciding Court Original Language

Tribunal Constitucional

Deciding Court English translation

Constitutional Court

Registration N

162/1999

Date Decision

27 September 1999

ECLI (if available)

ES:TC:1999:162

National Follow Up Of (when relevant)

N/A

Subject Matter

Judicial impartiality - Subjective and objective impartiality - Intimate friendship - Manifest animosity

Legal issue(s)

Judicial impartiality. The Constitutional Court was asked to determine whether the judges that convicted a politician for prevarication and misuse of public resources were impartial. The grounds

to challenge their impartiality were: their previous involvement with the case in procedural terms, intimate friendship with one of the parties, and manifest animosity against the accused person.

National Law Sources

Article 24 Spanish Constitution

Article 223 Organic Law on the Judicial Power

Facts of the case

Mr. Hormaechea, who was the president of the region of Cantabria, was condemned for prevarication and misuse of public resources by the High Court of Justice of Cantabria, confirmed by the Supreme Court. Mr. Hormaechea submitted a constitutional complaint before the Constitutional Court and alleged that he did not have a fair trial because the judges of the High Court of Justice of Cantabria were not impartial.

First, Mr. Hormaechea claimed that two of the judges were not impartial because they had participated in the decision to admit the criminal complaint against him. Second, he argued that the President of the Court has intimate friendship with one of the parties. Third, he argued that two of the magistrates had manifest animosity against him because of their leftist ideology and referred to an episode of the Civil War. Also, Mr. Hormaechea publicly denounced the legality of the appointment as a civil servant of the wife of the President of the Court. Regarding the latter, the President of the Court declared to the press that he was not going to abstain himself and that Mr. Hormaechea was going to be judged according to the law. Regarding the former, the President of the Court declared that Hormaechea's declarations were shameful, that they revealed a moral character that he did not wish for the President of an Autonomous Community, that he did not have any right to question the independence of the Court regardless of the ideology of its members, and that referring to awful episodes of the Civil War was a pitiful and miserable attitude.

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

The Constitutional Court referred to Article 6 ECHR and thoroughly examined the ECtHR case law in order to give an interpretation the right to an impartial judge enshrined in Article 24 of the Constitution. The Constitutional Court emphasized that the ECtHR was an important hermeneutic tool according to Article 10(1) of the Constitution and to the distinction between subjective and objective impartiality.

First, regarding the fact that two of judges had participated in the decision to admit the criminal complaint, the Court held that that was constitutionally irrelevant. Although carrying out investigative or supervisory functions of the investigation might justify founded fears regarding judicial impartiality, impartiality may only be questioned when the activity involves assuming the position of a party or helping the parties, which was not the case.

Second, the Constitutional Court argued that the fact that the Court's President and one of the accusing parties had met for lunch three times could not be regarded as "intimate friendship".

Third, the Constitutional Court acknowledged that Mr. Hormaechea had been provoking the judges of the High Court of Justice through his declarations before the press. The Court ruled that the responses by the President of the Court were a reaction to that, and that he never anticipated a guilty judgment. However, the Court found that the tone and radicalism of the disqualifications of Mr. Hormaechea enabled the existence of a legitimate suspicion of partiality. The Constitutional Court concluded that the suspicions of the applicant were objectively justified and therefore the right to an impartial judge had been breached.

Use of Judicial Interaction technique(s)

Consistent interpretation according to Article 10(2) of the Constitution.

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

The Constitutional Court profusely referred to the ECtHR's case law to give content to the right to an impartial judge.

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

The references to the ECtHR's case law strengthened the reasoning of the Constitutional Court.

(Link to) full text

<https://hj.tribunalconstitucional.es/es/Resolucion/Show/3904>

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