

Spain, Constitutional Court, 140/2016, constitutional, 21 July 2016

Member State

 Spain

Topic

Rule of law: access to justice

Deciding Court Original Language

Tribunal Constitucional

Deciding Court English translation

Constitutional Court

Registration N

140/2016

Date Decision

21 July 2016

ECLI (if available)

ES:TC:2016:140

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

Article 47 of the Charter

Subject Matter

Judicial fees - Fair trial - Access to justice

Legal issue(s)

Access to justice.

National Law Sources

Article 24(1) of the Spanish Constitution

Law 10/2012, 20 November, regulating taxes in the field of the Administration of Justice and the National Institute of Toxicology and Forensic Sciences

Facts of the case

The Socialist parliamentary group in Congress challenged the constitutionality of Law 10/2012, 20 November, regulating taxes in the field of the Administration of Justice and the National Institute of Toxicology and Forensic Sciences, before the Constitutional Court. The Socialist group argued that Law 10/2012 breached the right to effective judicial protection enshrined in Article 24(1) of the Constitution, and more specifically the right to access to justice and to an appeal.

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

At first, the Constitutional Court ruled that the mere existence of a judicial tax in the civil, social and administrative jurisdictions was not per se unconstitutional.

The applicants argued that the amounts of the several judicial taxes did not take into account the situation of those who did not have sufficient resources. Also, they argued that the amounts had a discouraging effect.

First, regarding the lack of sufficient resources from the standpoint of the right to access to justice, the Constitutional Court referred to Article 6(1) ECHR and Article 47 Charter, and profusely quoted ECtHR case law as a hermeneutic tool. The Constitutional Court argued that the ECtHR has reiteratively acknowledged that the right to access to justice is not absolute, and that the States can regulate limitations to its exercise, even of a "financial" nature, as long as, those measures pursue a legitimate end and there is a relationship of proportionality between the means and the end. The Constitutional Court concluded that taking into account the clauses on exemption and flexibility in the payment of the judicial taxes, the law was not unconstitutional from the perspective of the economic capacity

Second, regarding the discouraging effect of the tax in exercising the right to access to justice, the Court examined whether it pursued as constitutional legitimate end and whether it was proportional. The Constitutional Court held that the taxes sought two legitimate ends: to establish a mix model for funding the Justice system and to discourage the abusive submission of appeals. However, the Court ruled that the judicial tax did not meet the proportionality test and therefore was unconstitutional.

Relation of the case to the EU Charter

The Constitutional Court invoked Article 47 of the Charter and several CJEU judgments. Nonetheless, the Constitutional Court emphasized that the Charter was not a legally binding parameter. Moreover, the Court claimed that in *Torralbo Marcos*, C-265/13, the CJEU declared that the Law 10/2012 was not implementing EU law and therefore the Charter was not applicable.

Also, the Constitutional Court quoted the CJEU in *Vasile Toma*, C-205-15, stating that the right to access to a court is not an absolute right, and thus proportional restrictions that seek a legitimate end and do not undermine the essence of that right are admissible, including the payment of judicial taxes.

Relation between the EU Charter and ECHR

The Constitutional Court heavily relied on the ECtHR case law, but it also argued that the ECHR was not directly binding. The ECHR is relevant as a hermeneutic tool according to Article 10(2) of the Constitution.

Use of Judicial Interaction technique(s)

Consistent interpretation, following Article 10(2) Constitution

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

The Constitutional Court referred to the ECHR and the Charter in order to give an interpretation to Article 24(1) of the Constitution regarding the right to access to justice. The Court engaged with an assessment of several decisions of the ECtHR to give content to that right.

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

The Constitutional Court made use of consistent interpretation to strengthen its reasoning regarding the compatibility between a judicial tax and the right to access to justice.

Impact on Legislation / Policy

The Constitutional Court annulled the legislative clauses that were declared to be unconstitutional.

(Link to) full text

<https://hj.tribunalconstitucional.es/es/Resolucion/Show/25064>

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