

Spain, Constitutional Court, judgment nº 133/2014, of 22 July, constitutional

Member State

 Spain

Topic

Impartiality (impartiality and the role of law standards)

Deciding Court Original Language

Tribunal Constitucional

Deciding Court English translation

Constitutional Court

Registration N

133/2014

Date Decision

22 July 2014

ECLI (if available)

ES:TC:2014:133

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

Subject Matter

Right to fair trial – Impartiality – Terrorism

Legal issue(s)

In a criminal case, involving terrorism, the convicted questions the impartiality of the sentencing court because of the existence of a previous conduct of a judge in a similar case involving terrorism and the same accused

National Law Sources

Article 24 of the Spanish Constitution (due process clause)

Facts of the case

On 16 September 2011, the applicants were convicted by the National High Court (Audiencia Nacional) to ten years' imprisonment for being members and the leaders of a terrorist organization. They were banned from taking part in elections for the duration of their respective sentences.

Prior to these convictions, on 2 March 2010, the applicants were sentenced by the National High Court (Audiencia Nacional) to two years' imprisonment for the encouragement of terrorism. During this first trial, one of the judges of the panel showed partiality against the accused Otegi Mondragón. The Spanish Supreme Court expressly declared this partiality and annulled the conviction on 2 February 2011.

The convictions issued by the National High Court on 16 September 2011 were delivered by the same panel of judges of the National High Court which sentenced the applicants on 2 March 2010. The applicants alleged before the Supreme and Constitutional Courts that the breach of the impartiality declared in the first trial also contaminated the impartiality of the judges of the second trial. The Supreme and Constitutional Courts rejected the claim on the grounds that both trials were based on different criminal charges (Judgment of the Spanish Supreme Court nº 351/2012, of 7 May and Judgment of the Spanish Constitutional Court nº 133/2014, of 22 July). Subsequently, the European Court of Human Rights condemned Spain for a violation of the right to fair trial (article 6.1 ECHR) in its judgment of 6 November 2018, Case Nos. 4184/15 and 4 other applications, *Otegi* case.

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

In its judgment nº 133/2014, of 22 July, the Spanish Constitutional Court analyses the case law of the European Court of Human Rights on impartiality (article 6.1 ECHR). It is a prolific analysis, recognizing all the doctrine about judicial impartiality of the Strasbourg Court. Indeed, the Spanish Constitutional Court establishes Article 6.1 ECHR as a legal basis for the right to judicial impartiality and then explores all the case law of the Strasbourg Court. In that regard, the Spanish Constitutional Court distinguishes the subjectivity and objectivity perspectives of the impartiality and correctly describes both perspectives from the standpoint of Strasbourg (subjectivity as absence of personal prejudice and objectivity as absence of legitimate doubts about impartiality from an external observer). In doing so, the Spanish Constitutional Court quotes several cases of

Strasbourg jurisprudence (Micallef v Malta, Kyprianou v Xipre, De Cubber v Belgium, Pullar v the United Kingdom, Ferrantelli and Santangelo v Italy, Meznaric v Croatia, Castillo Algar v Spain).

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)

Consistent interpretation

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

N/A

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

The Spanish Constitutional Court carries out a deep analysis of the case law of the Strasbourg Court on judicial impartiality under Article 6.1 ECHR. The description of the Strasbourg's doctrine (subjective and objective perspectives), as well as the quotation of the relevant case law on the matter, are correct and prolific. The intent of the Spanish Constitutional Court is to interpret Article 24 of the Spanish Constitution (due process clause) consistently with Article 6.1 ECHR and the Strasbourg's case law. In that regard, the Spanish Constitutional Court integrates the Strasbourg's doctrine into the national constitutional analysis under Article 24 of the Spanish Constitution.

However, the application of the Strasbourg's doctrine is incorrect in the concrete case. The Spanish Constitutional Court recognizes that in the 2010 trial at the National High Court a judge of the panel was declared partial by the Spanish Supreme Court. This same judge also sentenced the same accused in the 2011 trial also in the National High Court. However, the Spanish Constitutional Court did not find neither a subjective nor objective breach of impartiality in accordance with the Strasbourg's doctrine. For the Spanish Constitutional Court was decisive that both trials involved different criminal charges. The 2010 trial involved the encouragement of terrorism whereas the 2011 trial was related to the participation and membership in a terrorist organization.

In the *Otegi* case, the European Court of Human Rights rejected the application of its doctrine in the way done by the Spanish Constitutional Court. In that regard, consistent interpretation failed in the concrete case. For the Strasbourg Court the right to fair trial was violated because of a breach of the impartiality principle (Article 6.1 ECHR). The European Court of Human Rights took the objectivity perspective and declared that although the two trials involved different charges, the

context was the same: terrorism. The judge was declared biased in relation to terrorism activity and both trials were related to terrorism. In that regard, there are legitimate doubts for an external observer about the impartiality of the judge.

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

The Spanish Constitutional Court uses the Strasbourg Court's case law as a supportive argument. At the end, the relevant legal basis for solving the case is Article 24 of the Spanish Constitution (due process clause), therefore, national constitutional law is determinant. However, the Spanish Constitutional Court engages with the Strasbourg Court to support its own argumentation based on national constitutional law. The Constitutional Court is aware that at the end the case could get the Strasbourg Court and for this reason considers its case law. In other words, the analysis of the Strasbourg Court legitimates the own reasoning of the Constitutional Court based on national constitutional law. However, as it is stated supra, the Spanish Constitutional Court failed to correctly apply the Strasbourg's doctrine. In that way, the consistent interpretation was done incorrectly and at the end Spain was condemned for a violation of Article 6.1 ECHR.

Impact on Legislation / Policy

N/A

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

N/A

Impact on national case law from the same Member State or other Member States

N/A

Other

N/A

(Link to) full text

<http://hj.tribunalconstitucional.es/es/Resolucion/Show/24072>

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