

Spain, Constitutional Court, judgment nº 135/2018, of 13 December, constitutional

Member State

 Spain

Topic

Independence (tenure, discipline, transfers, and removal of magistrates)

Deciding Court Original Language

Tribunal Constitucional

Deciding Court English translation

Constitutional Court

Registration N

135/2018

Date Decision

13 December 2018

ECLI (if available)

ES:TC:2018:135

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

Subject Matter

Independence – Discipline – Suspension of functions – Irremovable – Judicial tenure

Legal issue(s)

The case concerns the debate about the constitutionality of a national legal clause which establishes the need of a “declaration of aptitude” issued by the General Council of the Judiciary (CGPJ) to allow the reintegration to the judicial career of a judge which was disciplinary suspended in his/her judicial functions.

National Law Sources

Article 367.1 and Article 367.2 Organic Law 6/1985, of 1 July

Facts of the case

On 20 November of 2014, the General Council of the Judiciary (CGPJ) sanctioned a judge for committing a serious offense to one year of suspension of functions. Once the sanction was served, the judge requested to the CGPJ his reintegration to the judicial career. Under Article 367.1 of the Organic Law 6/1985, the judge needed a “declaration of aptitude” issued by the CGPJ before his reintegration. The CGPJ declared that the judge was unfit to the reintegration to the service and denied the “declaration of aptitude”. Subsequently, the CGPJ declared a permanent and non-temporary suspension of functions of the judge.

The suspended judge challenged this decision of the CGPJ before the Spanish Supreme Court. This Court decided to paralyze the proceedings and to send a question of unconstitutionality to the Spanish Constitutional Court for assessing the constitutionality of Article 367.1 of the Organic Law 6/1985. The Supreme Court alleged that the terms of the regulation of the “declaration of aptitude” were contrary to the principle of legal certainty (Article 9.3 Spanish Constitution) and the judicial tenure (Articles 117.1 and 117.2 of the Spanish Constitution).

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

The Spanish Constitutional Court declared the “declaration of aptitude” unconstitutional and annulled this legislative provision in the terms that was regulated. This declaration of unconstitutionality was framed under national law, without considering any references to the Charter or the Convention. The grounds for the unconstitutionality were based exclusively under national constitutional law.

In this context, the Spanish Constitutional Court found the regulation of the “declaration of aptitude” against the principle of legal certainty (article 9.3 of the Spanish Constitution). The legislator used an ambiguous term, without any clarification or criteria and, therefore, it was not possible to know the meaning of the “aptitude” required for the reintegration to the judicial functions. The Spanish Constitutional Court argued that it was possible to establish a requisite such that, but it was necessary to frame by the legislator itself the meaning, the criteria or the boundaries of this “declaration of aptitude” in order to comply with the principle of legal certainty. In that regard, the decisionmaker, that is, the CGPJ which was in charge of deciding if the judge was

“fit” or not for the reintegration, had too much discretion. The Spanish Constitutional Court required more legislative precision for complying with the principle of legal certainty.

Moreover, the legislator did not establish the consequences of a denial of this “declaration of aptitude”. In case of denial, the suspended judge who already served the disciplinary sanction did not know whether can be reintegrated to the judicial career or, in any case, the next step or action to be done. In words of the Spanish Constitutional Court, the denial led the judge to a “legal limbo” which was incompatible with the principle of legal certainty.

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)

N/A

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)

N/A

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

N/A

Impact on Legislation / Policy

Article 367.1 Organic Law 6/1985 was declared unconstitutional and annulled, as same as parts of Article 367.2 Organic Law 6/1985 which were related to the “declaration of aptitude” established in Article 367.1. The legislator has not changed the terms of the regulation of the “declaration of aptitude” and, therefore, currently this requisite is deactivated. The Spanish Constitutional Court declared the terms of regulation of the “declaration of aptitude” unconstitutional, but not the existence *per se* of this kind of requisite. It was possible to reintroduce the requisite, but with much more legislative precision about its meaning and criteria for its application. However, until now, the Spanish legislator has not provided a new regulation for this requisite and, therefore, nowadays it is completely deactivated.

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-ES/Resolucion/Show/25818>

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