

Lorenzo Bragado and Others vs. Spain, App no 53193/15 (ECtHR 22 june 2023)

Member State

 Spain

Topic

Access to court – prolonged non-renewal of the General Council of the Judiciary

Sector

Judicial Self-Government (Judicial Council, Court Presidents)

Deciding Court Original Language

European Court of Human Rights

Deciding Court English translation

European Court of Human Rights

Registration N

App no 53193/21

Date Decision

22 June 2023

ECLI (if available)

ECLI:CE:ECHR:2023:0622JUD005319321

National Follow Up Of (when relevant)

N/A

ECtHR Jurisprudence

Article 6(1) of the Convention (access to court)

Subject Matter

Legal issue(s)

The case addresses the lack of motivation of a constitutional court judgment. The appellants are part of a list of candidates presented by the president of the Council to the Parliament to renew the General Council of the Judiciary in due time and form. The case deals with the consequences of parliament's inaction, the individual rights of the candidates to be able to enjoy a full process for accessing the civil service and the lack of access to the courts to ensure the legality of that process due to the Constitutional Court rejection of the admissibility of the appeal as "out of time".

Request for expedited/PPU procedures

N/O

Interim Relief

N/A

National Law Sources

N/A

Facts of the case

In Spain, the General Council of the Judiciary (GCJ) is the self-governing body of the judiciary (Article 122 of the Spanish Constitution) and it is responsible for appointments, promotions, and disciplinary measures regarding judges. It is renewed by constitutional mandate every five years. Consequently, as the last renewal was on 4 December 2013, the body should have been renewed by 4 December 2018. However, as of today, this renewal has not yet taken place. The problem lies in the fact that the political parties have been unable to reach an agreement on the renewal.

The Spanish Constitution and the Organic Law on the Judicial Power (OLJP) indicate that the renewal of the body must be carried out by a reinforced parliamentary majority. Therefore, the renewal of the twenty members of the CGJ requires the favorable vote of 3/5 of the Congress and Senate, respectively. Of the 20 members of the Council, 8 are proposed by the parliamentary groups from among jurists of recognized prestige, while the remaining 12 are judges proposed by their peers, but who must be appointed by parliament. The intention of the rule is to favor consensus and agreement between the political parties in order to guarantee the impartiality and independence of the Council.

In the present case, six candidates belonging to the Francisco de Vitoria association - one of the legally recognized judicial associations in Spain - claim that Article 6(1) of the Convention has been violated because they have been denied their right of access to the CGJ. They denounce that even though on 27 September 2018 the President of the Council presented a list of 51 candidates, parliament decided to withdraw the proposal. It is alleged that parliament did not even vote on the proposal of the candidates and therefore the appointment process to which they had submitted themselves was not completed.

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

In the Court's reasoning, the question of admissibility is developed in a particularly exhaustive manner. The Court has no doubt that the action was brought within the six-month time-limit, in accordance with Article 35(1) of the Convention. The main legal dispute as to the admissibility of the application is whether the appellants are invoking a right that can be understood to fall within the scope of Article 6(1) of the Convention. In other words, the question is whether the appellants, the candidates in a procedure to be appointed as members of the Council (GCJ), have the right to go to court for the Parliament's inaction.

The Court cites many precedents in which it was recognised that, while there is no right to be appointed to a particular public office, the right to be able to participate on equal terms in a fair and legal process it is effectively recognized. In other words, access to public service must be guaranteed without any irregularities, discriminatory treatment, or arbitrariness. Furthermore, to guarantee the legality of the proceedings, it is necessary to recognise the right of access to the courts, in accordance with Article 6(1) of the Convention. In the appellants' case the Court states that the six judges were duly proposed as candidates by the President of the Council. Following the nomination, the parliament, according to Spanish law, was to hold a vote to determine whether or not the candidates were appointed to the post. But the vote was never called. In the Court's view, the candidates were duly nominated and were entitled to see the appointment process completed by parliament.

To avoid admission of the claim, the government raised two exceptions: the political nature of the appointments and the application of the Eskelenin test in the case. But the court rejects both.

The Court does not consider that the appointment of a member of the GCJ by Parliament is an act of a political nature. On the contrary, even if the process has been politicised, the appointments of members of the GCJ do not constitute the exercise of the legislative function. As evidence to rule out that the appointments are of a political nature, the Strasbourg Court points out that the appointment processes are governed by the criteria of merit, ability and equal opportunities that must govern the processes of access to the judicial function.

On the other hand, the Court acknowledges that the application of the Eskelenin test makes it possible to exclude public servants from the right of access to the courts but recalls that the national government must prove two conditions. First, that there is a national law providing for such a prohibition, and second, that the exclusion is justified. In the present case, it seems clear that the national legislation allows candidates for appointment as members of the CGJ to bring an action for amparo before the Constitutional Court, so that the first condition of the test is not satisfied. It therefore proceeds to analyse the merits of the case.

The ECtHR considers that the rejection of the constitutional complaint (recurso de amparo) by the Constitutional Court infringed the right of access to justice recognised in Article 6(1) of the Convention. Indeed, the ECtHR recognises that the right of access to justice is not absolute and may be subject to limits, but these limits must serve a legitimate aim and be proportionate. Excessive formalism may not be an obstacle to access to justice. In this regard, the Court considers that the Constitutional Court's interpretation of section 42 of Law 2/1949 is contrary to Article 6(1) of the Convention.

The Constitutional Court dismissed the complaint for amparo for being out of time. According to the Constitutional Court, the three months to file the complaint began to be computed from the day on which the appointment should have taken place, i.e., 4 December 2018, while the appellants filed the amparo on 14 October 2020 (almost two years later). On the contrary, the Strasbourg Court considers that the Constitutional Court failed to appreciate that the constitutional complaint

was brought against the failure by Parliament to renew the Council, which was qualified as continuous and continuing act, and not an act with a certain date. The failure to motivate the decision of inadmissibility, Strasbourg ruled, "deprived the appellants of their access to justice (Article 6(1) of the Convention)". With the aggravating factor that, in this case, the impossibility of accessing the courts to control the legality of the appointment process of the council members not only had an effect on the candidates, but also on the functioning and the possibility of renewing the Council.

Use of Judicial Interaction technique(s)

Consistent interpretation

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

The Strasbourg Court in its reasoning cites various precedents of its own, but at no point does it resort to precedents of other jurisdictions. Notably, throughout the text there are no references to the case law of the Court of Justice of the European Union. Therefore, there is no judicial dialogue between international jurisdictions.

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

The judgment addresses an essential issue for the rule of law: the independence of judges and their self-governing bodies. In her concurring opinion, Judge Elosegui highlights how in recent years there has been an increase in the number of lawsuits filed by judges to defend their right to remain independent. The ECtHR ruled *Lorenzo Bragado* case in a European context marked by the illiberal regression and the crisis of the rule of law that is taking place in Eastern Europe (Poland and Hungary). Although the ruling does not impose a model for the organisation of the judicial system, it does seek to protect the rights of individual judges in a context of politicisation that paralyses their self-governing body and creates the risk of damaging the body's appearance of independence and therefore the public's trust.

In the future, the application of the criterion established by the ruling will bring security and certainty to candidates affected by parliament's inaction, but it will not be enough to solve the problem of politicisation and the deadlock experienced by the Spanish GCJ. The renewal of the Council requires first and foremost agreement between political parties and institutional compromise. Both the European Commission's Rule of Law Report and the GRECO report have denounced the deadlock experienced by the GCJ in Spain and the way in which this has a negative impact on the appearance of judicial independence and citizens' confidence in justice.

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

Connected national caselaw / templates

N/A

(Link to) full text

[https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-225331%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-225331%22]})

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