

Spain, Supreme Court, Judgment 2614/2016, Contentious-Administrative chamber, 14 of December of 2016

Member State

 Spain

Topic

Right to freedom of expression – disciplinary measures

Sector

Freedom of Expression

Deciding Court Original Language

Tribunal Supremo. Sala Contencioso-Administrativa

Deciding Court English translation

Spanish Supreme Court. Contentious-Administrative chamber.

Registration N

2614/2016

Date Decision

14 December 2016

ECLI (if available)

ECLI:ES:TS:2016:5373

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

Article 10.1 ECHR (freedom of expression)

Subject Matter

Right of freedom of expression of judges – disciplinary measures – the meaning of judicial duties and loyalty to the constitution

Legal issue(s)

The judge was suspended from exercising judicial functions due to two offenses: i) failing to fulfil his judicial duties, and ii) being disloyal to the constitution. The General Council of the Judiciary sanctioned Judge Vidal for participating in political events during the Catalan independence crisis. The judge claims that his involvement in events organized by civil organizations was driven by scientific interest, not political motives. Additionally, he questions the compatibility of the disciplinary regime with the principle of legality and his right to freedom of expression. Therefore, the case illustrates the tension between judicial independence and accountability.

Request for expedited/PPU procedures

NO

Interim Relief

No interim relief

National Law Sources

Constitutional principles

Article 9.1 and 9.3 of the Convention (mandate to public powers to respect the Rule of law and compliance with the constitution).

Article 25.1 of the Constitution (principle of legality regarding disciplinary rules)

Article 117 of organic law of the judiciary (judges' obligation to respect the rule of law)

Disciplinary internal legal regime

Article 417.1 of organic law of the judiciary (duty to be loyal to the constitution)

Article 417.14 of organic law of the judiciary (mandate to respect judicial duties).

Facts of the case

In the context of the Catalan political crisis, which reached its peak between the years 2012-2017, Judge Vidal drafted a Catalan constitution and distributed it for debate. In addition, Judge Vidal participated as a speaker in over a hundred events organized by pro-independence civil society organizations such as Omnium Cultural and the National Assembly of Catalonia. In these events, he presented himself as a judge of the Provincial Court of Barcelona and encouraged attendees to engage in political participation.

Through a decision dated February 16, 2015, the General Council of the Judiciary suspended Judge Vidal from the practice of his profession for a period of three years. The agreement, adopted with 8 dissenting votes, found the judge committed a serious offense: firstly, for violating his judicial duties (Article 417.14 of the Organic Law of the Judiciary) and secondly, for breaching his duty of loyalty to the Constitution (Article 417.1 of the Organic Law of the Judiciary). The Council deemed that the judge had participated in acts of a political nature, meaning that he had taken a political stance, and thereby had lost the appearance of independence and impartiality.

Convinced of the lack of legal basis to justify the disciplinary sanction, the judge challenged the decision of the General Council of the Judiciary before the Contentious Chamber of the Supreme Court.

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

This case constitutes a clear example of how the use of the disciplinary regime can, at times, collide with the judges' right to freedom of expression. Prior to analyzing the Court's reasoning, it is interesting to understand the arguments raised by the appellant in his complaint. Judge Vidal appealed the disciplinary sanction on procedural grounds (expiration and rejection of evidence) and substantive grounds. We are particularly interested in understanding and analyzing the substantive reasons alleged to request the nullity of the disciplinary measure.

The judge requests the nullity of the sanction, among other reasons, because: i) he believes that drafting a constitution and participating in events organized by civil society had a scientific, rather than political, intention; ii) he also argues that the obligation to uphold and enforce the constitution does not require ideological adherence to it; iii) he criticizes that the sanction is based on the interpretation of a disciplinary provision? with an essentially indeterminate content, "ignorance of judicial duties,"; and finally iv) he denounces the indeterminate content of the concept of "constitutional loyalty" (Article 417.1 Organic Law of the Judiciary), reproaching the Council for attributing to him the violation of two offenses whose content actually overlaps. Thus, the judge understands that he is accused of violating judicial duties (Article 417.14 Organic Law of the Judiciary) and failing to fulfill the duty of loyalty (Article 417.1 Organic Law of the Judiciary), when in reality, the former is a manifestation of the latter.

The Court ultimately rejected all allegations and upheld the sanction imposed by the Council on Judge Vidal. To do so, it relied on various reasons. Firstly, it established that when taking office, the judge promises to uphold the constitution (Article 318 Organic Law of the Judiciary) and is bound by the compliance of the constitution (Articles 9.1 and 9.3 of the constitution), and the rule of law (Article 117 Organic Law of the Judiciary). In this sense, the Supreme Court understood that participating in a process advocating for Catalonia's independence through a constituent process outside the constitutional reform procedures is contrary to the judge's statutory mandate to uphold the constitution. This mandate is not limited solely to actions taken in the exercise of judicial functions but extends to actions outside the judges' work.

Secondly, the Court emphasized the distinction between violating judicial duties (Article 417.14 Organic Law of the Judiciary) and being disloyal to the constitution (Article 417.1 Organic Law of the Judiciary). The Supreme Court argued that the scope of application of both types of offenses is different. The former can occur when the judge acts in the exercise of judicial functions, but also when acting outside of it. Meanwhile, the latter occurs only when the judge acts in the exercise of judicial functions. However, the Court asserted that this did not preclude actions taken outside the scope of judicial functions from affecting the appearance of independence and impartiality that the judge must maintain when exercising judicial functions. Otherwise, it would erode public trust in the justice system. Hence, it considered the judge to have committed two different disciplinary offences.

The Supreme Court wanted to make it very clear that Mr. Vidal is not suspended for his ideas but for collaborating with citizen groups that promote a political process in Catalonia outside or directly against what is established in the constitution and its reform clauses. Alongside the majority vote, the judgment included a series of concurring and dissenting opinions. For example, the concurring vote of Justice Sieira Míguez emphasizes that any act of political nature in which a judge participates, presenting themselves in their capacity as a judge, constitutes a violation of their judicial duties (Article 417.14 Organic Law of the Judiciary) that may jeopardize the appearance of independence and impartiality, thereby undermining the principle of public trust in the justice system.

On the contrary, Justice Garzón Herrero expressed disagreement with the majority. According to the dissenting judge, the majority demands a positive adherence to the constitution from the judge, as if Spain were a model of militant democracy, which is not the case. In this regard, the judge refers to the jurisprudence of the European Court of Human Rights (ECtHR) to point out that judges, despite the duty of prudence, are also entitled to the right to freedom of expression. Justice Menéndez Pérez also dissents from the majority. In his view, the facts do not prove Judge Vidal's lack of loyalty to the constitution, as there is no evidence that he advocated for its violation. Despite being a borderline case, he does not consider that judge Vidal has violated statutory obligations that would cast doubts on his impartiality and independence since he always remained prudent and measured in his statements.

As can be seen, the resolution of the case was not unanimous, and only the appellant and one of the dissenting judges relied on the jurisprudence of the European Court of Human Rights (ECtHR). Interestingly, there is no reference to European jurisprudence in the majority opinion of the Supreme Court.

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)

N/A

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

N/A

Impact on Legislation / Policy

N/A

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

N/A

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

N/A

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

N/A

Did the national court take into account national case law on fundamental rights?

N/A

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

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

N/A

Connected national caselaw / templates

N/A

Other

N/A

(Link to) full text

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Author

