

Spain, Supreme Court, nº 121/2022, 2 February 2022

Member State

 Spain

Topic

impartiality

Sector

Disciplinary proceedings; Judicial Ethics

Deciding Court Original Language

Tribunal Supremo

Deciding Court English translation

Supreme Court

Registration N

121/2022

Date Decision

2/02/2022

ECLI (if available)

ECLI:ES:TS:2022:398

National Follow Up Of (when relevant)

NO

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

N/A

Subject Matter

Judges of Impartiality – duty of abstention – evidence

Legal issue(s)

The litigation concerns a judge who failed to fulfill his duty to recuse himself from a case, despite maintaining an intimate relationship with the plaintiff

Request for expedited/PPU procedures

NO

Interim Relief

No interim relief

National Law Sources

Article 219 and 417.8 Judicial Power Organic Law

Facts of the case

On May 24, 2018, Judge Julián issued an Order modifying measures in a child custody case. In this modification, the father's visitation rights were suspended, and the amount of child support to be paid to the mother was increased by 250 euros per month.

Days later, on June 10, Judge Julián informed the Provincial Court of Ávila that he had begun an intimate relationship with the plaintiff, Mrs. Genoveva, and therefore, he would abstain from hearing the case in the future (Article 219.16 LOPJ).

However, the defendant, Mr. Vitorino, argued that when the judicial order was issued, the relationship between the judge and the plaintiff already existed, and therefore, he requested the nullity of the proceedings. As evidence, the defendant provided the file of a private detective.

On September 5, 2018, due to doubts about the impartiality of Judge Julián's actions, the judge who replaced him decreed the nullity of the judicial proceedings.

Judge Julián gave a statement to the General Council of the Judiciary. There, he denied that the relationship began before May 24. He acknowledged knowing the plaintiff since he issued the first judgment in the case in 2016 and knew who she was because she was also a waitress in a town of 8,000 inhabitants. In any case, the judge stated that in 2016, he asked the plaintiff if she wanted to participate in a gender study, but she rejected it at that time. He reiterated that on May 24, they coincidentally met at an event where he was being honoured. There, he asked her again if she wanted to participate in his gender violence study. She agreed, and in the following days, they started a romantic relationship.

On December 17, 2019, the Disciplinary Committee of the General Council of the Judiciary sanctioned Judge Julián with 18 months of suspension from employment and salary for considering him guilty of a very serious offense (Article 417.8 LOPJ): "Failure to abstain knowing that one of the legally established causes exists".

The Committee considered that there was a photograph where the plaintiff, Mrs. Genoveva, appeared accompanying Judge Julián, on the same day he issued the judicial order of May 24, very favourable to the interests of Mrs. Genoveva. The Disciplinary Committee considered that the

evidence allowed to conclude that there was a relationship between the plaintiff and the judge before May 24, and that he failed to abstain.

The sanctioned judge appealed the decision to the Plenary of the General Council of the Judiciary, but the appeal was rejected on July 16, 2020.

The judge filed a lawsuit against the decision of the CGPJ before the Supreme Court. In the lawsuit, the judge asserts that it is false that the romantic relationship with the plaintiff began before May 24, and he recalls that he was the first to request abstention. Additionally, the judge points out that no testimonies have been provided, and that the detective's report provides evidence that are of events after May 24. In summary, the sanctioned judge claims that he is asked for an impossible proof to demonstrate that the relationship did not exist, denounces that his right to the presumption of innocence has been violated, and that the disciplinary sanction imposed is disproportionate.

Both the Public Prosecutor's Office and the State Attorney's Office reject the claims of the appellant judge.

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

The Court evaluates the validity of the imposed sanction based on the evidence it has, which consists of three items: i) the photograph from May 24 where the plaintiff and the judge appear together at an event where he was being honored, ii) the report from the private detective, and iii) the judge's statement before the CGPJ.

The Court acknowledges that there are no direct proofs of the relationship between the judge and the plaintiff, but there is sufficient evidence to understand that it existed. Thus, the Court considers that all the provided evidence shows attitudes that are only possible in a relationship of proximity and closeness. Therefore, it is considered that the plaintiff shows joy towards Judge Julian upon receiving the decoration, and that he accompanies the plaintiff to her home, to pick up her child from school, or even to her parents' house. Additionally, the sanctioned judge did not provide the supposed study on gender-based violence that he claimed to be conducting.

In conclusion, the Court found evidence indicating the existence of a relationship and the judge's failure to abstain from it. Therefore, it confirms the imposed sanction.

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

<https://www.diarioconstitucional.cl/wp-content/uploads/2022/02/21.02-TS.pdf>

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History of the case: (please note the chronological order of the summarised/referred national judgments.)

N/A
