

Spain, Audiencia Provincial de Barcelona (Provincial Court of Barcelona), resolution number 930/2019, of 30 of May of 2019

Member State

 Spain

Topic

accountability, impartiality

Sector

Predictive Justice

Deciding Court Original Language

Audiencia Provincial de Barcelona

Deciding Court English translation

Provincial Court of Barcelona

Registration N

675/2019

Date Decision

30/05/2019

ECLI (if available)

ECLI:ES:APB:2019:6349A

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

N/A

Subject Matter

Permission for prison leave – RisCanvi program – judicial control of decisions where AI platforms intervene.

Legal issue(s)

In the present case, the judge oversees the decision made by the prison authorities. Specifically, the prison authorities denied the temporary leave of an inmate, despite the fact that the RisCanvi program (an AI platform) assessed that releasing the inmate posed a low risk to society.

Request for expedited/PPU procedures

NO

Interim Relief

N/A

National Law Sources

Article 47.2 Penitentiary Organic Law and article 154 of Penitentiary Regulation

Facts of the case

The Treatment Board of Brians 2 Prison denied the request for a three-day ordinary leave submitted by one of its inmates. In this regard, it is important to note that Spanish law, specifically Article 47.2 of the Organic Law on Penitentiary Institutions and Article 154 of the Penitentiary Regulations, outlines the requirements that must be met in order to be granted a temporary leave. However, meeting these requirements alone is not sufficient to guarantee the approval of such a leave. The prison authorities have discretion to deny the request if they feel that the inmate does not inspire the necessary trust.

The inmate, whose request was denied, then filed an appeal with the Supervisory Prison Court No. 4 of Catalonia. Nevertheless, the court dismissed the appeal. The judge determined that the inmate had not yet demonstrated sufficient empathy toward the victim and had not fully internalized the content of the reintegration programs he had recently completed.

The inmate subsequently decided to appeal to the Provincial Court of Barcelona. The appeal was opposed by the Public Prosecutor's Office.

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

The Provincial Court of Barcelona dismissed the appeal. In this regard, it was noted that the inmate had only been in prison for 48 hours and had been sentenced to four years for a continuous fraud offense. Additionally, it was highlighted that the inmate has pending cases before the Investigating Court of Barcelona and six enforceable sentences for offenses against road safety, document forgery, and public order violations.

The court emphasized that the RISCANVI program (which calculates the inmate's risk of recidivism for the purpose of granting temporary leave) assessed a low risk of recidivism. However, the court supported the denial of the temporary leave due to the inmate not having fully

internalized the content of the rehabilitation program and the need to clarify other pending legal matters. Therefore, the judge concluded that there were no "sufficient guarantees" to consider that the inmate would have made a proper use of the temporary leave. In this sense, the court considered that it was necessary for the inmate to continue his maturation process to minimize the risk.

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)

Although the national courts do not make reference to EU Law, the case illustrates how the public administration and the judicial power control decisions made by AI programs (RisCanvi). At least, in fields as penitentiary permissions where fundamental rights of the prisoner can be jeopardized.

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.poderjudicial.es/search/AN/openDocument/6d16f8aa88410be6/20190904>

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