

Spain, Provincial Court of Girona, Judgment number 278/2020, 25 of June of 2020

Member State

 Spain

Topic

accountability, impartiality

Sector

Predictive Justice

Deciding Court Original Language

Audiencia Provincial de Girona

Deciding Court English translation

Provincial Court of Girona

Registration N

738/2020

Date Decision

25/06/2020

ECLI (if available)

ECLI:ES:APGI:2020:738/2020

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

N/A

Subject Matter

Penitentiary leave permits – RisCanvi – judicial control of automatised decisions

Legal issue(s)

In this case, a court reviews the legality of prison leave permits. In Catalonia, when granting such a permit for temporary leave the prison, the administration considers the results provided by the RisCanvi program. The court concludes that favourable technical reports prepared by the psychologist should take precedence over the negative assessments from RisCanvi.

Request for expedited/PPU procedures

NO

Interim Relief

N/A

National Law Sources

Article 154 of the Penitentiary Regulations

Facts of the case

The Treatment Board of the "Puig de les Basses" Penitentiary authorized Ambrosio to enjoy a three-day temporary leave on September 14, 2019. However, on December 17, 2020, the Supervisory Prison Court No. 1 of Catalonia revoked the permit granted by the Treatment Board. The court concluded that there were no guarantees that the inmate would make proper use of the leave. For supporting its decision, the court referred to the results provided by the RiSCanvi program*, which indicated that Ambrosio posed a high risk of reoffending and a medium risk of violating his sentence.

Ambrosio then appealed to the Provincial Court of Girona. In his appeal, Ambrosio argued that the Treatment Board had approved the temporary leave and that the court had wrongfully rejected it. The Public Prosecutor's Office, on the other hand, opposed granting the temporary leave, citing concerns over its appropriateness.

*RisCanvi is a statistical program used by the penitentiary administration in Catalonia to reject or accord the penitentiary leave permits.

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

In Spain, article 154 of the Penitentiary Regulations governs the requirements that must be met to grant a temporary leave from prison. Specifically, in order to grant such a leave, the law requires both objective requirements (having served a minimum amount of time in prison) and subjective ones (evaluating and considering the inmate's personal circumstances). However, since the purpose of imprisonment is rehabilitation and leaves are a tool to prepare for release, the courts consider that leave permits should only be denied in exceptional cases (such as risk of escape or

the commission of a new crime).

Based on this legal framework, the Provincial Court assesses whether or not to grant the leave. The Court first notes that the inmate meets the objective requirements (the required number of days in prison) and subjective ones (good behaviour with both inmates and staff). Since the inmate meets these minimum conditions, the Court asserts that it is then necessary to evaluate whether there is a risk that, if granted temporary leave, the inmate will commit new criminal acts or attempt to escape. In this regard, the Provincial Court highlights that the technical reports assessed by the Treatment Board were favourable to granting the permit leave. Although these reports are not binding, they are considered essential in deciding whether to grant temporary leave.

The Provincial Court rejects the lower court's arguments for denying the leave. The lower court had disregarded the psychologist's recommendation (which was in favour of granting the leave) because the RiSCanvi program classified Ambrosio as a danger. In contrast, the Provincial Court reiterates that the RiSCanvi program is not infallible and that it provides statistical data, which can produce false positives or negatives.

Thus, based on the analysis of the circumstances (technical reports and the inmate's good behaviour), the Provincial Court overturns the lower court's decision and grants Ambrosio a three-day temporary leave.

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

(Link to) full text

<https://www.poderjudicial.es/search/AN/openDocument/831639275c6b46b9/20201016>

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