

Case Law Guide. Fundamental Rights and Freedoms

1. Judgment of the Spanish Constitutional Court (SCC) n° 46/2015, of 5 March

Summary of the judgment

With this ruling the Constitutional Court responded to the appeal of unconstitutionality lodged by the National Ombudsman against the Catalan law regarding the Catalan Ombudsman. That law stated that this Catalan institution of defense of fundamental rights was the same as the National Apparatus for the Prevention of Torture, in fulfilling the provisions of the optional protocol of the Convention against torture ratified by Spain in 2006.

The Constitutional Court declared the unconstitutionality of the Catalan Law, affirming that only the Spanish state can design the National Apparatus for the Prevention of Torture.

This judgment is particularly significant because the Constitutional Court stressed that an autonomous State is not entitled to fulfil some international obligations stemming from an international treaty ratified by Spain when they are not expressly falling under the competences that the national law attributes to that autonomous State, not even if the concerned measures are taken to increase the implementation of the fundamental rights protection system.

In this case, Catalonia did so because its statutory law envisages some partial powers concerning international relations and international law allocated to the Generalitat of Catalunya which, in this specific circumstance, increased the powers of the Sindic de Greuges, the local Catalan ombudsman.

However, the national Ombudsman did not like the initiative of the Catalan authorities and therefore filled a complain before the Constitutional Court asking for a declaration of unconstitutionality of the Catalan law increasing the powers of the local Ombudsman.

Questions

1. What is the Sindic of Greuges?
2. Why do you think that the National Ombudsman filled a complaint before the Constitutional Court concerning a law that increased the powers of the local Catalan Ombudsman if both institutions have the same scope and objectives?
3. Which are the competences of the autonomous communities in the field of the fundamental rights protection?

2. Judgment of the Spanish Supreme Court (SSC) n° 1263/2018, of 17 July 2018

Summary of the judgment

In this case, the Court ordered Spain to pay €600,000 in compensation to Ángela González for the responsibility of its authorities in relation to the death of her daughter. Her daughter was murdered by her father in an unsupervised visit authorised by a judge. National courts dismissed Ángela's case, but the Committee on the Elimination of Discrimination Against Women (that is not a judicial body) found a breach of her human rights.

The Supreme Court has now affirmed that the State must comply with the Committee's decision. The Spanish Supreme Court has ruled that economic compensation is due if public authorities fail to comply with recommendations delivered by treaty bodies which do not own a binding legal force by themselves. This is a major development. Yet, in deciding the case, the Court only focus on the claimant's situation and made no reference to the legal enforceability of law and policy recommendations, which are frequently formulated in generic terms and their implementation would require the involvement of a variety of actors at different levels. Demanding States to abide by general recommendations as a matter of law would be impractical in many instances and it would probably exceed the purposes of international individual complaint mechanisms. Raising the legal weight of the UN committees' decisions on individual complaints could lead to a greater use of this redress mechanism. Before this judgment, many other national tribunals and governments refused to consider these decisions as binding.

The Spanish supreme court judgment opened now a new door with its jurisprudential turn that could lead to more international cases from lawyers and claimants. Clearly enough, this case represent an important decision, at least in Spain, where now the victims of human rights violations might count on an additional way of redress to obtain compensation against national authorities.

Questions

1. What the Spanish Supreme Court has established concerning the effectiveness of the UN Human Rights Treaty Bodies decisions in individual complaints?
2. Why this judgment opened a new door for individual claimants who suffered human rights violations?
3. Is Spain now obligated to implement all the decisions taken by the UN non-judicial bodies concerning individual violations of fundamental rights?