EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Violation of Spanish judges' rights in case concerning Parliament's failure to complete appointments process to governing body of judiciary

In today's **Chamber** judgment[1] in the case of Lorenzo Bragado and Others v. Spain (application nos. 53193/21, 53193/21, 53707/21, 53848/21, 54582/21, 54703/21, and 54731/21) the European Court of Human Rights held, by 4 votes to 3, that there had been:

a violation of Article 6 § 1 (right to a fair trial/access to court) of the European Convention on Human Rights.

The case concerned the appointment process for membership of the General Council of the Judiciary ("the GCJ"), the governing body of the judiciary in Spain. In 2018, the GCJ composition came up for renewal and the applicants, at the time Spanish judges, were candidates. In the following years and to date, however, Parliament has still not completed the appointments process. In 2020 the applicant judges lodged an *amparo* appeal with the Constitutional Court complaining about Parliament's failure to follow through with the process for renewing the composition of the GCJ, but it was rejected as out of time.

The Court found in particular that Article 6 was applicable to the case as it concerned an arguable civil right under Spanish law, namely the applicants' right to participate in the procedure for membership of the GCJ and the examination of their candidacies by Parliament in a timely manner.

It concluded that the Constitutional Court had not explained the rationale behind the dates chosen as the starting point for the three-month time-limit of the *amparo* appeal. The applicants could therefore not have foreseen the way in which the relevant law on time-limits had been interpreted and applied in their case. That had impaired the very essence of their right of access to a court, which, in the circumstances of the case, was also closely connected to ensuring respect for the legal procedure for renewing the composition of the governing body of the judiciary and to the proper functioning of the justice system.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicants are six Spanish nationals, Juan Luis Lorenzo Bragado, Manuel María Jaén Vallejo, Mónica Garcia de Yzaguirre, Rafael Estévez Benito, Maria Tardon Olmos and Jose Antonio Baena Sierra.

The General Council of the Judiciary ("the GCJ") is the governing body of the judiciary in Spain. Members' terms are renewed every five years by Parliament.

In 2018, the GCJ composition came up for renewal and the applicants, at the time Spanish judges, were candidates. The final list of 51 admissible candidates, including the applicants, was made public in September 2018.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.n
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Since then Parliament has been dissolved twice – in March and September 2019 – and general elections have been held, with the matter of renewing the GCJ composition being rolled over each time to the next Parliament (in particular, the 13th and 14th legislatures). To date, however, Parliament has still not voted on whom to appoint from the list of candidates.

In 2020 the applicants lodged an *amparo* appeal with the Constitutional Court to complain about Parliament's prolonged and continuing failure to follow through with the appointment process, but it was ruled inadmissible in 2021 as lodged out of time. In particular, it considered that the three-month time-limit for lodging an *amparo* appeal, as set down in section 42 of Law no. 2/1979, had begun either on 4 December 2018, when the mandate of the GCJ had expired, or on 4 December 2019, when the 14th legislature had opened. Either way, the applicants' appeal had been lodged on 14 October 2020 and was therefore too late.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial/access to court), the applicants alleged that the Constitutional Court's ruling rejecting their complaint about the appointment process had been arbitrary and had lacked reasoning.

The applications were all lodged with the European Court of Human Rights on 22 October 2021.

Judgment was given by a Chamber of seven judges, composed as follows:

Carlo **Ranzoni** (Liechtenstein), *President*,
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
María **Elósegui** (Spain),
Mattias **Guyomar** (France),
Kateřina **Šimáčková** (the Czech Republic),
Mykola **Gnatovskyy** (Ukraine),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 6

Firstly, the Court examined ***whether Article 6 was applicable*** to the dispute in issue.

It reiterated that the guarantees of access to a court under Article 6 § 1 were only applicable where there was a dispute over a "right" that could be said, at least on arguable grounds, to be recognised under domestic law.

It pointed out that the European Convention did not guarantee, as such, a right to be appointed to a post or to be promoted within the civil service. However, what was at stake in the proceedings brought by the applicants was not their right to become members of the GCJ, but their right to a lawful procedure for the timely examination of their candidacies.

It considered, moreover, that the applicants' arguments, alleging a violation of a legally established selection procedure and raising complex legal issues, including the interpretation and application of the statutory time-limit under section 42 of Law no. 2/1979, had been sufficiently tenable.

It therefore found that the applicants, who had all been included on the final list of admissible judicial candidates from which Parliament had to select new GCJ members, had had a right, which it could be said, at least on arguable grounds, to be recognised under national law, to participate in the

procedure for membership of the GCJ and to have their candidacies examined by Parliament in a timely manner.

The Court then went on to examine the Government's two intertwined arguments contesting the "civil" nature of that right, another aspect of the question of whether Article 6 was applicable to the case.

The Government's first argument alleged that the dispute concerned a "political" and not a "civil" right and consequently did not come under the scope of Article 6 of the Convention. The Court noted, however, that the applicants' claim, concerning the procedure for membership of the GCJ, did not involve any "political obligations" or the exercise of any "political rights". Nor indeed was membership classified as a "political office". Importantly, their claim was related to the part of the procedure preceding any actual voting by members of parliament.

The Government also argued that the right in issue was not civil under what is known in the Court's case-law as the *Eskelinen*[2] test. Under that test disputes involving civil servants could only be excluded from the scope of Article 6 § 1 of the Convention if two conditions were met: firstly, the national law must have excluded access to a court for the post or category of staff in question, and, secondly, this exclusion was justified on objective grounds in the State's interest.

In that connection the Court was satisfied that the applicants' claim could have been adjudicated by the Constitutional Court. In particular, although the scope of a constitutional review concerning parliamentary activities was limited, access to the Constitutional Court had not been excluded in respect of the applicants' claim. As the first condition of the *Eskelinen* test had not been met, it was not necessary to examine the second condition.

On that basis, the Court found that Article 6 and its guarantees of access to court were applicable to the applicants' case.

Turning to ***the merits of the case***, the Court noted that the three-month time-limit under section 42 of Law no. 2/1979 was central to the applicants' constitutional claim.

Such legal issues had not previously been raised before the Constitutional Court, which was the only level of jurisdiction able to deal with the situation. Against that background, it would have been reasonable to expect that the rejection of their *amparo* appeal would be reasoned.

However, the Constitutional Court had not given even the most basic of justifications for the rationale behind the two dates (4 December 2018 and 4 December 2019) it had referred to when rejecting the applicants' *amparo* appeal.

The Court therefore concluded that the applicants could not have foreseen the way in which section 42 of Law no. 2/1979 had been interpreted and applied in their case. That had impaired the very essence of their right of access to a court for the protection of their arguable civil right. Such a fundamental safeguard was closely connected, in the circumstances of the case, to ensuring respect for the legal procedure for renewing the composition of the governing body of the judiciary and to the proper functioning of the justice system.

There had therefore been a violation of Article 6 § 1 in respect of each applicant.

Article 8

The Court held, by 4 votes to 3, that there was no need to also examine the matter under Article 8.

Article 41 (just satisfaction)

The Court held, by 4 votes to 3, that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage.

[2] Vilho Eskelinen and Others v. Finland [GC], no. 63235/00 of 19.4.2007.

Separate opinions

Judge Elósegui expressed a concurring opinion, while Judges Ranzoni, Guyomar and Gnatovskyy expressed a joint dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in English.

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