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Meeting: 1514th meeting (December 2024) (DH)

Item reference: Action Report (22/10/2024)

Communication from Spain concerning the case of Domenech Figueroa v. Spain (Application No. 54696/18)
- *The appendices in Spanish are available upon request to the Secretariat.*

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Réunion : 1514e réunion (décembre 2024) (DH)

Référence du point : Bilan d'action (22/10/2024)

Communication de l'Espagne concernant l'affaire Domenech Figueroa c. Espagne (requête n° 54696/18)
(anglais uniquement) - *Les annexes en espagnol sont disponibles sur demande au Secrétariat.*

ABOGACÍA GENERAL DEL ESTADO

MINISTERIO
DE LA PRESIDENCIA, JUSTICIA
Y RELACIONES CON LAS CORTES

SUBDIRECCIÓN GENERAL
DE ASUNTOS CONSTITUCIONALES
Y DERECHOS HUMANOS

ACTION REPORT

***Case: DOMÈNECH FIGUEROA v. SPAIN* (Application No. 54696/18)**

***Date of judgment*: 28/09/2021**

***Final on*:** 28/12/2021

I. CASE DESCRIPTION

1. Subject of the case

The case concerns the breach of Article 6.1 of the Convention, in its manifestation of right to access to an appeal before the superior court, in labour proceedings brought by the applicant, employee of a financial institution who challenged the lawfulness of his individual subscription to a collective redundancy agreement.

2. Summary of relevant facts

In 2013, the applicant subscribed to a collective redundancy agreement reached in his company, a financial institution, in the context of a process of closure of different sites. As a result, his employment relationship was terminated.

In 2014, after finding that the announced site closures had not taken place, he brought an action before the labour courts requesting, as a main claim, the nullity of the individual agreement signed by him to join the collective redundancy agreement and, as a subsidiary claim, compensation for damages.

At the trial, he verbally withdrew the latter claim, maintaining only the claim for nullity of the agreement, but the judge (*Juzgado de lo Social*) did not take this withdrawal into account and in the judgment it only referred to the claim for compensation -the claim

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that had in fact been withdrawn-, which was dismissed, and not to the claim for nullity. Following a request for clarification, a decision was issued stating that the action actually brought was the claim for nullity of the agreement to join the collective redundancy scheme.

After an appeal against the judgment (*recurso de suplicación)*, the High Court of Justice (*Tribunal Superior de Justicia*) referred in its judgment once again only to the claim for compensation –which had been withdrawn at the trial-, and not to the claim for nullity, dismissing the appeal. A new request for clarification was filed. The court issued a decision including some arguments *obiter dicta* on the basis of which, even though the action brought were the claim for nullity, it should be dismissed.

In this context, the applicant filed a motion for nullity of the proceedings before the *TSJ*, which was dismissed, and an appeal for unification of doctrine (*recurso de casación para unificación de doctrina*) before the Supreme Court. The latter was declared inadmissible, as the requirements for the determination of "contradictory doctrine" between judgments –needed in this kind of appeal- were not met in the case. This was, in particular, because of the fact that the arguments given by the *TSJ* referring to the claim for nullity contained in the decision of clarification –not in the judgment of the case- had the character of *obiter dicta*.

Subsequently, the applicant appealed for *amparo* before the Constitutional Court, which dismissed the appeal on the grounds of lack of special constitutional significance of the case.

3. Violation found

In the judgment the Court, after analysing the law applicable and the circumstances of the case -in particular the reasons why the Supreme Court did not admit the appeal for unification of doctrine filed by the applicant-, reaches the conclusion that it was because of the fact that the arguments given by the High Court of Justice about the question in conflict regarding the claim for nullity were only *obiter dicta* –not *ratio decidendi*- that the appeal for unification of doctrine was declared inadmissible: it was **the mistake** made by the *TSJ* when identifying in its judgment the action brought by the applicant (as a result of a confusion between the main claim for nullity and the claim for damages, which had been withdrawn at the trial) what, ultimately, **led to the inadmissibility of the applicant's appeal** before the Supreme Court.

Concluding, thus, that the mistake made by the High Court of Justice of Andalucía –that could have rectified its judgment when noting the error instead of issuing a complementary decision containing *obiter dicta* arguments- had the effect of depriving the applicant of his right to access to the Supreme Court, and that the applicant had to bear an excessive burden as a result of this mistake, the Court declared a violation of Article 6.1 of the Convention.

As for just satisfaction, the Court, while stating that the most appropriate form of redress in a case like this would be the reopening of domestic judicial proceedings –if requested-, recognised the suffering by the applicant of certain anguish because of the violation, not to be compensated by the mere finding of the violation of by the reopening of the proceedings, ordering to pay the applicant an amount of EUR 9,600 in respect of non-material damage.

The judgment became final on 28/12/2021.

II. INDIVIDUAL MEASURES

1. Regarding the payment of just satisfaction

Just satisfaction awarded by the Court for compensation of non-pecuniary damages suffered by the applicant –a total amount of EUR 9.600 – has been effectively paid by the Government of Spain on 4/04/2022.

The internal order to do the payment was delivered on 28/10/2021.

The document of payment is annexed as Document no. 1.

2. Other individual measures

According to the Court's judgment, irrespective of the compensation for non-pecuniary damages, the most appropriate form of redress in the case under examination with regard to the applicant's individual situation would be a review of the domestic proceedings. Thus, it is stated:

"§31. La Cour rappelle que la forme la plus appropriée de redressement pour une violation de l'article 6 § 1 consiste à faire en sorte que le requérant se

retrouve autant que possible dans la situation qui aurait été la sienne si cette disposition n'avait pas été méconnue (Atutxa Mendiola et autres c. Espagne, no 41427/14, § 51, 13 juin 2017). Elle juge que ce príncipe trouve à s'appliquer en l'espèce. En effet, elle note que le droit interne prévoit la possibilité de réviser les décisions définitives qu'un arrêt de la Cour a déclarées contraires aux droits reconnus dans la Convention.

32. Par conséquent, elle estime que la ***forme la plus appropriée de redressement serait, pourvu que le requérant la demande, la révision de la procédure conformément aux exigences de l'article 6 § 1 de la Convention****".*

Following the Court's judgment, the applicant submitted before the Supreme Court, within the 1-year period provided for in the legislation for this purpose, a request for review of the final judgments issued in the domestic proceedings, based on article 236 of *Ley Reguladora de la Jurisdicción Social*[1] and articles 509 *et seq* of Ley de Enjuiciamiento Civil.

[1] *Ley Reguladora de la Jurisdicción Social, a*rticle 236.1 (version in force at the time of the submission of the request for review in the case under examination).

"1. Contra cualquier sentencia firme dictada por los órganos del orden jurisdiccional social […] procederá la revisión prevista en la Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil, por los motivos de su artículo 510 y por el regulado en el apartado 3 del artículo 86, de la presente Ley. La revisión se solicitará ante la Sala de lo Social del Tribunal Supremo.

En la revisión no se celebrará vista, salvo que así lo acuerde el tribunal o cuando deba practicarse prueba. En caso de condena en costas se estará a lo previsto en el artículo anterior y el depósito para recurrir tendrá la cuantía que en la presente Ley se señala para los recursos de casación.

La revisión se inadmitirá de no concurrir los requisitos y presupuestos procesales exigibles o de no haberse agotado previamente los recursos jurisdiccionales que la ley prevé para que la sentencia pueda considerarse firme […]".

The wording of the provision has been modified, with effects from 20/03/2024, by Royal Decree-Law 6/2023, of 19 December, which has introduced the following paragraph*:*

"En los supuestos del apartado 2 del artículo 510 de la Ley 1/2000, de 7 de enero, salvo en aquellos procedimientos en que alguna de las partes esté representada y defendida por el Abogado del Estado, el letrado o letrada de la Administración de Justicia dará traslado a la Abogacía General del Estado de la presentación de la demanda de revisión, así como de la decisión sobre su admisión. La Abogacía del Estado podrá intervenir, sin tener la condición de parte, por propia iniciativa o a instancia del órgano judicial, mediante la aportación de información o presentación de observaciones escritas sobre cuestiones relativas a la ejecución de la Sentencia del Tribunal Europeo de Derechos Humanos. El letrado o letrada de la Administración de Justicia notificará igualmente la decisión de la revisión a la Abogacía General del Estado. Del mismo modo, en caso de estimarse la revisión, los letrados y las letradas de la Administración de Justicia de los tribunales correspondientes informarán a la

The Supreme Court has ruled on the case on 16/01/2024.

In its judgement, after analysing broadly the procedural instrument of the appeal for a review of final judgments -and in particular its application in cases where the European Court of Human Rights has found a violation of the Convention-, the court finds that the requirements for a review are met in the case under examination (as explained in Ground 6), and it upholds the applicant's request for review (with the extent indicated in Ground 7 of said judgment), declaring the annulment of both the judgment issued by the *Tribunal Superior de Justicia* on appeal and the *Juzgado de lo Social* at instance level.

It is to be highlighted that the Supreme Court makes in its judgment of 16/01/2024 an extensive interpretation of the Court's judgment, concerning the extent of its effects, as in the Court's judgment the violation of the Convention was attributed solely to the *Tribunal Superior de Justicia*, not to the *Juzgado de lo Social*. Regarding the latter, it is acknowledged that, although the court initially erred, it subsequently amended its mistake:

> *"24. La Cour note qu'au cours de la procédure la juridiction interne a commis une erreur en déclarant que le requérant avait retiré sa demande en nullité du licenciement, formée à titre principal, et qu'il avait maintenu sa demande d'indemnisation du préjudice, formée à titre subsidiaire, alors que c'était exactement le contraire.* ***La juridiction de première instance a corrige l'erreur en temps utile et a bien précisé que, en tout état de cause, la demande en nullité du licenciement formée à titre principal avait été tranchée sur le fond […]****".*

The Court's judgment is thus clear when attributing the violation to the Tribunal Superior de Justicia's performance:

> *"24. […] Néanmoins, la juridiction d'appel a par la suite refait lamême erreur bien que le recours du requérant fût clair à propos de l'action qu'il entendait engager. De plus, il faisait expressément mention de la décision rendue par le juge de première instance le 26 janvier 2016 (paragraphe 8 ci-dessus).* ***Le Tribunal supérieur de justice n'a pas corrige l'erreur malgré la demande adressée par le requérant****. Il a cependant tranché au fond la demande principale*

Abogacía General del Estado de las principales actuaciones que se lleven a cabo como consecuencia de la revisión".

(la demande en nullité du licenciement), exposant que dans tous les cas elle avait été formée au moyen d'une procédure inadéquate.

25. En ce sens, il y a lieu de noter que ***le refus du Tribunal supérieur de justice de corriger cette erreur a postérieurement entraîné l'irrecevabilité du pourvoi en cassation du requérant****. En effet, dès lors que les arguments présentés par la juridiction d'appel pour trancher la demande en nullité formée à titre principal étaient des obiter dicta, le Tribunal suprême a conclu qu'il n'était pas possible d'examiner la contradiction jurisprudentielle alléguée par le requérant (paragraphe 11 ci-dessus).*

26. En application des principes généraux exposés ci-dessus, la Cour relève que l'erreur commise par la juridiction interne a eu pour effet de priver le requérant d'un accès à la juridiction suprême. Elle estime que le requérant a dû supporter une charge excessive en raison de cette erreur, d'autant plus que celle-ci était exclusivement imputable à la juridiction en question. En effet, si la juridiction d'appel avait corrigé son erreur, les arguments présentés pour trancher l'action en justice du requérant n'auraient pas été des obiter dicta, et de ce fait le Tribunal suprême aurait tranché différemment le pourvoi en cassation de l'intéressé. Il s'ensuit qu'en raison de cette erreur de fait, imputable à la juridiction interne, une decisión ndéniablement erronée a été rendue en l'espèce. Ainsi, ***l'erreur commise par le Tribunal supérieur de justice d'Andalousie a porté atteinte au droit du requérant à un accès effectif au Tribunal suprême*** *(Laskowska c. Pologne, no 77765/01, §§ 60-61, 13 mars 2007 ; Šimecki, précité, §§ 46-47 ; Sefer Yılmaz et Meryem Yılmaz, précité, §§ 72-73)".*

The Supreme Court has therefore extended the effect of the Court's judgment beyond that strictly required by the Court, as the former has decided, in order to strengthen the safeguards on the applicant's position, not only to annul the judgment of the Tribunal Superior de Justicia -as indicated by the Court-, but also the judgment of the Juzgado de lo Social, ordering the restitution of the case file to the *Juzgado* for the parties to use their rights, as they see appropriate, in the corresponding trial ("*devolviéndose los autos al Juzgado de lo Social para que las partes usen de su derecho, según les convenga, en el juicio correspondiente*").

With the annulment by the Supreme Court of the judgments issued in the domestic proceedings -more specifically, with the annulment of the judgment issued by the *Tribunal Superior de Justicia*- the Government of Spain consider that the execution of the individual measures stemming from the ECtHR's judgment has been completed.

This is, in the Government's view, irrespective of the further course of the domestic proceedings, and in particular of whether the new judgment which is to be delivered -and which will have to decide on the main claim brought by the applicant in the domestic proceedings-, is favourable or unfavourable to his position. And also irrespective of whether eventually the applicant's is restored through the delivery of a new judgment by the *Tribunal Superior de Justicia*, correcting the error to which the European Court of Human Rights attributes the violation of the Convention found in the case, or also a new judgment is delivered by the *Juzgado de lo Social*.

III. GENERAL MEASURES

1. Publication and dissemination of the judgment

As explained in the Action Plan submitted by the Government of Spain on August 2022, the judgment delivered by the Court in the current case was widely disseminated on the same date of its publication among domestic authorities and those courts concerned.

It has been translated by the translation team of the *Subdirección General de Constitucional y Derechos Humanos* of the Ministry of Justice, under the responsibility of the Agent of the Kingdom of Spain before the Court, and sent to the Registrar for its dissemination through HUDOC Data Base.

The judgment and its translation to Spanish have also been disseminated by the Ministry of Justice among the public through its publication on the Ministry's website.

Special mention must be done to the publication of the translation of the judgment on the web page of *Consejo General del Poder Judicial*[2], and on the CENDOJ Database[3].

[2] https://www.poderjudicial.es/cgpj/es/Temas/Centro-de-Documentacion-Judicial--CENDOJ-/Jurisprudencia/Sentencias-de-actualidad/Otros-Organos/Tribunal-Europeo-de-Derechos-Humanos/Tribunal-Europeo-de-Derechos-Humanos--Vulneracion-del-articulo-6-1-del-Convenio--Acceso-a-los-Jueces-y-Tribunales--Derecho-del-demandante-a-un-acceso-efectivo-al-Tribunal-Supremo

Finally, it is to be mentioned that the judgment has been widely reported in the media[4].

2. Other general measures

The judgment in the *Domènech Figueroa* case does not identify any general problem arising from the Spanish legislation or from the judicial practice. Indeed, the Court does not criticize the rules on admissibility of cassation appeal for unification of doctrine (*recurso de casación para unificación de doctrina*) nor their general interpretation by the domestic courts.

Due to the very specific circumstances of the case, in which judicial authorities from both first instance and appeal (*recurso de suplicación*) committed an unintentional mistake when identifying the claim put forward by the applicant –by confusing the subsidiary claim raised in the initial application, which the applicant had expressly withdrawn at the trial, with the main claim, and omitting to rule in the judgment on the main claim-, it can be stated that **it is an isolated case, which does not need the adoption of any further general measures**.

From the Government's point of view, it is not necessary to take any further general measures in order to implement the judgment.

[3] The Judicial Documentation Centre (CENDOJ) is the technical body of the General Council of the Judiciary responsible for the official publication of case-law, also offering support and information services to members of the judiciary by providing them with access to various documentary sources used in the development of judicial activity.

[4] https://www.expansion.com/juridico/sentencias/2021/09/28/6152f225468aeb1e5b8b4611.html

https://www.europapress.es/economia/laboral-00346/noticia-tedh-condena-espana-indemnizar-extrabajador-vio-vulnerado-derechos-despido-colectivo-20210928142457.html

https://www.malagahoy.es/malaga/Estrasburgo-condena-Espana-reclamacion-laboral-Malaga_0_1615039487.html

IV. CONCLUSION

In the light of the foregoing, the Government respectfully request the Committee of Ministers to declare that Spain has fulfilled its obligations under Article 46 §1 of the Convention and close the examination of this case.

Madrid, 21 October 2024
The Co-Agent of the Kingdom of Spain

TO THE DEPARTMENT FOR THE EXECUTION OF JUDGEMENTS
COMMITTEE OF MINISTERS - COUNCIL OF EUROPE