

SPANISH CONSTITUTIONAL COURT

Cabinet of the President
Press Office

INFORMATION NOTE No. 6/2014

THE SPANISH CONSTITUTIONAL COURT PROTECTS A WOMAN AGAINST A JUDGE'S DECISION TO NOT SUSPEND A FORECLOSURE

The Spanish Constitutional Court (TC) has granted protection to a citizen whose right to effective judicial protection (Art. 24.1 Spanish Constitution (CE)), viewed as the right to a reasoned decision, was infringed by First Instance Court Number 31 in Madrid, during foreclosure proceedings against the home where the plaintiff lived with her children. The judgment delivered by the Second Chamber overruled all four judicial resolutions challenged, and ordered proceedings to recommence from the date immediately prior to the first resolution delivered on 10 March 2011.

On 27 September 2011, "*for reasons of exceptional urgency*" and further to Article 56.3 of the Organic Act of the Constitutional Court, the TC ordered the interim suspension of "*the enforcement of any challenged resolutions (...) on the grounds that this enforcement would cause irreparable or almost irreparable harm, devoiding an appeal for protection [“recurso de amparo”] of its purpose*".

The judgment now delivered by the Second Chamber TC merely analyses whether the resolutions challenged by the appeal for constitutional protection are unreasonable or arbitrary, and whether they are reasoned; no pronouncement is made as to the adequacy of suspending the foreclosure based on the facts alleged by the plaintiff, given that this is an ordinary point of law that the court is competent to resolve.

The applicant for constitutional protection, on two occasions, requested suspension of foreclosure proceedings by raising two preliminary rulings referring to the existence of two criminal charges that could affect her eviction. In the first, brought on 15 January 2010, she alleged existing criminal proceedings against her ex-husband for an offence of abandonment; in the second, filed on 9 March 2011, she claimed that legal measures had been taken against the creditor bank on the grounds of an alleged offence of procedural fraud. Both preliminary rulings were rejected by First Instance Court Number 31, which on both occasions ordered continuance of foreclosure proceedings. According to the applicant for constitutional protection, in response to her petition of March 2011, the Court refused to process the preliminary ruling mistakenly assuming that it referred to the one related to her ex-husband, which had already been resolved.

The judgment, in which the Vice President, Adela Asua, acted as the reporting Judge, states that by merely reading the order dated 25 May 2010 (settling the first preliminary ruling) it is evident that the court made a mistake when responding to the second preliminary ruling, raised in 2011. The TC affirms that there was evidence that "*said resolution analysed the first preliminary ruling in criminal law raised by the appellant, related to the indictment of the plaintiff's ex-husband for a potential offence of abandonment*". However, in the second preliminary ruling, based on "*a potential commission of an offence of procedural fraud by Caja Madrid, as mortgage lender*", the Court "*merely affirmed that it had already pronounced itself on the matter in its previous order of 25 May 2010; and this statement, without a doubt, is manifestly wrong*".

This mistake, the judgment adds, "*is constitutionally relevant*", given that "*it has determined the decision adopted*" by the Court, which "*refused to suspend the eviction*".

requested. Furthermore, *“this inadequacy is attributable to the court, not to the party’s negligence, who at all times tried to have the court remedy its error”*.

The Constitutional Court clarifies that the granting of constitutional protection only involves taking the proceedings back to the date immediately prior to delivery of the first of the resolutions challenged. The Court cannot *“examine or assess”* the *“potential capacity of the facts, which the plaintiff claimed to be apparently criminal”*, to determine suspension of the foreclosure. *“This decision is exclusively entrusted to the civil courts”*, it concluded.

Madrid, 21 January 2014