



## INFORMATION NOTE No. 25/2014

### THE PLENARY MEETING REJECTS ANY “IRREGULARITY” IN THE COURT’S ACTIVITY WHEN PROCESSING AN APPEAL AGAINST THE “PAROT DOCTRINE”

The Plenary Meeting of the Spanish Constitutional Court (TC) rejects any “irregularity” in the process which ended granting constitutional protection, due to a breach of the rights to freedom and to effective judicial protection, to Pello Josepe Etxeberria Lete, to whom the Spanish National Court and Supreme Court applied the so-called “Parot doctrine”. Constitutional protection proceedings lasted five years as a result of “a provisional set-back” in the TC resulting from its excessive workload, in addition to the “extraordinary technical complexity” of the appeal.

In order to determine whether a judicial procedure has suffered delays, the TC explains, it does not suffice “to calculate, objectively and out of context, the length of the suit from beginning to end but, as the European Court of Human Rights (ECHR) points out, the specific circumstances of the case should be taken into account”.

The Plenary Meeting highlights, first, the “extraordinary technical complexity” of the matter raised (the retroactive application of a change in existing case-law regarding calculation of payable penitentiary benefits) which, furthermore, was “unheard of” by the Court. It also points out the fact that said complexity had already been brought to light in the ECHR’s resolution, which “had needed the intervention of both instances, further to its thorough and detailed study of the matter” in order to resolve an “identical case” (the appeal lodged by Inés del Río against the “Parot doctrine”). Finally, the Decision notes that the appeal lodged by Etxeberria Lete before the TC was not an isolated appeal, but “part of many different appeals for constitutional protection”, with heterogeneous procedural situations subject to “the case-law settled in the first of these appeals”. This is why it was necessary to carry out a “detailed analysis” in order to “identify and assess” each situation. Consequently, the applicant’s appeal depended on a “joint resolution of all of the appeals for constitutional protection included in this long list”.

The review of convictions, carried out after the passing of the 1995 Criminal Code, added extra technical complexity to the resolution of the appeals against the “Parot doctrine”. In fact, following the entry into force of the new Criminal Code, in some cases the system of payable penitentiary benefits continued (despite being excluded by the new Code), as it was thereafter used to determine whether the Criminal Code of 1973 or that of 1995 was the most favourable.

This technical complexity alone- which determined the Plenary Meeting’s decision to personally examine all appeals against the “Parot doctrine”- would “rule out any irregularity in the Court’s activity”, states the Decision. However, the TC lists other circumstances which, all together, explained the length of the process.

Amongst them, the Plenary Meeting cites *“the obvious social and political impact of the case”*, given that the appeal for constitutional protection had been lodged by *“a person convicted of very serious crimes and imprisoned for along period of time, who could eventually be released depending on the decision taken by the Court”*. The Decision also examines *“the Court’s activity”* throughout the processing of the applicant’s appeal for constitutional protection; during this period of time the Plenary Meeting had to bear an *“extraordinarily heavy”* workload, as verified, it states, by its Annual Reports. In addition to this *“ordinary”* workload there was a *“coincidence in time”* between Etxeberria Lete’s constitutional protection and the unconstitutionality appeal lodged in July 2006 against Catalonia’s Statute of Autonomy, the *“technical complexity”* and *“social and political relevance”* of which *“required that the Court hold discussions for many days”*.

Finally, the Plenary Meeting brings two more facts into consideration: the reform of the Public General Act of the Constitutional Court (LOTC) in 2007, *“which substantially changed how to study, process and resolve appeals for constitutional protection, involving an inevitable adjustment of the Court”*; and the *“extraordinary delay in covering the vacancy left by one of its members”* (Mr. Roberto García-Calvo, whose position had remained outstanding since his death, in May 2008, until 2012).

The Plenary Meeting concludes that the delay in the applicant’s appeal for constitutional protection *“was due to what must be defined as a provisional set-back in the Constitutional Court resulting from its excessive workload, in addition to the particular complexity of the appeal for constitutional protection referred to here”*. In order to remedy the situation, the LOTC was reformed in 2007, bringing *“greater flexibility in the processing of constitutional matters”*. However, the TC explains, the effects of the reform were unable to benefit *“the processing of the appeal for constitutional protection covered by this resolution”* due to the particular circumstances involved. In this regard, the Decision cites ECHR case-law, which makes a distinction between temporary and permanent delays and which, in the *Zimmerman v. Steiner* case, released the State from liability for *“a provisional back-log in the processing of matters (...) if adequate measures to overcome an exceptional situation are quickly adopted”*. *“Nowadays”*, the Court states *“The length of constitutional protection suits has been considerably reduced, which proves the effectiveness of this legal reform”*.

The Plenary Meeting also disagrees that the Constitutional Court acted irregularly when processing the appeals for constitutional protection lodged by José María Pérez Díaz and Juan María Igarataundi Peñagaricano against the *“Parot doctrine”*; the former lasted less than two and a half years, and the latter less than three years. In both cases, likewise entailing *“particular complexity”*, the length of the proceedings *“cannot be deemed to amount to an irregularity (...) since this period of time is the ordinary duration of any claim for constitutional protection”*.

Madrid, 24 March 2014