



INFORMATION NOTE No.35/2014

THE SPANISH CONSTITUTIONAL COURT GRANTS PROTECTION TO A FOREIGNER WHOSE RESIDENCE PERMIT WAS NOT RENEWED DUE TO COMMITTING A TRAFFIC OFFENCE

The First Chamber of the Spanish Constitutional Court (TC) has overruled two judgments, delivered by a Valencia Court and by the High Court of Justice of the Autonomous Community of Valencia (TSJCV), which had upheld an administrative resolution whereby, in May 2010, C.A.A. had been refused a renewed work and residence permit. In a judgment where Juan Luis Ignacio Ortega acted as the Reporting Judge, the First Chamber considers that the appellant's right to effective judicial protection has been infringed and orders that new judgments be delivered.

In September 2008, C.A.A. applied to renew his Spanish residence and work permit. In November 2008, the Deputy Office of the Government of Valencia rejected the renewal when it discovered that the applicant had a criminal record. The Administration in 2010 upheld its decision when resolving the remedy of appeal. This refusal to renew the permits was subsequently confirmed by the judgments delivered by Contentious-Administrative Court Number 10 in Valencia (in 2010) and by the High Court of Justice of the Autonomous Community of Valencia (in 2012). On 21 November 2007, C.A.A. had been found guilty of a traffic offence and convicted to a four-month fine and eight months' withdrawal of his driver's licence.

In this request for constitutional protection, the appellant claimed that his right to effective judicial protection and right of defence had been infringed, given that the resolutions challenged had not taken into account his allegations as to his personal circumstances and links to Spain. In particular, he mentioned that he was the father of two children (who at the time of the facts were five and six), one of whom was a Spanish national, who were financially dependent on him.

The Court took into account that he was not applying for his first residence permit but a renewal, which is why the refusal to renew "*entailed a change in the applicant's position*" and in "*his citizen status*", given that as a result he became illegal and did not hold a permit to reside in Spain. In addition, a refusal to grant a work permit meant "*almost automatically the loss of a job*" and, consequently, the inability to fulfil "*his duties arising from father-child relations*".

The judgment affirms that there are "*exceptional circumstances*" in this case, which should be weighted by the Administration and the courts. However, the courts had simply rejected the renewal application of the permits when they confirmed an existing criminal record. Both the Administration and the courts "*should have taken into account*" the seriousness of the facts on which the appellant had been convicted, as well as the fact that "*the case involved the right to family unity (Art 18 Spanish Constitution (CE)), along with the*

right to social, economic and legal family protection (Art. 39 CE), in relation to the mandate foreseen in Art. 10.2 CE, as well as Art. 31 of the UN Convention on the Rights of the Child, of 20 November 1989”.

Specifically, when applying for a renewal of his permits, it should have been taken into account that the party had already settled his civil liability for the damage caused and that the order to withdraw his driver’s permit had totally expired. These circumstances, added the TC, *“should have been weighted, given that the circumstances first of all relate to his own effort to become integrated and a part of Spanish society, given that the appellant had no other criminal record other than the one already described and even held an employment contract for an indefinite term; secondly, the family’s ties to Spain (the appellant’s mother resides in Valencia and holds a permanent residence permit), which ultimately affect two minors (one of whom is Spanish, both very young, as they were born in 2002 and 2003 and were 5 and 6 years old at the application date, who were partly under his care and also depended financially on his allowance)”.*

The TC reached the conclusion that the judicial resolutions (administrative resolutions may not infringe the right to effective judicial protection) had made *“an interpretation of the rule that does not uphold the constitutional grounds”*, given that *“they just confirmed the administrative resolutions without weighting the special personal circumstances of the applicant for constitutional protection, when applicable law allowed an interpretation that would have supported this weighting”.*

Madrid, 16 April 2014.