



SPANISH CONSTITUTIONAL COURT

Cabinet of the President
Press Office

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THE TC ADVISES THAT JUDICIAL BODIES MUST AVOID SITUATIONS OF INEQUALITY, PARTICULARLY IN THE CASE OF HANDICAPPED INDIVIDUALS

The Spanish Constitutional Court has granted constitutional protection to a man who was convicted *in absentia* (he did not attend the trial, despite being summoned) for committing a crime of robbery. Chamber One of the TC considers that the right to effective judicial protection (Art. 24.1 Spanish Constitution – CE) had been breached given that, notwithstanding evidence of possible mental disability, no psychiatric examination was carried out and the judicial body could not evaluate whether the appellant understood the importance of appearing in Court on the day scheduled for the trial.

The Judgment, where Judge Juan Antonio Xiol acted as Reporting Judge, considered that, in this case, before holding a trial *in absentia*, the Criminal Court should have taken into account a series of factors that were proven during the proceedings, to include: that the appellant claimed to have committed the crime under threats from a third party; that the examining Judge had ordered a psychiatric examination to determine the accountability of the accused, but it did not take place due to the appellant's absence; and that he was being treated for depression, had drinking problems, 68% disability recognised by the Regional Government of Galicia and slight mental retardation.

According to the Court, the failure to not consider these circumstances meant that the decision to proceed with the trial *in absentia* consequently infringed the appellant's right to effective judicial protection. In fact, the judgment points out that during the procedural investigation there was "*evidence of the appellant's possible mental disability*", despite which, no forensic examination was carried out "*in order to confirm that the appellant might suffer some disorder or alteration (...) preventing him from fully understanding the illegality of the facts*".

The Criminal Court, which held the public hearing, "*could not avoid any doubts raised by the examining judge*" on the appellant's "*possible misunderstanding*". Therefore, in compliance with the duty to prevent defencelessness, it should have either "*verified that this disability did not hinder the accused's understanding of the importance of the summons to a hearing, subject to the notice that an in absentia conviction was possible*", or "*ensured his appearance at the public trial, especially taking into account that during the investigation he claimed to have committed the crime under threats from a third party and that his mental disability could eventually affect his liability*".

According to Court case-law, whenever there is evidence that the accused "*may be mentally disturbed and consequently incapable*", the judicial body must carry out "*any complementary steps necessary to clear any doubts on the matter*". The foregoing is a result of Art. 9.2 CE, whereby the public powers must "*encourage conditions to ensure real and effective freedom and equality of individuals (...), removing any obstacles that prevent or hinder the same*". This duty is even more significant in the case of handicapped individuals.

Therefore, “a mere individual notification to the appellant of the summons to the trial, advised of the possibility of an in absentia conviction, formally complied with the law but was insufficient to clear the doubts arising during examination of the appellant’s disability”.

Madrid, 10 June 2014.