



CONSTITUTIONAL COURT OF SPAIN
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THE CONSTITUTIONAL COURT DISMISSED AN AMPARO APPEAL CONCERNING A SANCTION FOR CRITICISING A POLITICAL PARTY THROUGH THE MEDIA

The Plenum of the Constitutional Court has dismissed the *amparo* appeal submitted by an affiliate of the Socialist Party (PSOE) that criticised through Letters to the editor not holding primary elections to choose the candidate for Oviedo's local elections. The Court considers that the Constitution grants a special position to political parties (Article 6 of the Constitution; CE). Therefore, this must be taken into account in order to resolve the conflict between the fundamental rights at stake (right to association and freedom of expression). Consequently, the Court has the power to analyse not only the proceeding requirements but the actual content of rights. After this the Court deems that in this specific case the affiliate's words are out of the application area of the freedom of expression because they could have compromised the party's public opinion. The Vice-president of the Court, Adela Asua, has been the Rapporteur of the Judgment. The Ruling has a dissenting opinion by the President, Francisco Pérez de los Cobos adhered by the Judge Andrés Ollero.

The Court explains that *the "special constitutional significance"* the need for defining the case law according to the exercise of fundamental rights by the political party's members. They analyse if the affiliate freedom of expression can be limited when his opinion is contrary to the association's interests. This restrictions is foreseen in the disciplinary authority that a party exercises over its affiliates.

Following the constitutional case law, expressions necessary for the public interest are within the area of application of the right to freedom of expression. They are allowed even in cases where the target feels bothered. However there is no right to swear.

As for the political parties, the constitutional case law understand that they are a kind of association among those classified in Article 22 CE (Right to association). This grants a lower check power and government intervention with a high range of freedom and independency. This special protection has justified the flexibility of the judges when they prosecute political parties' internal activity and their relationship with their affiliates. This has justified also the formal check of their disciplinary authority.

That said, Article 6 CE grants political parties a special constitutional position that means that they are not considered simple private legal persons as it happens with other holders of the right to association foreseen in Article 22 CE. This ensures that the Constitutional Court takes into account the affiliates' right to participate in the organisation and functioning of the party and, at the same time, it demands the affiliates to collaborate with the political association to promote its correct functioning.

In the area of freedom of expression this translates into a duty of containment in the public expressions even for the affiliates that have no public responsibilities. The exercise of the right of freedom of expression must be reconciled with the necessary loyal collaboration with the political party. This does not mean that the expressions are forbidden, but that they should be formulated in a way that does not severely impair the autoorganisation power of the party, its associative image or its normal purposes.

As for the jurisdictional check of the parties' disciplinary authorities, until 2011, the constitutional case law upheld that it should only have a formal scope. Therefore, the Court did not analyse the sanctioned behaviour, it only analysed if there was enough ground for the bodies to take such decision.

The Court acknowledges for the first time in this Judgement that the decisions of the political parties that imply the interference in a fundamental right may be subject to the constitutional check that goes beyond the mere formal check.

The application of the aforementioned in this specific case leads to dismiss the *amparo* appeal given the following reasons:

The expressions of the affiliate fell within the application area of the constitutional mandate of democratic functioning of political parties, which is the internal procedure to select the candidates. The publication of those expressions in the media transfers to the public opinion both debates and increases the potential detrimental effects on the political party's image.

Some of the expressions used by the actor may be considered provocative and hurtful because they introduce the parties' bodies from a negative and hostile perspective that compromises seriously the party's public opinion, breaching its statutory duties.

The legitimate exercise of criticising does not justify the use of expressions that may infringe upon the party's external image and of those that rule it. This may also mislead public opinion to think that the organisation itself does not respect the constitutional mandate that imposes the democratic organisation and functioning.

Therefore, in this case, the party exercised its disciplinary authority legitimately when it sanctioned the temporary suspension from militancy.

In their dissenting opinion, Pérez de los Cobos and Ollero agree on the dismissal of the appeal, but they do not agree with some aspects of the grounds. They consider that the change in the constitutional interpretation disturbs the balance between the affiliate's and party's fundamental rights because it resolves this conflict of rights (right to association and freedom of expression) with reasoning rules designed for conflicts between individuals with no common legal relationship as the one that arising from the "*associative pact*". Therefore, the Judgment does not apply the new constitutional interpretation, fact that reveals that the check's paradigm announced cannot be completed because that would mean ignoring the necessary margin of appreciation of the party ex Article 22 CE, which was usually protected by the same case law that now intends to change it.

Madrid, 18 January 2017.