



CONSTITUTIONAL COURT OF SPAIN
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THE CONSTITUTIONAL COURT ASSERTS THAT THE PRESUMPTION OF INNOCENCE IS INFRINGED WHEN DOUBTS ABOUT THE INVOLVEMENT IN THE INCIDENT ARE RAISED

The Constitutional Court upheld the *amparo* appeal submitted by an ex-accused for a crime against public health who claimed a compensation due to abnormal functioning of the Administration of Justice. He spent more than fourteen months in prison before being acquitted. The Plenum annuls the Judgment that rejected the compensation because it deems that in the legal grounds “*questions the innocence of the appellant*”, which infringes his fundamental right to presumption of innocence (Article 24.2 of the Constitution). The Judgment has a dissenting vote of the Rapporteur, Juan José González Rivas, adhered by Judge Antonio Narváez.

The appellant was arrested for alleged crime against public health when he transported in his vehicle two bags of a suspicious-looking substance. In spite of the analyses, the nature of the substance could not be determined. Consequently, after the trial the appellant was acquitted on account of lack of evidence. He was in pre-trial detention from 4th June 2003 to 24th August 2004.

The Court explains that the “*special constitutional significance*” of the appeal lies in a new aspect of the right to presumption of innocence on which there is not any case law. More specifically, about the effectiveness of the aforementioned right in proceedings involving an abnormal functioning of the Administration of Justice.

Following ECHR case law, when someone is acquitted after having being detained does not automatically generate an obligation of compensation by the State neither it implies that there has been an infringement of the right to presumption of innocence. However, the ECHR has considered adversely affecting decisions “*administrative and judicial decisions that made the difference between the acquittal for having been proved the non-involvement in the incident and the acquittal on account of lack of evidence of such involvement. Because that reasoning, without nuances casts doubts as to the innocence of the appellant*”.

The argument in this case was centred on whether or not there was a criminal offence. Therefore, bearing in mind the ECHR case law, the Constitutional Court concluded that the Supreme Court Judgment infringed the right to presumption of innocence of the appellant.

The Constitutional Court explains that “*arguments directly or indirectly affecting the presumption of innocence cannot be used to determine whether or not there is pecuniary responsibility of the State for pre-trial detention*”. At this point, the EHRC is quoted, “*once the acquittal is firm [...], casting doubts as to the innocence, included those related to the acquittal causes, are not compatible with the presumption of innocence*”. And adds that the EHRC “*in application of the principle in dubio pro reo, there should not be any difference between an acquittal based on lack of evidence and an acquittal based on an undeniable innocence finding (...)*”.

In this case, the challenged Judgment dismissed the pecuniary responsibility of the State based on the lack of evidence acquittal of the appellant (this is, in application of the principle of presumption of evidence), rather than the inexistence of a criminal offence.

Judges Juan José González Rivas and Antonio Narváez, consider that the appeal should have been dismissed. In their opinion, there is much more EHRC case law than the one quoted in the Judgment. Moreover, they believe that the Supreme Court “*did not judge the appellant behaviour at all*”. On the contrary, it only evaluated whether the doubts as to the existence of a criminal offence (expressed by the judicial body that ruled the case) should have given raise to pecuniary responsibility of the State.

Madrid, 24 January 2017.