



CONSTITUTIONAL COURT OF SPAIN  
Cabinet of the President  
Press Office

## PRESS RELEASE No. 6/2017

### UE DIRECTIVES ARE BINDING REGARDLESS NOT HAVING BEEN TRANPOSED IF THE STATE HAS MISSED THE DEADLINE TO DO SO

The Constitutional Court has upheld the amparo appeal submitted by a citizen whose lawyer was refused the access to the police file opened after being arrested by the Guardia Civil. The assigned judge did not remedy this situation and he also denied the habeas corpus. The Court considers that there has been a violation of the right to individual liberty (Article 17.1 of the Spanish Constitution, hereinafter CE) and the right to be assisted by a lawyer during police custody (Article 17.3 CE). The rapporteur was the Judge Ricardo Enríquez.

The events leading to the amparo appeal took place in July 2014 when the appellant was arrested and refused the right to be assisted by a lawyer to give testimony. The appellant applied for the habeas corpus and claimed before the investigating Judge no. 4 of Illescas (Toledo) that the arrest was illegal because of insufficient information of its causes, among other reasons. The judge dismissed his request.

In the amparo appeal, it is alleged that the access to the police file is an enforceable right in accordance with Article 7 of the Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings even if it has not been transposed when these events took place. The Court upholds the appeal and declares that, the refusal of the Guardia Civil and the dismissal of the habeas corpus by the investigating judge have violated the rights of the appellant.

In the Judgment it is explained that the Court of Justice of the European Union (CJEU) case law establishes that *“the State Member that breaches its duty to adopt the measures foreseen in a Directive before the deadline, cannot enforce this failure against individuals. And that is because the useful effect of the obligations imposed to the States by a Directive would be weakened if the individuals were not able to invoke them before the courts and the latter taking them into consideration as an element of the European Law”*.

In this particular case, the Directive 2012/13/EU deadline was the 2d June 2014. Spain did not fulfil this obligation until the adoption of the Organic Law 5/2015, 27 April which reformed the Criminal Procedure Law and was enforceable from the 28 October 2015 on. Therefore, from a constitutional perspective the aforementioned Directive proclaims the right to access to the materials considered essential to appeal effectively the legality of the arrest.

Even though the judge acknowledged the validity of the Directive, he rejected the habeas corpus arguing that there was no police file when the lawyer requested it because the police was still undertaking preparatory inquiries. This argument is deemed insufficient by the Constitutional Court because it is not coherent with the events related by the police. If the arrest took place because of the commission of a series of crimes in different places, at least, the reports of these crimes must exist in paper or some other electronic form.

Madrid, 10 February 2017.