



CONSTITUTIONAL COURT OF SPAIN
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THE CONSTITUTIONAL COURT REJECTS THE AMPARO APPEAL THAT DENIED THE TRANSFER OF AN INMATE TO A DETENTION CENTRE CLOSER TO HIS FAMILY HOME

The Plenum of the Constitutional Court has declared inadmissible the amparo appeal against two judicial decisions that confirm the Secretariat General of Penitentiary Institutions' decision. The decision foresees the transfer of an inmate from Soto del Real prison, in Madrid, to a prison in Valladolid, 400 km away from the municipality of Guipuzcoa where his family lives. The appellant claims that there has been a violation of his fundamental right to privacy, acknowledged in Article 18.1 of the Constitution, connected to the right to respect for family life, foreseen in Article 8.1 of the European Convention on Human Rights (ECHR). The Court explains that the Constitution does not acknowledge a "*right to respect for family life*" equivalent to the one acknowledged in the Convention of Rome. The Constitution protects "*the privacy itself, not the private actions of men*". This entails the rejection of the appeal given that there is no violation of any right. The decision has a dissenting vote of Judge Juan Antonio Xiol, adhered by the Vice-president Adela Asua and Judge Fernando Valdés Dal-Ré.

In his appeal, the appellant affirms that, according to the European Court of Human Rights (ECtHR) case law, denying prisoners to live closer to their families represents a disproportionate interference in the right acknowledged in Article 8.1 ECHR.

In this regard, the Court explains that the constitutional doctrine has not admitted that the material scope of the protection of the right to privacy acknowledged in Article 18.1 of the Constitution exactly corresponds to the content of the "*right to respect for family life foreseen in Article 8.1 ECHR*". This also applies "*to the right to family reunification, which neither is it interpreted in the same way Article 8.1 is*".

The Court reminds that the "right to respect for family life of Article 8.1 ECHR is reflected in the principles of our Constitution". These principles guarantee "the free development of personality (Article 10.1 of the Constitution)" and "ensure social, economic and legal protection of the family (Article 39.1 of the Constitution)". Ordinary judges must observe these principles. However, these principles cannot be part of the object of an amparo appeal before the constitutional jurisdiction.

The Court points out that the ECtHR has limited the scope of Article 8.1 because "*it does not acknowledge the prisoner's right to choose his detention centre*", family separation is an inevitable consequence of prison and authorities have an ample margin to decide where the prisoners are going to live according to the internal regulation. In addition, it reminds that the ECtHR judgments mentioned in the appeal refer to different situations from the one here analysed.

On the contrary, the Court reminds that, according to the European Convention of Human Rights, *“the decision concerning the distribution of prisoners in the detention centres is a discretionary faculty of the Administration and it is never a prisoner’s right to respect for family life”*. The authorities violate this right only when they do not correctly evaluate the personal circumstances of the inmate and ignore the necessity to preserve a minimum degree of family link. In this case, *“neither the distance between the detention centre and the family home (400 km as the appeal specifies), nor the state of transportations in Spain are to be compared to the ones evaluated by the ECtHR”* in the judgments mentioned by the appellant.

Therefore, the challenged decisions can only be judged taking into account the *“reasonability of the interpretation, the application of the legal system and the constitutional interdiction of arbitrariness (Article 24.1 of the Constitution)”*. Moreover, these three arguments have not been mentioned in the appeal. Yet the prisoner’s limitations to see his family that he reports being consequence of the distance *“do not ex ante lack of constitutional legitimacy because they are consequences that are directly linked to the sense, nature and content of the penalty of deprivation of liberty that he is serving (Article 25.2 part II of the Constitution)”*.

In its dissenting vote, Judges Asua and Valdés hold that constitutional case law should include the coexistence and touch between the family members in the material scope of the protection of the right to privacy of Article 18.1 of the Constitution, according to the interpretation given to Article 8.1 ECHR by the Court of Strasbourg. They affirm that the ECtHR case law acknowledges an ample margin to the Administration when it has to decide how to distribute the inmates, but it also warns that the inmates’ interest must be taken into account. In their opinion, analysing the specific circumstances of the case, the interference in the inmate’s family privacy seems *“disproportionate and unnecessary”* because the reasons that deny his transfer to a detention centre closer to his family *“were not based on penitentiary organization or treatment”*. Thus, they understand that the appellant’s right to privacy has been violated.

Madrid, 14 March 2017.