CONSTITUTIONAL COURT OF SPAIN
Cabinet of the President
Press Office

INFORMATIVE NOTE No. 24/2017

THE CONSTITUTIONAL COURT ORDERS THE REOPENING OF A CASE BROUGHT FOR ALLEGED ILL TREATMENT OF A DETAINEE, DUE TO NOT EXHAUSTING ALL INVESTIGATION CHANNELS

Chamber One of the Constitutional Court has declared the nullity of resolutions whereby Criminal Investigation Court 1 in Pamplona and the Provincial Appellate Court of Navarra ordered a stay and shelving of the applicant's reported torture, following his arrest, due to belonging to the Ekin organisation in 2010. The judgment points out that the judicial body did not exhaust all the investigation channels available to clarify the facts, in accordance with the doctrine established by the European Court of Human Rights (ECHR), and has ordered that proceedings retrospectively recommence as of the date immediately preceding the first decision to shelve the case. Andrés Ollero was the Reporting Judge.

The facts giving rise to this *amparo* appeal occurred in September 2010, following the appellant's arrest due to belonging to an ETA-supportive organisation. After the proceedings being examined by Criminal Investigation Court Number 1 in Pamplona were initially shelved, related to alleged ill treatment, the Provincial Appellate Court ordered a reopening of the case in order to conduct new investigation measures. Subsequently, the Court stayed the proceedings again, and its decision was in this case upheld by the Provincial Appellate Court.

In his claim for *amparo*, the applicant alleged a breach of his rights to physical and moral integrity (Art. 15 of the Spanish Constitution) (*Constitución Española – "CE"*), to effective judicial protection (Art. 24.1 CE) and a due process, and the use of suitable means of evidence for his defence (Art. 24.2 CE). In his opinion, the shelving of the investigation had been ordered without conducting all the measures required to clarify the facts.

The judgment explains that the Constitutional Court has repeatedly established, in line with ECHR case-law, that all judicial bodies be subject to a "*stricter standard of investigation in the case of alleged torture and ill treatment on the part of State security agents* and forces", particularly when the complainant has been the object of incommunicado detention. According to ECHR case-law, even if medical reports do not indicate "*clear signs*" that a crime of torture has been committed, "*other additional means of evidence should be completed, exhausting any investigation possibilities that may be used".*

The application of said doctrine to this case led to upholding the appeal. The Chamber indicated that the fact that the medical reports did not contain details to confirm that ill treatment had taken place "*does not exclude the need to investigate". "There may be other types of data which- in terms of the duty to complete a thorough investigation- may generate a suspicious scenario potentially connected to existing torture or ill treatment".* The Court considers that "*examination proceedings were not applied to the fullest extent"* and that the arguments provided by the judicial bodies "*are not in line with the duty to provide a reinforced*

reasoning, which is constitutionally required in these cases". In fact, when the investigation was closed, there were still available means of evidence to try and clarify the facts, such as a statement from the complainant, from the forensic doctors, from the public aid lawyer who assisted the plaintiff during his arrest and from the agents entrusted with his custody at the police station.

This is why the Chamber decided that there was a breach of the right to effective judicial protection in relation to the right to not be subject to torture or inhumane and degrading treatment, declared the nullity of the challenged resolution and ordered that proceedings be taken back to the time immediately preceding the decree of initial shelving of the case by Criminal Investigation Court 1 in Pamplona.

Madrid, 3 May 2017.