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PREVENTING A DETAINED PERSON TO BE INFORMED OF THE GROUNDS OF HIS ARREST MIGHT BREACH HIS FUNDAMENTAL RIGHT TO FREEDOM

The First Chamber of the Constitutional Court has upheld the appeal for constitutional protection brought by a man whom the Police did not sufficiently inform about the reasons leading to his arrest. Such omission by the Police prevented him from conducting a proper preparation of his defence during the police interrogation. The ruling drafted by Magistrate Cándido Conde-Pumpido considers that the fundamental right to personal freedom enjoyed by the appellant, as enshrined by the Spanish Constitution in its articles 17.1 and 17.3, has been violated.

The facts at issue took place after the arrest of the plaintiff, together with other young people following his presumed involvement in a brawl where several people were wounded. After being arrested, he was informed of his rights. He was also told that his arrest was due to his presumed involvement of a crime of personal injury where he was seen when these events happened. The lawyer who was assigned to assist him filed a request for habeas corpus after the Police had denied him a copy of the police statement but the court at issue refused to initiate the procedure.

The Court examines the fact from the viewpoint of article 17.3 of the Constitution, which states that *“Any person arrested must be informed immediately, and in a manner understandable to him or her, of his or her rights and of the grounds for his or her arrest”*. **This is, remarkably, the first judgement issued by the Court since the Spanish Criminal Procedure Law (LECrim) incorporated the European directives enacted in order to protect the rights of people in a situation of arrest.** Following this reform in 2015, LECrim grants detainees the right to be informed *“about the procedure”* they might follow in order to challenge their arrest and a right *“to access the elements of [police] proceedings that are essential to challenge de legality of the arrest”*.

According to the ruling, this right does not entail that the detainee must enjoy access to the whole content of the police statement; *“[such a right] is meant and recognised to provide access to those [police proceedings] which are essential to challenge the legality of the arrest”*. In fact, the police statement might contain information about third parties that have not been arrested or about other lines of inquiry whose communication to a person presumably involved in the matter could jeopardize the police investigation.

Therefore, it might be concluded that, under the new legal regime, it falls on the police officers in charge of detainee’s custody to inform him or her in writing *“immediately and in a comprehensible manner, not only about the rights they enjoy during that situation, but also of the facts that are attributed to them and of the objective reasons on which the deprivation of liberty is based”*. And whenever the detainee so requests, *“they must also provide them with access to those documents or elements of the [police] proceedings”* on which the precautionary deprivation of liberty relies.

In this particular case, according to the appeal, the appellant was only told that he had been arrested *“because the police units in charge intercepted him where the [presumably criminal]*

facts took place". However, several other elements connecting the appellant with the commission of the offence (several witnesses warned the Police that a brawl was happening, the appellant and other young people fled from this place when the police officers arrived; one of them threw a big machete to the floor) were omitted, such elements would have allowed his lawyer to challenge the arrest based on reasonable grounds.

The Court concludes that the refusal to sufficiently inform the plaintiff about the reasons of the deprivation of liberty decided against him entails a breach of articles 17.1 and 17.3 of the Constitution, which guarantee the right to freedom and to personal security. Therefore, the Court declares null and void the judicial ruling of the court at issue which refused to grant him the right to file for the habeas corpus procedure.

The ruling specifies that the appeal for constitutional protection was not upheld because there were no motives to arrest the appellant but, rather, because even though those motives existed, they were not communicated to the detainee or to his lawyer.

Madrid, 8 March 2018