



CONSTITUTIONAL COURT OF SPAIN
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THE CONSTITUTIONAL COURT UPHOLDS THE RIGHT TO FREEDOM OF ASSOCIATION OF A WORK COUNCIL MEMBER WHO WAS FIRED FOR DISPLAYING, IN A LOCAL COUNCIL PLENARY, A MESSAGE STATING THAT “WHERE THERE IS A CORRUPTED, THERE IS A CORRUPTOR”

The Plenary Session of the Constitutional Court has resolved to uphold the appeal for constitutional protection (“*recurso de amparo*”) brought by a worker that was also a representative at the work council of the company Seguridad Integral Canaria S.A. The Court considers that the disciplinary dismissal breached his right to “*freedom of union association, in connection his right to freedom of speech*”, on the grounds of articles 28.1 and 20.1 a) of the Spanish Constitution (CE).

The judgement rendered by the Plenary of the Court declares that such dismissal was null and void, in opposition to the earlier decision of the Social Chamber of the High Court of Justice of Canarias. According to the facts of the case, the appellant, in compliance with a previous decision of the Intersindical Canaria trade union, attended a Local Council plenary session together with other members of the work council. This event took place in the context of a conflictive labour environment, due to the workers’ complaints concerning unpaid salaries. During the Local Council plenary session, the appellant stood up wearing a mask of a controversial public figure and a tee-shirt with the following message: “*where there is a corrupted, there is a corruptor*”. Next to this message, an image showed two people exchanging money.

The challenged judgement had considered that the conduct of the appellant was relevant enough to justify a disciplinary dismissal based on an infraction to contractual good faith, on falsehood, on disloyalty and on verbal affront against his employer, since the right to honour of the managers of the company and of the contracting Administration had been allegedly breached.

However, the Constitutional Court holds that “*in order to oppose a fundamental right, only another fundamental right or a constitutionally relevant interest may be alleged*”. In this vein, it considers that the appellant, in his capacity of member of the work council and, thus, of representative of the workers, enjoys a “*special protection*” in certain situations: namely, when he exercises his right to freedom of speech regarding persons exercising public functions or who are involved in relevant issues. In these cases, the judgement drafted by Magistrate Santiago Martínez-Vares considers that “*the exercise of the right reaches the maximum level of protection, thus becoming practically immune to restrictions that, otherwise, might eventually be constitutionally admissible*”.

In this case, “*the purpose [of the appellant] was to claim a bolder action from the Administration concerning the employer’s non-payment of salaries. He thus intended to decry*

the passivity of the Local Council, which had refrained from requiring the observance of the labour rights of the contracting company”.

In sum, the Constitutional Court does not share the considerations of the challenged judgment when it states that the conduct of the worker affected the honour of the managers of the company, *“since these are in no case individually determined”*. In any case, the prestige of the company could have been attained, *“and this is not a value that may be equated with the honour that is enshrined in the Constitution as a fundamental right”*. What is more, the security company, eventually accused of corrupting the administration, was not even singled out.

Madrid, 14 September 2018