



CONSTITUTIONAL COURT OF SPAIN
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THE CONSTITUTIONAL COURT REFUSES TO GIVE PERMISSION TO APPEAL TO A UNION REPRESENTATIVE FROM THE PUBLIC TELEVISION OF MADRID

The First Chamber of the Constitutional Court has rendered a judgement whereby it refuses to grant leave to proceed to an appeal for constitutional protection (*“recurso de amparo”*) filed by a union representative from *Radio Television Madrid, SAU* (the regional public broadcasting company of Madrid). The refusal to admit this appeal is based on several procedural grounds.

Firstly, the appellant challenged a judgement of the Supreme Court on the grounds that his right to a fair trial had been breached. The judgement of the Constitutional Court holds that *“the appellant should have filed an annulment appeal [“incidente de nulidad de actuaciones”] against that decision of the Supreme Court, dated June 20th 2017, before resorting to the Constitutional Court.*

Regarding this point, the judgement drafted by Magistrate Alfonso Montoya Melgar considers that *“since the decision of the Social Chamber of the Supreme Court is not liable to an ordinary or an extraordinary appeal, and since the alleged violation could not have been raised before, filing an annulment appeal was indispensable”.*

Secondly, the appellant also alleged that his right to freedom of union association had been infringed. In his view, a set of temporary rights that the applicable collective labour agreement (article 58 of the collective labour agreement of *Radio Televisión Madrid, SAU*) had extended to union representatives were applied to him with a delay of 3 years.

The Constitutional Court considers that this argument was only raised at the appeal stage, and not at the beginning of the judicial proceedings. Thereby, *“the violation of the right of unionisation was raised too late and, consequently, that argument did not receive an explicit nor an implicit response by the court of appeals”.* In other words, this infringement was alleged when the relevant procedural stage had already been fulfilled, and *“no further arguments could have been accepted”.*

The last violation raised by the appellant also refers to article 28.1 of the Constitution, which regulates the right to freely join a trade union. The plaintiff contended the guarantees provided to union representatives, as provided by the Organic Law on Freedom of Union Association and as extended by the applicable labour agreement, were not properly applied to him.

Once more, the Court rejects the argument on the grounds that *“it [the claim] was not invoked as early as it could have been raised”* by the appellant. In the same vein, the Court states that *“this claim was first submitted before the court of appeals, when it should have been raised before the first ordinary court [the Social court]”.*

Madrid, 26 September 2018