EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Fines imposed on electoral board members by the Constitutional Court after the suspension of the referendum on Catalonia did not breach the Convention

In its decision in the case of Aumatell i Arnau v. Spain (application no. 70219/17) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the applicant's involvement in organising a referendum, scheduled for 1 October 2017, on the independence of Catalonia.

The Court first found that the failure to serve notice of the Constitutional Court's decision personally on Ms Aumatell i Arnau had not prevented her from having knowledge of it or from making submissions to that court.

The fine imposed on Ms Aumatell i Arnau was itself prescribed by law. Moreover, she had been notified in person of the Constitutional Court's decisions concerning the suspension of the referendum. As a result, she had been aware that her conduct could result in fines and criminal proceedings.

Principal facts

The applicant, Ms Montserrat Aumatell i Arnau, is a Spanish national who was born in 1975 and lives in Valls.

On 6 September 2017 the Parliament of Catalonia enacted the Law "on the self-determination referendum" providing, in particular, for the appointment of the members of the Central Electoral Bureau of Catalonia responsible for organising the vote. The Principal State Prosecutor, representing the Spanish Government, declared the law unconstitutional and requested its provisional suspension. In a decision of 7 September 2017 the Constitutional Court declared the law inapplicable and the organisation of the referendum unlawful. On 8 September 2016, ignoring the order issued by the Constitutional Court, the Central Electoral Bureau appointed the members of the electoral boards. Ms Aumatell i Arnau was appointed as a member of the Tarragona electoral board. In a decision of 13 September 2017, the Constitutional Court reminded the members of the electoral boards that the Law "on the self-determination referendum" had been suspended.

On 20 September 2017, noting the failure to implement its decisions, the Constitutional Court imposed a coercive day-fine of a minimum of 6,000 euros (EUR) on all members of the electoral boards. On 22 September 2017 Ms Aumatell i Arnau was informed of that decision via the Official Gazette. She resigned from her post on the same day. In a decision of 14 November 2017 the Constitutional Court lifted the day-fines imposed on the members of the electoral boards in view of all the resignations.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 29 November 2017.

Relying on Article 6 (right to a fair hearing), the applicant complained that notice of the day-fine had not been served on her personally and that she had been prevented from being a party to the proceedings. Relying on Article 7 (no punishment without law), she argued that her membership of the Tarragona electoral board did not amount to a criminal offence. Relying on Article 13 (right to an effective remedy), she complained of the lack of a remedy against the Constitutional Court's decision. Lastly, under Article 14 (prohibition of discrimination), she alleged that she had been subjected to political persecution on the grounds of her involvement in the referendum.

The decision was given by a Committee of three judges, composed as follows:

Helen **Keller** (Switzerland), *President*,
Pere **Pastor Vilanova** (Andorra),
María **Elósegui** (Spain),

and also Fatoş **Aracı**, *Deputy Registrar.*

Decision of the Court

Article 6 § 1

Having regard to the various aspects of the case, the Court found that the fine imposed on the applicant was of a criminal-law nature.

The Constitutional Court's decision of 20 September 2017 had imposed a coercive day-fine of EUR 6,000 on Ms Aumatell i Arnau. Beforehand, on 13 September 2017, she had been personally notified of the decisions of 7 and 13 September 2017 rendering the organisation of the referendum illegal and suspending the law on the "self-determination referendum" with a judicial injunction. The fact that Ms Aumatell i Arnau had been fined could thus be explained by her failure to comply with the decisions of the Constitutional Court.

The decision in question had been published in the State's Official Gazette (BOE) on 22 September 2017. The parties had been given three days within which to submit arguments before the coercive measure was actually implemented. Once the resignation had been received by the court, it took the decision to discontinue the fine. Ms Aumatell i Arnau had been personally notified of the Constitutional Court's decisions and thereby warned of her duty to prevent or stop any initiative which would disregard or circumvent the suspension of the referendum as agreed by the Constitutional Court.

The Court consequently found that the failure to serve her personally with notice of the decision of 20 September 2017 had not prevented Ms Aumatell i Arnau from having knowledge of that decision or from making submissions to the Constitutional Court. The complaint thus had to be dismissed as manifestly ill-founded.

Article 7

The fine imposed on Ms Aumatell i Arnau had itself been prescribed by law. Law no. 2/1979 on the Spanish Constitutional Court (the "Constitutional Court Act"), since its amendment on 16 October 2015, provided that the Constitutional Court, where there was a risk that one of its decisions might not be complied with, could decide to serve notice of its decisions personally on any authority or civil servant, should it see fit to do so. Moreover, the Constitutional Court was empowered to demand explanations from any institutions, authorities, civil servants or individuals concerned by the implementation of the decision within a given time-limit. Lastly, if non-compliance were to continue beyond the time-limit, the court was entitled to take certain measures including the imposition of a fine on those committing the offence.

The Court could not find that there had been a lack of foreseeability, since the coercive fine, like the related proceedings, were provided for in the Constitutional Court Act.

Moreover, Ms Aumatell i Arnau had been notified in person of the Constitutional Court's decisions on the suspension of the referendum. As a result, she was aware that her conduct could be penalised by fines and entail criminal proceedings. Moreover, once she had resigned the court had lifted the fine and she had not sustained any actual economic prejudice, as no money had been taken from her.

Consequently, there was no reason to conclude that the wording of the Constitutional Court Act lacked clarity or foreseeability at the material time or that the Constitutional Court had made an arbitrary interpretation of the provisions. That part of the application thus had to be rejected as ill-founded.

Article 13

The Court found that section 93 of the Constitutional Court Act provided for a *súplica* appeal against the decisions of the Constitutional Court. The other members of the electoral boards concerned had lodged such an appeal against the decision of 20 September 2017. On 14 November 2017 the Constitutional Court had responded to all their complaints and had lifted the fines. The complaint about a lack of remedies had to be rejected as manifestly ill-founded.

Article 14

Ms Aumatell i Arnau had relied on this provision in isolation and had not substantiated her claims. She had not provided any basis of comparison to enable the Court to examine a possible analogy between two situations that might reveal discrimination.

This part of the application was also ill-founded and had to be rejected.

The decision is available only in French.

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