

Case Law Guide. Fundamental Rights and the Judicial Process

1. Judgment of the SCC n° 155/2009, of 25 June

Summary of facts

The applicant before the SCC was convicted for robbery in first instance (*Judge of Fuenlabrada* n° 2) to a penalty of twelve days of permanent location and to be complied with in her domicile. In appeal, the applicant was convicted by the *Audiencia Provincial de Madrid* to eight days of permanent location. The applicant lodged an individual constitutional complaint before the SCC alleging the violation of the right to fair trial (Article 24 SC). Particularly, the applicant first alleged the violation of the accusatory principle because the Prosecutor asked for a penalty which was finally not taken into account by the courts and, second, applicant alleged the lack of motivation of the judicial decisions in individualizing the penalty.

Questions

1. What is the meaning of the “special constitutional importance” for the SCC?
2. Describe shortly all the categories of “special constitutional importance” draw by the SCC.
3. Do you think that the categories of the SCC are sufficiently clear? What do you think about the application of these categories to the specific case?

2. Judgment of the ECtHR, *Arribas Antón v. Spain*, 20 January 2015

Summary of facts

In July 2002 the head of Zamudio psychiatric hospital disciplined the applicant, who worked at the hospital as a nursing assistant, for very serious misconduct, namely an attempt to have sexual activity with non-consenting patients. The applicant was debarred from working in psychiatric hospitals for one year. The applicant appealed against the decision to a higher administrative authority, but his appeal was dismissed. He then took his case to the Contentious-Administrative Court, which upheld his claim and set aside the sanction imposed on him on grounds of procedural error. The health service appealed. The High Court of Justice ordered the reopening of the administrative proceedings. The new proceedings ended with the same sanction being imposed on the applicant. His appeals against it were all dismissed. On 9 July 2010 the applicant lodged an individual constitutional complaint before the Constitutional Court, but it was declared inadmissible on the grounds that he had not complied with the obligation to prove that his appeal was one of “special constitutional importance”.

Questions

1. For the ECtHR, is it possible to establish an admissibility criterion such as the “special constitutional importance”? What is the line of argumentation of the Court?
2. Analyze the argumentation of the ECtHR regarding the lack of motivation of the inadmissibility decision of the SCC. Do you agree with the ECtHR? Do you think that there is an issue about Art. 6.1 ECHR?
3. Do you think that overall the ECtHR assessment of the “special constitutional relevance” is correct? What do you think about the effectiveness of the individual constitutional complaint and the need to lodge it for exhausting all domestic remedies?