



Reports of Cases

ORDER OF THE GENERAL COURT (Fourth Chamber)

27 April 2021 *

(Action for failure to act and for damages – Institutional law – Parliament’s Committee on Petitions – Petition concerning the infringement by the Spanish courts of EU law in the field of fundamental rights – Decision to declare the petition closed – Article 28 of the Rules of Procedure – Request for referral to a Chamber sitting in extended composition – Action in part brought before a court or tribunal manifestly lacking jurisdiction to hear it, in part manifestly inadmissible and in part manifestly lacking any foundation in law)

In Case T-719/20,

Roberto Alejandro Macías Chávez, residing in Seville (Spain),

Fernando Presencia, residing in Talavera de la Reina (Spain),

José María Castillejo, residing in Madrid (Spain),

represented by J. Jover Padró, lawyer,

applicants,

v

Kingdom of Spain,

and

European Parliament,

defendants,

APPLICATION seeking, inter alia, principally, (i) under Article 265 TFEU, a declaration that the Parliament unlawfully failed to act on the petition submitted by the applicants concerning the infringement by the Spanish courts of EU law in the field of fundamental rights and (ii) under Article 268 TFEU, compensation for the damage allegedly suffered by the applicants from that and, in the alternative, under Article 268 TFEU, compensation for the damage allegedly suffered by the applicants as a result of the conduct of the Kingdom of Spain,

THE GENERAL COURT (Fourth Chamber),

* Language of the case: Spanish.

composed of S. Gervasoni (Rapporteur), President, L. Madise and R. Frendo, Judges,

Registrar: E. Coulon,

makes the following

Order¹

...

Procedure and forms of order sought by the applicants

- 7 By application lodged at the Court Registry on 7 December 2020, the applicants brought the present action.
- 8 The applicants claim that the Court should:
 - first, refer the case back to the Grand Chamber of the General Court or to a Chamber sitting with a different number of Judges, pursuant to Article 28 of the Rules of Procedure of the General Court;
 - second, adopt interim measures on the basis of Articles 278 and 279 TFEU, namely suspend the Spanish court proceedings concerning them and declare their right to receive financial assistance equivalent to the salary which they received in their previous employment;
 - third, grant their application under Article 265 TFEU, directed against the Parliament, regarding ‘in particular’ the decision of 9 October 2020, order the suspension of the retaliatory measures taken against them and order the Parliament to pay compensation for the damage they have suffered;
 - fourth, in the alternative, order the Kingdom of Spain to pay compensation for the damage they have suffered as a result of the infringement of EU law by the Spanish courts, declare that that Member State must prescribe penalties against those persons who have prevented or attempted to prevent their complaints from being dealt with and adopt measures to monitor compliance with that obligation.

Law

...

¹ Only the paragraphs of the present order which the Court considers it appropriate to publish are reproduced here.

The request for referral to a Chamber sitting in extended composition

- 11 The applicants request that the case be referred back to the Grand Chamber or to a Chamber sitting with a different number of Judges, pursuant to Article 28 of the Rules of Procedure. In support of that request, they rely on the fact that the case involves the Parliament, as regards in particular the exercise of their ‘absolute’ fundamental rights, as well as the Kingdom of Spain and in particular, within the latter, certain courts and authorities linked to the judiciary.
- 12 Under Article 28(1) of the Rules of Procedure, ‘whenever the legal difficulty or the importance of the case or special circumstances so justify, a case may be referred to the Grand Chamber or to a Chamber sitting with a different number of Judges’.
- 13 Under Article 28(2) of the Rules of Procedure, such a referral may be proposed to the plenum by the Chamber hearing the case, the Vice-President of the General Court or the President of the General Court at any stage of the proceedings, either of the General Court’s own motion or on application by a main party.
- 14 According to the case-law, the referral of a case to a Chamber sitting in extended composition is an option, not an obligation, recourse to which is subject to the criteria defined in the Rules of Procedure (judgment of 17 December 2020, *BP v FRA*, C-601/19 P, not published, EU:C:2020:1048, paragraph 95).
- 15 In this case, however, neither the President nor the Vice-President of the General Court felt compelled to exercise that option. The Chamber for its part, considers, in the light of the elements from the file, that none of the criteria mentioned in Article 28(1) of the Rules of Procedure was satisfied. The case-law on which the present order is based is well established and the applicants do not claim any legal difficulty justifying its being called into question. In addition, the fact that an institution and a Member State may be criticised in relation to fundamental rights, even those deemed ‘absolute’, does not constitute a special circumstance as such and does not confer significant weight on the case.
- 16 Consequently, the request by the applicants for referral to a Chamber sitting in extended composition must be rejected as manifestly lacking any foundation in law.

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On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby orders:

- 1. The action is dismissed in part as being brought before a court or tribunal manifestly lacking jurisdiction to hear it, in part as being manifestly inadmissible and in part as manifestly lacking any foundation in law.**
- 2. Mr Roberto Alejandro Macías Chávez, Mr Fernando Presencia and Mr José María Castillejo shall each bear their own costs.**

Luxembourg, 27 April 2021.

E. Coulon
Registrar

S. Gervasoni
President