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Synthèse / Summary / Kurzfassung / резюме

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**The Constitutional Tribunal of Spain
Tribunal Constitucional de España**

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XVI Congress of the Conference of European Constitutional Courts

Cooperation of Constitutional Courts in Europe: Current situation and perspectives

Spain

Summary

Article 10.2 of the Spanish Constitution of 1978 states: “The principles relating to fundamental rights and liberties recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain.” This provision has led the Spanish Constitutional Court to pay special attention to the European Convention on Human Rights, as well as to European Union rules related to the enforcement of the fundamental rights recognised by the Constitution. Jurisprudence has indicated that the international texts and agreements to which Art. 10.2 of the Spanish Constitution refers offers valuable criteria for interpreting the meaning and scope of the rights and liberties recognized by the Constitution; but this provision does not confer a constitutional status to rights other than those enshrined in its text, nor does it convert those international agreements into an autonomous canon of constitutionality.

The Convention of Rome is constantly cited in Spanish constitutional case-law. From the initial judgment 21/1981 of 15 June 1981, more than three hundred judgments have quoted and taken into account the different human rights articulated in the Convention of 1950 or in the protocols ratified by Spain. The European Union Charter of Fundamental Rights has been taken into account by the Constitutional Court since the very moment it was proclaimed (STC 292/2000 of 30 November 2000, on the protection of the personal data of citizens). The delay in defining the legal status of the Charter in the Union legal order, not becoming fully effective until 2009, may explain why it was not cited very often. However, it has remained a constant over time.

Other sources of international law are also cited. Although the Universal Declaration of Human Rights is the only text specifically mentioned by the Spanish Constitution, the international covenants that enact it have attained a higher profile: both the civil and political rights covenant and the covenant on social, economic and cultural rights. Other United Nation’s agreements that have had an influence include the conventions for the prevention and punishment of the crime of genocide; against torture; on the elimination of all forms of discrimination against women; on the rights of the child; and the rights of persons with disabilities. Some examples to mention at the European level include the conventions on the automated processing of personal data; the compensation for victims of violent crimes; or the prevention of violence at sporting events. Finally, we should not forget the transcendence of the conventions drafted by the International Labour Organisation (ILO).

The Spanish Constitutional Court regularly quotes the jurisprudence of the two Courts of Europe. European jurisprudence is also cited regularly by the courts of the various jurisdictions. Cited in the majority of cases, in addition to European court decisions, are Spanish Constitutional Court judgments that have taken the European doctrine into account. Constitutional jurisprudence has established that when Spanish courts interpret and enforce

domestic laws they must take into account not only the international treaties and texts to which Art. 10.2 of the Constitution refer to, but also the interpretation of the bodies created by these same international treaties and agreements to guarantee their application. The jurisprudence of Strasbourg has been used as a guideline for interpreting many Spanish fundamental rights and liberties, such as the right to equality before the law, the right to a trial without undue delay, the right to secrecy of communications and, especially, the right to an impartial judge. The Convention of Rome has had a significant impact upon criminal justice, particularly regarding pre-trial detention and the monitoring of telephone conversations, as well as constitutional guarantees in criminal court appeals. The influence of Luxembourg jurisprudence has been more limited but essential, for example, in cases regarding interdiction of discrimination based on gender or sexual orientation.

There are no substantial differences between Spanish and European constitutional doctrine. Regarding the jurisprudence of the European Court of Human Rights, some nuances could be mentioned on equality before the law (whether it includes a right to “unequal legal treatment”); the presumption of innocence (Spanish case-law focuses on the evidential procedures that support a conviction and not so much on treating someone as guilty who has not been declared as such by a court after a fair trial); and the right to family privacy (which does not extend to the right to family life under Art. 8 ECHR). Regarding the Court of Justice, there is sometimes disagreement in the area of the right to equality (guaranteed wages) and European procedures for arrest warrants and surrender (conviction rendered *in absentia* being open to review). This last issue resulted in a preliminary judgment (Court of Justice judgment *Melloni*, 2013). When dealing with issues arising from the interception of ships on the high seas, the Strasbourg Court specifically considered the criteria of the Spanish court (ECtHR *Rigopoulos vs. Spain*, dec. 1999; judgments *Medvedyev vs. France*, 2008 and 2010). At the European Union level, the judgment on the *Unión de Pequeños Agricultores* (2002) recognising the right of individuals to “effective judicial protection of the rights they derive from the Community legal order” has an unmistakably Spanish imprint.

The judgments of the Spanish Constitutional Court also cite the jurisprudence of other courts, although much less frequently than the courts of the European Council and the European Union. The doctrine of the German Federal Constitutional Court and the Italian Constitutional Court has a very prominent role. The Constitutional Court does not quote with any precedence the judgments of countries who share the Spanish language.

The Spanish court has explicitly taken into account the jurisprudence of other countries, European or otherwise, in a broad variety of cases that encompass the various jurisdictional divisions. Cases related to the constitutional guarantees of criminal proceedings could perhaps be highlighted. There are no studies permitting us to determine whether and how Spanish judgments impact the jurisdiction of foreign constitutional courts.

The Spanish court maintains friendly and cooperative relationships with similar institutions in other countries through the Conference of European Constitutional Courts, the Ibero-American Conference of Constitutional Justice, the annual meetings of constitutional court justices of Italy, Portugal and Spain, and the Venice Commission. In addition, beyond Europe and Ibero-America, the court has been collaborating in recent years on various international

cooperation initiatives related to constitutional justice in countries such as the Philippines, Morocco, Tunisia, Turkey and Vietnam, and it is a founding member of the World Conference on Constitutional Justice.