

## **Decision in case 1178/2018/STI on the European Commission's failure to keep the complainant informed about the state of play in an infringement procedure (CHAP(2016)01831) against Spain**

Decision

**Case 1178/2018/STI - Opened on 13/07/2018 - Decision on 16/08/2018 - Institution concerned** European Commission ( Settled by the institution ) |

1. On 28 May 2016, the complainant, a Spanish citizen, lodged an infringement complaint against Spain. He complained that:

1) Spain did not comply with the ruling of the Court of Justice of the EU in Case C-8/14 *BBVA SA v Pedro Peñalba* [1] (hereinafter, 'the Court ruling') as it failed to amend a specific provision of the Spanish legislation on the protection of mortgage debtors (Law 1/2013 [2] ) to bring it into compliance with the Court ruling;

2) the Spanish courts failed to apply the Court ruling *ex officio* ;

3) the Spanish courts did not generally comply with the obligation to examine unfair contract terms in mortgage agreements;

4) Article 35(5) of Law 40/2015 on the legal regime of public administrations ( *Ley de Régimen Jurídico del Sector Público* [3] ) is incompatible with Article 47 of the Charter of Fundamental Rights ('the Charter' [4] ) and the principle of effectiveness, as it established additional requirements to those laid down in the Court's jurisprudence on State's liability for breach of EU law [5] ;

5) Articles 292 to 296 of the Law of the Judicial Branch ( *Ley Orgánica 6/1985 del Poder Judicial* [6] ) are in breach of Article 47 of the Charter and the principle of effectiveness as they established a costly and time-consuming procedure to claim State liability for the infringement of Union law by the judiciary.

2. On 12 December 2016, the Commission acknowledged receipt of the complaint. The Commission informed the complainant that it would update him about the outcome of its assessment.



3. The complainant wrote to the Commission on 5, 13 and 19 April 2018, and 17 May 2018, asking for an update regarding the handling of his infringement complaint.

4. Dissatisfied with the lack of reply from the Commission, the complainant turned to the Ombudsman on 25 June 2018.

5. The Ombudsman's inquiry team contacted the Commission and asked it to inform the complainant about the state of play of his infringement complaint and to address the different issues he raised in his letter of 28 May 2016.

6. During the inquiry, the Ombudsman received the reply from the Commission to the complainant. In its letter, dated 27 June 2018, the Commission apologised for the delay in replying to the complaint. In addressing the complainants' concerns the Commission stated the following:

- As regards the allegation that Spain had failed to comply with the Court ruling (point 1), the Commission stated that in that regard it opened an infringement procedure against Spain in 2016, which is still ongoing. It added that, according to the Spanish authorities, Law 1/2013 would be amended to bring it into conformity with the Court ruling. To that date, however, the Commission had not received confirmation of such amendment.

- Regarding point (2) of the complaint (the fact that the Spanish courts would be failing to apply the Court ruling *ex officio* ), the Commission said that it had raised the issue with the Spanish authorities in the context of the above infringement procedure. It added however that, to date, it had not found evidence of a wide-spread practice of Spanish courts disregarding the Court ruling, which would justify further action against the Spanish authorities.

- As regards the allegation that the Spanish courts did not generally comply with the obligation to examine unfair contractual terms (point 3), the Commission noted that it did not find evidence of such practice. Rather, on the basis of the numerous requests for preliminary rulings submitted in recent years by Spanish courts concerning a wide range of legal questions such as abusive late payment interests, floor clauses and early termination clauses, it appeared “ *that the Spanish courts are taking an active role in the assessment of unfair contract terms* ”.

- As regards point (4) and the fact that the Spanish legislation would be in breach of the Court jurisprudence on State liability for breach of EU law, the Commission informed the complainant that, in June 2017, it opened infringement proceedings against Spain regarding this issue.

- As regards point (5) of the complaint, the Commission pointed out that the Spanish procedural rules regarding the State's liability for breach of EU law by the judiciary do not appear incompatible with EU law.

7. In light of the above, the Commission concluded that it could not find any grounds for opening new infringement proceedings against Spain in addition to the above-referred ongoing procedures.



8. Given that the Commission provided a detailed and comprehensive reply to the issues the complainant raised in his complaint and also apologised for the delay in replying to his queries, the Ombudsman considers this complaint to be resolved . I have therefore decided to close the case [7] .

Lambros Papadias

Head of Inquiries - Unit 3

Strasbourg, 16/08/2018

[1] Judgement of the Court of Justice of 29 October 2015, *BBVA SA v Pedro Peñalba* , C-8/14, ECLI:EU:C:2015:731.

[2] *Ley 1/2013 de medidas para reforzar la protección a los deudores hipotecarios, reestructuración de deuda y alquiler social*.

[3] *Ley 40/2015, de 1 de octubre, de Régimen Jurídico del Sector Público* .

[4] EU Charter of Fundamental Rights, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN> [Link]

[5] Judgment of the Court of 5 March 1996, *Brasserie du Pêcheur and Factortame* , joined cases C-46/93 and C-48/93, ECLI:EU:C:1996:79.

[6] *Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial*, BOE de 2 de julio de 1985.

[7] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of the [Decision of the European Ombudsman adopting Implementing Provisions](#) [Link]