

CJEU declares Spain's rules on State liability contrary to EU law

On 28 June 2022, the Court of Justice of the European Union declared that the Spanish rules on the liability of the State legislature following the reforms carried out in 2015 (Laws 39/2015 and 40/2015) are contrary to EU law. This judgment will not only result in the Spanish rules being reformed, it will allow those who, to date, did not meet the requirements that have now been declared unlawful, to claim damages.

1. THE JUDGMENT

The European Commission challenged four key aspects of the Spanish rules on the liability of the State legislature: (i) the need for the Court of Justice of the European Union (“**CJEU**”) to have declared the rules being applied contrary to EU law; (ii) the need for the individual to have obtained, before any court, a final decision dismissing an action brought against the administrative act that caused the loss or harm; (iii) the need for the individual to have relied on the breach of EU law in the action brought against the administrative act that caused the loss or harm; and (iv) the need for there to be a limitation period to claim damages as from the publication in the Official Journal of the European Union of the rulings declaring that the legislative provision in question infringed EU law.

The CJEU has agreed with the Commission and has declared all four aspects to be contrary to the principle of effectiveness, holding that each of them, taken individually, places individuals who have suffered damage as a result of a legislative act in a difficult or even impossible situation to bring a liability action against the State.

CJEU judgments in infringement proceedings do not annul the national rules challenged. However, the Member State must take all necessary measures to comply with the Court's judgment. Therefore, from 28 June 2022, the authorities (including the courts) must cease to apply the four aspects that the CJEU has declared incompatible with EU law.

The Spanish legislator will presumably reform the rules on the liability of the State legislature. However, until it does, the rules in Laws 39/2015 and 40/2015 will continue to apply except for the provisions that the CJEU has declared contrary to EU law, which will cease to apply.

2. SPAIN'S RULES ON STATE LIABILITY GOING FORWARD

Even though it is in the legislator's hands to redefine the rules on State liability for breaches of EU law, the future rules, in line with the CJEU's ruling, will presumably be the following:

- (A) Since the proceedings to establish State liability will be able to be initiated without a prior court judgment declaring a national provision to be contrary to EU law, the individuals will likely have the opportunity to initiate the proceedings to establish State liability from the moment they consider that a legislative act gives rise to a loss or harm for which compensation can be sought and is contrary to EU law. This means assessing whether EU law has been infringed in the proceedings. However, in our view, the possibility of initiating such proceedings without a prior CJEU ruling should not undermine the possibility of bringing a liability claim against the State when, as the case may be, a CJEU judgment finds that EU law has been infringed.
- (B) The CJEU understands that national laws can establish that an individual cannot seek compensation for harm or loss that they could have avoided by taking legal action. But it states that this should not hinder situations where the damage stems directly from an act or omission by the legislator, that is contrary to EU law, where there is no actual administrative act to challenge. Given the terms of this judgment, we understand that, although the interested party should be allowed to directly bring an action for State liability for damage that does not give rise to acts of application, the future rules may include some kind of burden similar to the current one for administrative acts that the interested party could have challenged.
- (C) The future rules will no longer be able to limit compensation for damage caused to five years preceding a judgment declaring that a legislator's act or omission is contrary to EU law.
- (D) Finally, when the time limit to bring a State liability action begins, where such action is based on damage caused by the legislator's acts or omissions and there is no prior CJEU judgment, will also need to be regulated. However, where there is a prior CJEU judgment, the current rule will presumably remain.

3. RETROSPECTIVE CLAIMS

As there is no provision limiting the effects of the judgment, we understand that, following its publication, claims can now be brought for State liability claims that could previously not be brought because of the limitations that the CJEU has now declared contrary to EU law. This, in our view, hypothetically means that individuals can bring State liability claims for damage arising directly from legislative acts that were not brought in the day or that were otherwise proscribed by the State liability rules that have now been declared contrary to EU law. Moreover, the fact that the judgment confirms that damage can be claimed without a prior CJEU judgment opens the door to new claims, which can now be brought in relation to provisions that the CJEU *may* consider contrary to EU law even though it has not yet ruled on them.

In short, this judgment allows individuals to bring State liability actions regarding matters that are currently quite relevant, such as the rules on dividends distributed to companies established in other Member States infringing the principle of free movement of capital, the inheritance and gift tax reductions in regional regulations not applying to non-residents or to goods and rights held abroad, among many others. And this is only but the start, as we will need to assess when, despite the CJEU remaining silent on this, EU law is breached and claims can be brought.

4. CONTACT LAWYERS



Miguel Cremades Schulz
Partner
+34 91 586 0437
miguel.cremades@uria.com



Gloria Marín Benítez
Partner
+34 91 586 0384
gloria.marin@uria.com



Manuel Vélez Fraga
Partner
+34 91 586 0531
manuel.velez@uria.com



Daniel Sarmiento
Counsel
+34 91 586 0657
daniel.sarmiento@uria.com



Darya Budova
Senior associate
+34 91 586 0977
darya.budova@uria.com
