
Partial annulment of Spanish rules on state liability

The CJEU submits that the rules on state liability laid down by Spanish law breach the principle of effectiveness and are incompatible with EU law.

Legal flash

July 2022



Key aspects

The Spanish rules on state liability breach the principle of effectiveness because they make reparation for the loss or damage caused subject to the following conditions:

- The legal provision applied must have been declared contrary to EU law in a judgment given by the CJEU.
- The citizen harmed must have obtained a final court decision dismissing an action brought against the administrative act that caused the loss or damage.
- Compensation for loss or damage must be sought within one year after publication of the CJEU's judgment declaring the legislative act contrary to EU law.
- Compensation is limited to loss or harm occurring within five years before the date of publication of that decision.

This decision will entail an amendment to national legislation and opens the door to claims from taxpayers.

In contrast, the CJEU considers that the principle of equivalence is not infringed.



CJEU judgment

On June 28, 2022, the Court of Justice of the European Union (CJEU) published its much-awaited judgment on Case C-278/20, giving final judgment on an appeal lodged by the European Commission against the Spanish rules on state liability.

In a nutshell, the Commission argued that these rules, allowing citizens to seek compensation for loss or harm caused by public authorities, and particularly the legislator, were not in line with the requirements stemming from the EU principles of effectiveness and equivalence when that loss or harm was the result of the application of a rule declared to be contrary to EU law.

The CJEU has ruled against the Kingdom of Spain, considering that the provisions in Acts 39/2015 (article 67, section 1, third paragraph) and 40/2015 (articles 32, sections 3 to 6; and 34, section 1, second paragraph) infringe the principle of effectiveness as they make it impossible or excessively difficult to obtain reparation for loss or harm caused to citizens as a result of an infringement of EU law for the following reasons:

- They subject this reparation to the fulfillment of certain requirements contrary to that principle. Particularly, they provide that citizens will only be compensated if there is a prior decision of the CJEU declaring that the internal rule is contrary to EU law, and require a final judgment delivered by a court dismissing an action against the administrative act which caused the loss or harm.
- They prescribe the right to seek compensation to one year after publication of the decision in the Official Journal, and they limit the recoverable loss or harm to that which occurred within the five years preceding the publication of that decision.

In contrast, the CJEU considers that Spanish rules do not infringe the principle of equivalence. According to this principle, conditions laid down by national law to seek compensation for a breach of EU law cannot be less favorable than those governing similar actions in the domestic legal system. On these grounds, the Commission argued that, although EU law holds that citizens harmed have a right to compensation where three conditions are met (the rule of EU law infringed is intended to confer rights on citizens, the infringement of that rule is sufficiently serious, and there being a direct causal link between that infringement and the loss or harm sustained by those citizens), it is not necessary for the first two requirements to be met when the harm results from the application of a rule declared unconstitutional. However, the CJEU interprets that this principle is satisfied as long as the national rules lay down these three conditions, without this forming a basis of the obligation on the Member States to allow a right to reparation to arise that is subject to more favorable conditions than those provided for in the case-law of the CJEU simply because national law has made a decision on actions for damages resulting from the application of a rule declared unconstitutional.



Scope and practical effects of the judgment

The CJEU's judgment is particularly important because it concludes that the rules on state liability applying domestic rules that breach EU law are contrary to that transnational legal order, and particularly to the principle of effectiveness, which is subject to national legislation.

As a “closing clause to the system,” the CJEU's interpretation of the Member States' liability in these circumstances sets a clear path for reparation benefiting all citizens that have been harmed by the application of internal rules that, in one way or another, go against EU law, particularly in the tax field, considering that it is not unusual for the Kingdom of Spain to be found to keep in force tax provisions that limit, hinder or obstruct some of the freedoms of movement governing market unity.

The elimination of requirements existing before the CJEU judgment declaring that the Spanish rules breach EU law and, if applicable, a final decision from an internal court dismissing the actions against the administrative act that applied the rule breaching EU law, as well as the right to seek compensation being prescribed to one year after publication of the CJEU's decision in the Official Journal, and the application of a five-year limitation period preceding the publication of the decision, now gives affected individuals and companies the possibility to seek compensation that was not previously available to them under Acts 39 and 40.

This will lead to inevitable consequences affecting, for example, non-resident taxpayers and the different, unfavorable treatment they have received compared to provisions on corporate income tax for companies established in Spain. Likewise, it cannot be ruled out that the application of Acts 39 and 40, dating back to 2015, which, as the CJEU has just ruled, breach EU law, may well have harmed European citizens that, owing to their restrictive rules, have been unable to seek the rights to compensation conferred by the EU legal order. This will likely lead to claims for compensation for loss or harm.

Finally, the above CJEU judgment raises additional issues, such as, from the perspective of the effectiveness of article 106.2 of the Spanish Constitution, the constitutionality of the rules on state liability for loss or harm stemming from the application of a legislative provision declared unconstitutional.



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