

CORTÉS, ABOGADOS

THE CONSTITUTIONAL COURT OF ANDORRA URGES THE CONCLUSION OF CRIMINAL PROCEEDINGS DUE TO UNDUE DELAYS

In May 2024, the law firm CORTÉS, ABOGADOS, with the collaboration of a lawyer from the Principality of Andorra, took on the defence of a number of individuals who are facing criminal proceedings in that country for the alleged commission of a money laundering offence. The proceedings were initiated in 2018 and, from the outset, it was agreed to the freezing and control of their bank accounts at Banca Privada d'Andorra (BPA).

At that time, that is, six years after the preliminary proceedings had been initiated, our clients had not even been summoned to appear as suspects and, therefore, had not been informed of the charges against them, their rights, or their right to make a statement before the investigating body and present their version of events to exonerate themselves from the allegations under investigation.

In view of the above – and among other actions taken by the firm – we wrote to the investigating body to warn them that, in our opinion, this circumstance violated the fundamental rights to a trial of reasonable duration and to a defence (Art. 10.2 of the Constitution of the Principality of Andorra and Art. 6 of the European Convention on Human Rights), and we requested that our clients be summoned as a matter of urgency to give statements as suspects – thus complying, in view of the appeal for protection we intended to file, with the requirement relating to the proactive procedural attitude maintained by the party that considers that, in the course of legal proceedings, a certain fundamental right has been infringed upon.

In view of the investigating body's failure to respond to our request, we filed an appeal for protection before the Constitutional Court of the Principality of Andorra, arguing that the aforementioned fundamental rights had been violated on the grounds that, broadly speaking, in addition to the unjustified paralysis of the investigation for long periods of time, the statements of the suspects had not been taken for more than six years, the statements of those under investigation – the only unavoidable, mandatory and necessary investigative procedure in the preliminary investigation phase and which, moreover, constitutes the main guarantee of the right of defence of the person under investigation – had made it procedurally impossible to request the dismissal and closure of the case in favour of our clients, that this decision could have been agreed by the investigating body and that, as a result, the freezing and control of their bank accounts at BPA would have been revoked.

In our appeal for protection, we request: (i) a declaration that our clients' fundamental rights to a trial without undue delay and to not be left defenceless have been violated, (ii) recognition of the right to compensation for damages caused as a result of the aforementioned infringement, and (iii) that the investigating body be ordered to take statements from those under investigation as a matter of urgency and to complete the investigation phase within a reasonable time.

Drawing on the case law of the European Court of Human Rights, the Constitutional Court of the Principality of Andorra upheld our appeal for protection and concluded – insofar as this publication is concerned – that "their (meaning, of

our clients) right to a trial of reasonable duration", the duration of the investigation, in which "no statements have been taken from the appellants as suspects", "is, objectively speaking, a delay that cannot be considered reasonable" and it is "considered appropriate to set a period of six months for" the investigating body "to conclude the investigation", with the possibility of "extending this period by six months, in the event that a decision is issued (...) that duly justifies the need for the extension".

The estimation of the aforementioned appeal for protection has made it possible to file a claim for financial liability against the State for the abnormal functioning of the Administration of Justice, quantifying the damage suffered by our clients on the basis, among other parameters, of the periods of time during which the criminal case has been unduly paralysed and no investigative activity has taken place, and of the fact that the longer the processing of a judicial proceeding is unjustifiably delayed, the greater the amount of fees that must be paid to the lawyer acting in defence of those under investigation.

Furthermore, the Constitutional Court's decision prompted the investigating body to summon our clients and take their statements as suspects, thereby enabling the filing of a motion to dismiss and close the case in their favour.

Finally, the Constitutional Court's imposition on the investigating body of the obligation to complete the investigation phase within six months (from the date of the acceptance of the appeal for protection) and the failure to meet this deadline without any decision justifying its extension, even though there is no provision in Andorran law similar to Article 324 of the Spanish Criminal Procedure Act, enables us to seek compliance with the ruling of the Constitutional Court of Andorra.