

## Spain: Court of Instruction of Santa Cruz de Tenerife, 25th September 2020, Appeal No. 1722/2020

**Country of Decision:**

Spain

**Date of Decision:**

25-09-2020

**Citation:**

Court of Instruction of Santa Cruz de Tenerife, Case 55/2020, of 25 September 2020.

**Court Name:**

Court of Instruction of Santa Cruz de Tenerife

**Keywords:**

Detention

Personal circumstances of applicant

Right to remain pending a decision (Suspensive effect)

**Relevant Legislative Provisions:**Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1]**Headnote:**

The governmental authority is requesting an authorization to detain an immigrant after an alleged infraction of article 53 of the Organic Law 4/2000 in order to guarantee the enforcement of a possible return procedure. Following the procedures detailed in article 62 of said law, the Court assessed the particular circumstances of the case, including the risk of nonappearance and the possible existence of previous administrative sanctions of the subject, concluding that the lack of roots in the Spanish territory and the fact that he already filled in an asylum application show that the detention is not necessary in this case.

**Facts:**

The applicant arrived at Santa Cruz de Tenerife by boat and claimed asylum. Having informed the Public Prosecutor, the authorities brought the applicant before the Court following the legal

procedures; the applicant was able to make a statement, assisted by a lawyer.

The Public Administration is now requesting authorization for his detention due to a commission of a serious offence contained in article 53 of the Organic Law 4/2000, in order to guarantee the application of the return procedure, whenever it can be executed.

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### **Decision & Reasoning:**

According to the Organic Law 4/2000, the governmental authority can request from the Court of Instruction the preventive custody of a third-country national while a sanctioning file is being processed. In this context, the issuance of a decision of expulsion is not necessary.

The Judge ruled on the basis of the principle of proportionality and assessed the circumstances of the case, particularly the risk of non-appearance due to a lack of residence or identity, as well as the actions of the applicant aimed at hindering or avoiding expulsion. The existence of conviction or prior administrative sanctions, or other criminal or administrative proceedings was taken into account.

The Court assessed whether the preventive custody of the applicant is according to law, by examining the formal administrative requirements and the testimony of both the applicant and the public prosecutor. The Court contained that the fact that the applicant did not have any connecting link with the Spanish territory, any means of livelihood and had already claimed asylum were sufficient grounds to deny his preventive custody.

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### **Outcome:**

Request of preventive custody denied.

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### **Attachment(s):**



[AJI\\_55\\_2020 Canarias internamiento.pdf](#)[2]

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### **Other sources cited:**

#### **Domestic Case Law cited**

Judgment of the Constitutional Court n. 174/1999 (Section 2), of November 3, 1999 (appeal 1374/1999) ? (Sentencia del Tribunal Constitucional n. 174/1999 (Sala 2ª), de 3 de noviembre de 1999 (recurso de amparo 1374/1999)).

Judgment of the Constitutional Court n. 179/2000 (Section 2), of June 26, 2000 (appeal 5317/1999) ? (Sentencia del Tribunal Constitucional n. 179/2000 (Sala 2ª), de 26 de junio de 2000 (recurso de amparo 5317/1999)).

### **National / Other Legislative Provisions:**

[Organic Act 4/2000](#) [3]

[of 11 January](#) [4]

[on the Rights and Liberties of Foreigners in Spain and their Social Integration \(?Act on Foreigners?\)](#) [5]

[modified by the la Organic Laws 8/2000](#) [6]

[of 22 of December](#) [7]

[14/2003](#) [8]

[of 20 of November and 2/2009](#) [9]

[of 11 of December](#) [10]

[Spanish Constitution \(Constitución Española. Boletín Oficial del Estado](#) [11]

[29 de diciembre de 1978](#) [12]

[número 311\) ? Article 17.](#) [13]

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**Links:**

[1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[2]

[https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/AJI\\_55\\_2020%20Canarias%20internamiento](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/AJI_55_2020%20Canarias%20internamiento)

[3] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/organic-act-42000>

[4] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/11-january>

[5] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/rights-and-liberties-foreigners-spain-and-their-social-integration--0>

[6] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/modified-la-organic-laws-82000>

[7] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/22-december>

[8] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/142003>

[9] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/20-november-and-22009>

[10] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/11-december>

[11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/spanish-constitution-constituci%C3%B3n-esp%C3%B1ola-bolet%C3%ADn-oficial-del-estado>

[12] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/29-de-diciembre-de-1978>

[13] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/n%C3%BAm-311-%E2%80%93-article-17>