



# Spain

## Ratified the European Convention on Human Rights in 1979

### National Judge: María Elósegui

[Judges' CVs](#) are available on the ECHR Internet site

Previous Judges: Eduardo García De Enterría (1978-1986), Juan Antonio Carrillo Salcedo (1986-1989), José María Morenilla (1990-1998), Antonio Pastor Ridruejo (1998-2003), Javier Borrego Borrego (2003-2008), Luis López Guerra (2008-2018)

[List of judges of the Court since 1959](#)

The Court dealt with 641 applications concerning Spain in 2017, of which 634 were declared inadmissible or struck out. It delivered 6 judgments (concerning 7 applications), 5 of which found at least one violation of the European Convention on Human Rights.

Applications processed in	2016	2017	2018**
Applications allocated to a judicial formation	627	668	308
Communicated to the Government	16	52	17
Applications decided:	575	641	307
- Declared inadmissible or struck out (Single Judge)	542	588	293
- Declared inadmissible or struck out (Committee)	8	44	7
- Declared inadmissible or struck out (Chamber)	7	2	0
- Decided by judgment	18	7	7

\*\* January to July 2018

For information about the Court's judicial formations and procedure, see [the ECHR internet site](#).

Statistics on interim measures can be found [here](#).

Applications pending before the court on 01/07/2018	
Total pending applications*	346
Applications pending before a judicial formation:	170
Single Judge	64
Committee (3 Judges)	24
Chamber (7 Judges)	78
Grand Chamber (17 Judges)	4

\*including applications for which completed application forms have not yet been received

## Spain and ...

### The Registry

The task of the Registry is to provide legal and administrative support to the Court in the exercise of its judicial functions. It is composed of lawyers, administrative and technical staff and translators. There are currently 668 Registry staff members.

## Noteworthy cases, judgments delivered

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### Grand Chamber

#### **Fernández Martínez v. Spain**

12.06.2014

The case concerned the non-renewal of the contract of a married priest and father of five who taught Catholic religion and ethics, after he had been granted dispensation from celibacy and following an event at which he had publicly displayed his active commitment to a movement opposing Church doctrine.

No violation of Article 8 (right to respect for private and family life)

#### **Del Rio Prada v. Spain**

21.10.2013

The case concerned the postponement of the final release of a person convicted of terrorist offences, on the basis of a new approach – known as the “Parot doctrine” – adopted by the Supreme Court after she had been sentenced.

Violation of Article 7 (no punishment without law)

Violation of Article 5 § 1 (right to liberty and security)

Furthermore, the Court decided that the respondent State was to ensure the applicant was released at the earliest possible date.

[Link to the press release in Spanish.](#)

#### **Palomo Sánchez and Others v. Spain (nos. 28955/06, 28957/06, 28959/06 and 28964/06)**

12.09.2011

The case concerned the dismissal of a group of trade unionists after the union’s newsletter had published a cartoon and articles considered to be insulting to two other employees and a manager.

No violation of Article 10 (freedom of expression) read in the light of Article 11 (freedom of assembly and association).

#### **Mangouras v. Spain**

28.09.2010

Pre-trial detention – with possibility of release on bail of three million euros – of captain of ship *Prestige* for causing damage to the environment and natural resources

(spilling 70,000 tons of fuel oil into the Atlantic Ocean).

No violation of Article 5 § 3 (right to liberty and security)

## Noteworthy cases, judgments delivered

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### Chamber

#### **Cases concerning inhuman or degrading treatment (Article 3)**

#### **Portu Juanenea and Sarasola Yarzabal v. Spain**

13.02.2018

The case concerned allegations of ill-treatment sustained by Mr Portu Juanenea and Mr Sarasola Yarzabal when they were arrested in 2008 by officers of the Guardia Civil and at the beginning of their incommunicado police custody.

Violation of Article 3 in its substantive and procedural aspects

#### **Beortegui Martinez v. Spain**

31.05.2016

The case concerned the alleged failure to investigate an allegation by Mr Beortegui Martinez that he was ill-treated by four *Guardia Civil* officers while detained incommunicado in police custody on suspicion of belonging to a terrorist organisation.

Violation of Article 3 on account of the investigation conducted by the national authorities

No violation of Article 3 as regards the applicant’s allegation of ill-treatment during his arrest and in police custody

#### **Etxebarria Caballero v. Spain and Ataun Rojo v. Spain**

07.10.2014

These cases concerned the investigation by the Spanish authorities into ill-treatment allegedly sustained by the applicants while they were held incommunicado in police custody. They were arrested by the police and placed in secret police custody in the context of judicial investigations concerning, in particular, their alleged membership of the terrorist organisation ETA.

In both cases:

Violation of Article 3 on account the lack of an effective investigation into the applicants' allegations of ill-treatment  
No violation of Article 3 concerning the ill-treatment alleged by the applicant Etxebarria Caballero

**Otamendi Eqiguren v. Spain**

16.10.2012

The case concerned the investigation into allegations of police ill-treatment of a man suspected of links with the terrorist organisation ETA held incommunicado in police custody.

Violation of Article 3 (investigation)

**B. S. v. Spain** (no. 47159/08)

24.07.2012

The case concerned a woman of Nigerian origin who was stopped by the police while working as a prostitute on the outskirts of Palma de Mallorca.

Violation of Article 3 as regards the investigation

No violation of Article 3 as regards the allegations of ill-treatment

Violation of Article 14 (prohibition of discrimination) in conjunction with Article 3

**Olaechea Cahuas v. Spain**

10.08.2006

Extradition to Peru in 2003 of Adolfo Hector Olaechea Cahuas (the subject of an international arrest warrant for his presumed membership of the "Shining Path").

Violation of Article 34 (right of individual application)

No violation of Articles 3, 5 (right to liberty and security) and 6 (right to a fair trial)

**Cases concerning Article 6**

Right to a fair trial

**Vilches Coronado and Others v. Spain**

13.03.2018

The case concerned the applicants' conviction for fraud against the State Treasury after an appeal hearing, the applicants having been acquitted at first instance.

No violation of Article 6 § 1

**Hernandez Royo v. Spain**

20.09.2016

The case concerned the fact that the applicants had been convicted at the appeal stage, without evidence having been heard from them in person, after they had been acquitted at first instance.

No violation of Article 6

**Gómez Olmeda v. Spain**

29.03.2016

The case concerned the complaint by a criminal convict that he had not been able to defend himself in open court in the appeal proceedings in his case.

Violation of Article 6 § 1

**Sociedad Anónima del Ucieza v. Spain**

04.11.2014

The case concerned a dispute over ownership of a medieval church between the applicant company, which had purchased and registered in the land register a plot of land in which the church had formed an enclave, and the Diocese of Palencia, which had registered the same church in its own name in the land register sixteen years later.

Violation of Article 6 § 1

Violation of Article 1 of Protocol No. 1 (protection of property)

**Varela Geis v. Spain**

05.03.2013

A bookshop owner who sold publications about the Holocaust complained that he had been convicted of "justifying genocide", an offence not corresponding either to the charges against him or to his conviction at first instance.

Violation of Article 6 §§ 1 and 3 (a) and (b) (right to a fair trial and rights of the defence): the applicant should have been notified of the amended charge against him in order to prepare his defence

**Serrano Contreras v. Spain**

20.03.2012

In this case, the Court concluded that the lack of public hearing before the Supreme Court resulted in a violation of the right to a fair trial (Article 6 § 1).

Judgment available in [Spanish](#).

See also judgments in the cases of [Iguual Coll](#), [Garcia Hernandez](#) and [Almenaro Alvarez](#).

**Vaquero Hernandez and Others v. Spain**

02.11.2010

Spanish Civil Guard officers and Civil Governor accused of murdering two presumed ETA members complained that they had not had a fair trial.

[No violation of article 6 §§ 1, 2 and 3](#)

**Castillo Algar v. Spain**

28.10.1998

Issue of impartiality in the trial of a lieutenant-colonel in the infantry and attached to the Spanish Legion, accused of having set up an unregulated private fund.

[Violation of Article 6 § 1](#)

Right to a fair hearing within a reasonable time

**García Mateos v. Spain**

19.02.2013

The case concerned a supermarket employee who asked for a reduction in her working time because she had to look after her son who was then under six years old.

[Violation of Article 6 § 1 combined with Article 14 \(prohibition of discrimination\)](#)

Presumption of innocence

**Lizaso Azconobieta v. Spain**

28.06.2011

The applicant was arrested in the course of a police operation against the terrorist organisation ETA. At a press conference held three days after the arrest, the civil governor of Guipúzcoa named him as a member of an ETA commando unit responsible for three bomb attacks. Two days later, a judge ordered his release. No charges were subsequently brought against him.

[Violation of Article 6 § 2](#)

Judgment available in [Spanish](#)

**Tendam v. Spain**

13.07.2010 (principal judgment)<sup>1</sup>

Refusal by the Spanish authorities to grant the applicant compensation for his pre-trial detention during the criminal proceedings against him for theft as well as for the loss of and damage to his property seized in

connection with the charge of handling stolen goods.

[Violation of Article 6 § 2](#)

[Violation of Article 1 of Protocol No. 1 \(protection of property\)](#)

**Vera Fernández-Huidobro v. Spain**

06.01.2010

Allegations of lack of impartiality for political reasons in the trial of a Minister of State for Security at the Ministry of the Interior convicted of misappropriation of public funds and false imprisonment.

[No violation of Article 6 §§ 1 \(right to a fair trial\) and 2](#)

Right of access to a court

**Arribas Anton v. Spain**

20.01.2015

The case mainly concerned the applicant's right of access to a court (*amparo* procedure).

[No violation of Article 6 § 1](#)

**Private and family life cases  
(Article 8)**

**Trabajo Rueda v. Spain**

30.05.2017

The case concerned the seizure of Mr Trabajo Rueda's computer on the grounds that it contained child pornography material.

[Violation of Article 8](#)

**Rubio Dosamantes v. Spain**

21.02.2017

The case concerned a complaint by the pop singer Paulina Rubio that her honour and reputation had been harmed by remarks made on television about her private life.

[Violation of Article 8](#)

**R.M.S v. Spain (no. 28775/12)**

18.06.2013

The case concerned the applicant's daughter's placement with a foster family by social services against the wishes of the applicant. The applicant complained that she was deprived of all contact with her daughter and observed that the administrative authorities had decided to place her daughter in foster care with a view to adoption before the domestic courts had even ruled that her daughter had been abandoned.

[Violation of Article 8](#)

<sup>1</sup> See also, with regard to the same case, the Chamber judgment of 28 June 2011 on the question of just satisfaction. In this judgment, the Court awarded Mr. Tendam EUR 200,000 for pecuniary damage.

**Martinez Martinez and María Pino Manzano v. Spain**

03.07.2012

The case concerned a couple living in the vicinity of an active stone quarry. They complained about the noise and the dust pollution and claimed compensation from the authorities for the damage suffered.

[No violation of Article 8](#)

**K.A.B. v. Spain (no. 59819/08)**

10.04.2012

The case concerned the adoption – despite the father’s opposition – of a child who was declared abandoned after his mother’s deportation.

[Violation of Article 8](#)

**Saleck Bardi v. Spain**

24.05.2011

The case concerned judicial proceedings that ended with the granting of guardianship of a child from the Sahrawi refugee camps in Tindouf to a Spanish host family, after a long period of uncertainty and despite her biological mother’s request for her return. Right to family life breached by authorities’ lack of diligence in returning child to biological mother

[Violation of Article 8](#)

**P.V. v. Spain (no. 35159/09)**

30.11.2010

Restriction of contact arrangements between a transsexual and her six-year-old son.

[No violation of Article 8 taken in conjunction with Article 14 \(prohibition of discrimination\):](#) the overriding factor had been the child’s best interests and not the applicant’s transsexualism, the aim being that the child would gradually become accustomed to his father’s gender reassignment.

**Moreno Gómez v. Spain**

16.11.2004

Night-time noise caused by night clubs opened near the applicant’s home

[Violation of Article 8](#)

**Prado Bugallo v. Spain**

18.02.2003

The case concerned telephone tapping in the course of a drug-trafficking investigation.

[Violation of Article 8](#)

**López Ostra v. Spain**

09.12.1994

Nuisance caused by a waste-treatment plant situated near the applicant’s home.

[Violation of Article 8 \(right to respect for private and family life\)](#)

[No violation of Article 3 \(prohibition of inhuman or degrading treatment\)](#)

**Cases concerning freedom of expression (Article 10)**

**Stern Taulats and Roura Capellera v. Spain**

13.03.2018

The case concerned the conviction of two Spanish nationals for setting fire to a photograph of the royal couple at a public demonstration held during the King’s official visit to Girona in September 2007.

[Violation of Article 10](#)

**Jiménez Losantos v. Spain**

14.06.2016

The case concerned the criminal conviction of Mr Jiménez Losantos, a journalist, for making comments about the mayor of Madrid which were considered to be insulting.

[Violation of Article 10](#)

**Rodríguez Ravelo v. Spain**

12.01.2016

The case concerned expressions used by a lawyer in a written application containing value judgments regarding a judge and attributing blameworthy conduct to her.

[Violation of Article 10](#)

**Otegi v. Spain**

15.03.2011

The case concerned the conviction of spokesperson of the Basque pro-independence left for insulting the King.

[Violation of Article 10](#)

**Gutiérrez Suarez v. Spain**

01.06.2010

Conviction for unlawful interference with King Hassan’s fundamental right to respect for his reputation, following publication of an article in which a family company belonging to the king was alleged to be involved in drug trafficking.

[Violation of Article 10](#)

### **Castells v. Spain**

23.04.1992

Mr Castells, a lawyer and senator elected on the list of the Basque coalition Herri Batasuna, sentenced to imprisonment in 1983 for insulting the Government after having published an article in which he held the latter responsible for the impunity enjoyed by armed groups.

[Violation of Article 10](#)

### **Cases concerning discrimination (Article 14)**

#### **Aldeguer Tomás v. Spain**

14.06.2016

The case concerned the applicant's complaint of having been discriminated against on the ground of his sexual orientation in that he was denied a survivor's pension following the death of his partner, with whom he had lived in a *de facto* marital relationship. The applicant, Mr Aldeguer Tomás, had been unable to marry his partner under the law in force during the latter's lifetime. Three years after his partner's death, the law legalising same-sex marriage in Spain entered into force.

[No violation of Article 14 read in conjunction with Article 8 \(right to respect for private and family life\) and Article 1 of Protocol No. 1 \(protection of property\)](#)

#### **Manzanas Martín v. Spain**

03.04.2012

In this case the Court concluded that difference between retirement pensions of Catholic priests and Evangelical ministers amounted to discrimination.

[Violation of Article 14 taken together with Article 1 of Protocol No.1 \(protection of property\)](#)

#### **Muñoz Díaz v. Spain**

08.12.2009

Refusal to award a survivor's pension to a Spanish Roma citizen married according to the community's own rites and without any civil effects in Spanish law.

[Violation of Article 14 in conjunction with Article 1 of Protocol No. 1 \(protection of property\)](#)

### **Cases concerning the dissolution of political parties**

#### **Herri Batasuna and Batasuna v. Spain, Etxeberria and Others v. Spain and Herritarren Zerrenda v. Spain** **Herri Batasuna and Batasuna v. Spain**

30.06.2009

Suspension of the activities of the parties in question declared illegal and dissolved under Law no. 6/2002.

Etxeberria and Others v. Spain: electoral groupings having pursued the activities of political parties that had been declared illegal and dissolved debarred from standing in municipal, regional or autonomous community elections.

Herritarren Zerrenda v. Spain: Herritarren Zerrenda barred from standing in European parliamentary elections of June 2004 on grounds that his aim was to pursue the activities of three parties that had been declared illegal and dissolved.

[No violations of Articles 10, 11 \(freedom of assembly and association\), 3 of Protocol No. 1 \(right to free elections\) and 13 \(right to an effective remedy\)](#)

#### **Eusko Abertzale Ekintza - Acción Nacionalista Vasca (EAE-ANV) v. Spain**

07.12.2010

After Batasuna and Herri Batasuna (among others) were declared illegal in 2003, certain candidatures in municipal elections and elections to the provincial councils in the Basque country and to the Navarra parliament were revoked.

[\(Both applications\) No violation of Article 3 of Protocol No. 1 \(right to free elections\)](#)

[\(2nd application\) No violation of Articles 10 and 11 \(freedom of association\)](#)

[\(Both applications\) No violation of Article 13 \(right to an effective remedy\)](#)

### **Other noteworthy cases, judgments delivered**

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#### **Junta Rectora Del Ertzainen Nazional Elkartasuna (ER.N.E.) v. Spain**

21.04.2015

The case concerned the inability of the members of a police officers' trade union to exercise the right to strike.

[No violation of Article 11 \(freedom of association\), taken alone and in conjunction](#)

with Article 14 (prohibition of discrimination)

**A.C. and Others v. Spain (no. 6528/11)**

22.04.2014

The case concerned the possible removal of international protection seekers from Spain to Morocco, where they alleged they would face a risk of inhuman and degrading treatment.

Violation of Article 13 (right to an effective remedy), taken together with Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment)

**Ruspoli Morenes v. Spain**

28.06.2011

Conditions of purchase by the Spanish Government of Goya's work "La Condesa de Chinchón" were compliant with the Convention. The State had exercised its right of pre-emption over an item of cultural interest. The painting is now on display in the Prado Museum, Madrid.

No violation of Article 1 of Protocol No. 1 (protection of property)

**Gurguchiani v. Spain**

15.12.2009

Retroactive application of a heavier penalty – deportation – to an illegal immigrant.

Violation of Article 7 (no punishment without law)

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## Noteworthy cases, decisions delivered

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**Barik Edidi v. Spain**

19.05.2016

The case concerned a lawyer (the applicant) who was asked by the president of a court to return to the area reserved for members of the public, on the ground that barristers appearing before the court could cover their heads only with the official cap (biretta).

Application declared inadmissible:

Complaint under Article 6 § 1 (right to a fair hearing) rejected as manifestly ill-founded

Complains under Article 8 (right to respect for private and family life), 9 (right to freedom of thought, conscience and religion) and 1 of Protocol No. 12 (general prohibition of discrimination) rejected for failure to exhaust domestic remedies

**Dorado Baúlde v. Spain**

24.09.2015

The case concerned the cassation appeal procedure before the Supreme Court in the Spanish judicial system.

Application declared inadmissible as manifestly ill-founded.

**A.M.B. and Others v. Spain**

(no. 77842/12)

20.02.2014

The case concerned the illegal occupation of a building belonging to the Madrid Housing Institute and a squatter's complaint about the decision to evict her from that building. An interim measure (under Rule 39 of the Rules of Court) had been applied by the Court on 12 December 2012 suspending the eviction measure ordered against Ms A.M.B. who was occupying the building with her two children.

Having regard to the observations submitted by the Spanish Government, the Court took the view that the maintaining of the interim measure was no longer justified and therefore lifted it.

Finding that the appeal before the Spanish Constitutional Court was still pending, the Court found that the application was premature and decided to reject it.

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## Noteworthy pending cases

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### Grand Chamber

**López Ribalda and Others v. Spain (nos. 1874/13 and 8567/13)**

The case concerns the covert video surveillance of a Spanish supermarket chain's employees at their workplace after suspicions of theft had arisen.

Relying on Article 8 (right to respect for private life) and Article 6 § 1 (right to a fair trial) of the Convention, the applicants complain about the covert video surveillance and the courts' use of the data obtained to find that their dismissals had been fair. Three of the applicants also complain that the settlement agreements were made under duress owing to the video material and should not have been accepted as evidence that their dismissals had been fair. Lastly, the first applicant also complains that the judgments had lacked proper motivation as to her specific circumstances or any reasoning leading to

the conclusion that her dismissal had been fair.

In its Chamber [judgment](#) of 9 January 2018, the Court held, by six votes to one, that there had been a violation of Article 8 of the Convention. The Chamber found in particular that under Spanish data protection legislation the applicants should have been informed that they could eventually be placed under surveillance, but they had not been.

The Chamber held, however, that there had been no violation of Article 6 § 1 of the Convention. It found in particular that the proceedings as a whole had been fair because the video material was not the only evidence the domestic courts had relied on when upholding the dismissal decisions and the applicants had been able to challenge the recordings in court.

As regards the first applicant's last complaint, the Chamber found that it did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

Case [referred](#) to the Grand Chamber on 28 May 2018

Grand Chamber hearing on 28 November 2018

#### **N.D. and N.T. v. Spain (nos. 8675/15 and 8697/15)**

The case concerns the immediate return to Morocco of sub-Saharan migrants who attempted on 13 August 2014 to enter Spanish territory illegally by scaling the barriers which surround the Melilla enclave on the North African coast.

Relying on Article 4 of Protocol No. 4 (prohibition of collective expulsions of aliens) to Convention, the applicants claim that they have been subjected to a collective expulsion without an individual

assessment of their situation, with no basis in law and without the provision of any legal advice. Further relying on Article 13 (right to an effective remedy) of the Convention taken together with Article 4 of Protocol No. 4, they complain that it was impossible to have their identity established, to put forward their individual situations, to challenge before the Spanish authorities their return to Morocco and to have the risk of ill-treatment that they ran in that State taken into consideration.

In its Chamber [judgment](#) of 3 October 2017, the Court held, unanimously, that there had been a violation of Article 4 of Protocol No. 4.

Case [referred](#) to the Grand Chamber on 29 January 2018

Grand Chamber [hearing](#) on 26 September 2018

## Chamber

### **Cases concerning expulsion**

#### **Saber v. Spain (no. 76550/13) and Boughassal v. Spain (no. 45938/14)**

Cases [communicated](#) to the Spanish Government on 31.08.2015

Deportation of applicants, long-term residents in Spain, following their criminal convictions.

The applicants mainly rely on Article 8 (right to respect for private and family life) of the Convention.

#### **Doumbe Nnabuchi v. Spain (no. 19420/15)**

Case [communicated](#) to the Spanish Government on 14.12.2015

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