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Meeting:	1514th meeting (December 2024) (DH)
Item reference:	Action Report (23/10/2024)

Communication from Spain concerning the case of Gonzalez Etayo v. Spain (Application No. 20690/17) [Ataun Rojo group] - *The appendices in Spanish are available upon request to the Secretariat.*

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Réunion :	1514e réunion (décembre 2024) (DH)
Référence du point :	Bilan d'action (23/10/2024)

Communication de l'Espagne concernant l'affaire Gonzalez Etayo c. Espagne (requête n° 20690/17) [Ataun Rojo groupe] ***(anglais uniquement)*** - *Les annexes en espagnol sont disponibles sur demande au Secrétariat.*

MINISTERIO
DE LA PRESIDENCIA, JUSTICIA
Y RELACIONES CON LAS CORTES

ABOGACÍA GENERAL DEL ESTADO

SUBDIRECCIÓN GENERAL DE
ASUNTOS CONSTITUCIONALES Y
DERECHOS HUMANOS

ACTION REPORT

***GONZALEZ ETAYO* (Application No. 20690/17)**

Judgment Date: 19/01/2021 ; Date Final Judgment: 19/01/2021

Content

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I. Procedural Background

A. The Judgement.

1.- Subject of the case

This case concerns the failure to thoroughly and effectively investigate the applicant's allegations of ill-treatment during his police custody.

2.- Summary of relevant facts

The applicant was arrested for his alleged membership of the EKIN nationalist group. He was taken to *Audiencia Provincial de Pamplona*, where, in accordance with the content of the expert report provided, he gave his consent to be fully examined by the forensic doctor, in close proximity to the facts, and it was found that he was not suffering from any physical or psychological signs of violence. The detainee voluntarily declares that, up to now, he has been treated well.

However, three months after these events, the applicant complained that he had been ill-treated during the detention prior to being brought before the court, and preliminary proceedings were instituted to investigate the facts that had been the subject of the complaint.

The Investigating Magistrate no 4 of Madrid opened investigation proceedings, requested medical reports and received the Applicant's statement. As it did not found evidences on any wrongdoing, a discontinuance ordered was rendered. Nevertheless, the *Audiencia Provincial*, upholding the Applicant's appeal, revoked the Investigating Magistrate decision, and ordered, among other evidences, that the Lawyers who assisted the Applicant during the incommunicado detentions should be heard and requesting the reports of the Forensic doctors that treated the Applicant in those times.

After carrying out those investigations and as the Investigating Magistrate still did not found any grounds of a committed crime, a new discontinuance order was rendered. This order was appealed by the Applicant and the *Audiencia Provincial*, once again, upheld the Appeal and ordered the continuation of the investigation to hear the legal aid lawyer that assisted the Applicant during his statement in the facilities of the police.

After that, and as there was not any ground for a possible crime, the Investigating Magistrate rendered a third discontinuance decision.

This decision was appealed and, in this time, the *Audiencia Provincial de Madrid* confirmed the Investigating Magistrate conclusion that the facts complained of were not sufficiently substantiated. The applicant appealed for *amparo* before the Constitutional Court, which dismissed the appeal as inadmissible.

The applicant brought an action before the European Court of Human Rights alleging a violation of Article 3 of the Convention, in that he considered that he had been ill-treated.

3.- **Violation found**

The European Court of Human Rights considers that, where there are reasonable grounds to believe that an act of torture has been committed, it is for the competent State authorities to carry out an impartial investigation of their own motion and without delay. While the Court notes the interest of the *Audiencia Provincial de Madrid* in dispelling any doubts about the alleged ill-treatment of the applicant, it observes, however, that it was not sufficient in the present case to consider the investigation as sufficiently thorough and effective to complete the above requirements of Article 3 of the Convention, being all the more necessary where, as in the present case, the period of time during which the wronged persons were in a situation of total absence of communication with the outside world, an environment which requires a greater effort on the part of the domestic authorities to establish the facts complained of.

In the Court's view, the administration of additional evidence suggested by the applicant, and in particular the identification and hearing of the officers responsible for his surveillance during his incommunicado detention, would have contributed to the clarification of the facts, in one way or another, as required by the Court's case-law.

The Court declared that there had been a violation of Article 3 in its procedural aspect, due to the lack of an effective investigation into the complaint of ill-treatment, and ordered the State to pay the sum of € 20,000 in respect of non-pecuniary damages.

II. Individual measures

A. Just Satisfaction

The amount of €20.000 as just satisfaction was paid on 6 May 2021[1].

B. Regarding the reopening of the proceedings.

1.- **Specific features of this case. Absence of a request by the Applicant.**

[1] Annex 1.- Document of payment

First of all, it is needed to recall the following features regarding the domestic proceedings that should be assessed:

The claims of ill-treatment brought by the Applicant were investigated in the investigating proceeding *Diligencias Previas* 1639/2011. In contrast to other cases examined by the ECtHR, neither the criminal proceeding was discontinued without any investigation activity, nor it was closed by the mere lack of identification of any possible responsible.

On the contrary, the investigation process was carefully reviewed by the *Audiencia Provincial* who, in two occasions, ordered the continuance of the investigation in order to gather new possible evidence; and after several witness and reports gathered, the conclusion was that there persisted the lack any ground of a possible crime.

The ECtHR Judgement, indeed, praises this increased effort of the national courts to exhaust the possibilities of investigation, in the following terms (para. 60):

> *«La Cour observe que, lorsqu'il existe des motifs raisonnables de croire qu'un acte de torture a été commis, il incombe aux autorités compétentes de l'État de procéder d'office et sans retard à une enquête impartiale (Arratibel Garciandia, précité, § 26). Bien que la Cour prenne acte de l'intérêt de l'Audiencia provincial de Madrid de dissiper tout doute sur les mauvais traitements que le requérant aurait subis, ce qui constitue une évolution très positive dans la présente affaire par rapport aux enquêtes menées dans les affaires citées au paragraphe 53 ci-dessus, elle note toutefois que l'annulation à deux reprises en appel des ordonnances de non-lieu rendues par le juge d'instruction n'a pas suffi en l'espèce à considérer l'enquête comme étant suffisamment approfondie et effective pour remplir les exigences précitées de l'article 3 de la Convention* (…)»

However, from a formal point of view, the Court considers that the investigation should still have been completed with the evidence suggested by the Claimant (it is understood, in its last appeal), even though this would have led to the same conclusion (the lack of evidence of a crime).

> *«…comme en l'espèce, le requérant se trouvait, pendant le laps de temps durant lequel les mauvais traitements allégués se seraient produits, dans une situation d'absence totale de communication avec l'extérieur, pareil contexte exigeant un effort plus important de la part des autorités internes pour établir les faits dénoncés. De l'avis de la Cour, l'administration des moyens de preuve supplémentaires suggérés par le requérant, et tout particulièrement l'identification et l'audition des agents chargés de sa surveillance lors de sa garde à vue au secret, aurait pu contribuer à l'éclaircissement des faits, dans un sens ou dans l'autre, comme l'exige la jurisprudence de la Cour»*

This specific background has to be taken into account in order to assess the possibility of any reopening of the criminal proceedings, which we make in the following paragraphs.

First of all, it is needed to highlight that the Applicant did not request the reopening of domestic proceedings, after the ECtHR Judgement has rendered.

Nowadays, the Criminal Procedures Act in its art, 954.3 (as amended by Law 41/2015) foresees the possibility of lodging a revision appeal against definitive decisions in criminal proceedings, a systematic interpretation of this article and this following one makes clear that it is only envisage for reviewing final convicting Judgements[2].

We would like to add that, recently, the Supreme Court has already confirmed that a revision appeal in a criminal proceeding, even on the basis of an ECtHR Judgement, **it is only possible in relation to convicting Judgements**, and not in order to review another kind of decisions (for instance, acquittal judgements or superseding decisions)[3]

Therefore, the current case, where the internal proceeding ended not by a convicting sentence but by a provisional discontinuance decision (*Auto de sobreseimiento provisional*), it is out of the scope of art. 954 et seq., such revision appeal is not possible.

In any case, that revision appeal would not be possible due to the one year time for revision nowadays envisaged has clearly elapsed (the time period for lodging a revision appeal is one year after the ECtHR Judgement is final (art. 954.3 *in fine* Criminal Procedure Act).

Notwithstanding that, as the internal proceedings did end with a superseding or discontinuance decision adopted by the investigating Magistrate and confirmed by the

[2] Particularly it is inferred of the two following articles of the Criminal Procedure Act as amended by Act 41/2015, of 5 October:
« Article 954.
(...)
3. Application may be made for a review of a final judgment where the European Court of Human Rights has held that the judgment was given in violation of a right recognised by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, provided that the violation, by its nature and gravity, has effects which subsist and cannot be terminated otherwise than by such a review.
In such a case, the application for review may only be made by a person who is entitled ***to bring such an action*** *and who has been an applicant before the European Court of Human Rights. The application must be made within one year of the judgment of the Court becoming final.*
« Article 955 :
The convicted person and, when the latter is deceased, his or her spouse, or whoever has cohabited as such, ascendants and descendants, are entitled to initiate and, where appropriate, lodge an appeal for review, with a view to rehabilitating the memory of the deceased and, where appropriate, to punishing the real culprit ».
Therefore, a revision application can only be made by the convicted persona against a conviction Judgement, and it is nod admitted to be lodged by the accusing party against an acquital Judgement.

[3] Order of 20th April 2021 of the Second Chamber of the Supreme Court, https://www.poderjudicial.es/search/AN/openDocument/68b066318106cb91/20210504 "*The order of 4 March 2021 agreed to the flat dismissal, without considering the reasons why Mrs.* […] *intends to appeal for review, because as we have said above, the extraordinary appeal for review can* ***only be used against final convictions****, which is not the case in this instance*."

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Audiencia Provincial, there is indeed another possibility for reopening the internal proceedings, which is that any party of that proceeding request this reopening to the Investigating Magistrate.

Pursuant to Article 641.1 of the Criminal Procedure Act, a provisional superseding decision may be issued when "there is insufficient evidence that the criminal offence on which the case is based has been committed." That, therefore, does not prevent eventually the request for a reopening of the case.

Nevertheless, none of the parties has requested a reopening of the case after the Judgement of the Court.

2.- Ex officio analysis by the Public Prosecutor Office.

In order to assess any other possibility for the execution of the ECtHR Judgement, an ex officio analysis has requested to the Public Prosecutor.

In its 2022 report[4], the Public Prosecutor Office first of all: a) confirms that the reopening of a domestic proceedings can be requested if they have been ended by a provisional discontinuance defence, as the prescription period has not been elapsed; b) but this possibility faces a legal obstacle which is, at the same time, a guarantee for the rights of the defendants: according to the case law of the Spanish Supreme Court, a *miminum* of new *prima facie* evidence must be provided in order to reopen the proceeding provisionally closed (otherwise, it could lead to mere prospective investigations or *fishing expeditions*):

> *«Given that the offence under investigation is punishable in our legal system with up to twelve years of absolute disqualification, by virtue of the provisions of art. 131 CP, the facts, at this time, would not be time-barred.*
>
> *In the present case, the judicial decision that put an end to the proceedings was a provisional discontinuance, which excludes the possibility of filing an appeal for review, in accordance with the provisions of art. 954 Criminal Procedure Act.*
>
> *As the Supreme Court has repeatedly pointed out, "[i]t is clear that this provisional nature of the dismissal of the proceedings can raise problems of legal uncertainty for those affected by the initial investigation, who are faced with the possibility of a reopening. This limitation of their expectations of security appears to be compensated by the requirements of new data that can be considered as elements not previously taken into account for the decision to dismiss (...) This means that the reopening of the proceedings once the provisional discontinuance order has become final depends on the provision of new evidence not already in the case" (STS 338/2015, of 2 June, by all).*

[4] Annex 2.- Ex officio analysis (April 2022) of the Public Prosecutor Office on the execution of the ECtHR Judgement.

In theory, the proceedings provisionally closed could be reopened in the event that new facts or evidence appeared that were not in the case at the time when the order for provisional discontinuance was issued, a circumstance that has not occurred in the present case. Nor is there any record of a request to reopen the proceedings»

Provided that, the 2022 report examines the list of evidentiary activity suggested by the Applicant in the last Appeal lodged before the domestic Courts, which, beyond the mere identification and statement of the agents, was mainly a voice identification parade. And the Public Prosecutor report, due to the nature of the suggested evidence, plus the time elapsed, concludes that this investigation activity could not provide any new *prima facie* evidence that could serve as a basis of revoking the discontinuance of the proceedings:

"Given the time that has elapsed since the facts complained of (more than 11 years), the practice of a voice line-up, requested by the applicant in his second appeal, would be unreliable and would entail the risk of entailing a prospective investigation as any characteristic of the voice or voices susceptible of recognition would be unknown.

In conclusion, given the circumstances of the case, the provisional discontinuance order cannot be the subject of an appeal for review, nor does the judgment of the European Court of Human Rights enable it to do so.

At this time, in accordance with our legal system, the Public Prosecutor's Office cannot carry out any procedural activity in the present case, without prejudice to the appearance of new facts or evidence that was not in the case at the time when the dismissal was ordered".

3.- **Prosecutor's Office reopens investigation in 2023.**

Subsequently and as a consequence of the ECtHR Judgment on this matter, the Provincial Prosecutor's Office of Madrid reopened the investigation into these facts (*Diligencias de Investigación Post-procesal 7/2023*), in which the following actions were carried out:

-The entire previous judicial proceedings was compiled in order to carry out a new examination of the case.

-Penitentiary Institutions were requested to provide the identity of the prison doctor before whom the applicant denounced the alleged ill-treatment and who prepared the report of 23/01/2011 on alleged ill-treatment of the applicant during his detention.

-Once the doctor was identified, a comprehensive witness statement was taken from him about the facts and about the report he prepared on 23/01/2011. In his current statement, the doctor stated that there was no objective element to conclude that the applicant had been beaten (as he claimed) or mistreated; the doctor thoroughly examined the applicant (physically and neurologically) and performed a blood test, and there was no sign of the

damage or injury he claimed to have suffered. He even performed a radiological test with no abnormal results. The doctor refers that he wrote in his report what the applicant indicated to him, but that the applicant himself (when asked about it) could not specify at the time of the medical examination in what part of the body he was allegedly hit nor in what way the alleged blows were executed.

-The *Guardia Civil* was requested to indicate whether the facilities where the incommunicado detention of the applicant was carried out were still the same, with the idea of carrying out an ocular inspection by the prosecutor's office. The facilities do not exist at present, because the building currently houses other dependencies of the *Guardia Civil*.

-The Central Court of Instruction 3 of the National High Court was requested to report on the specific control measures adopted to guarantee the rights of the detainee in the exceptional framework of incommunicado detention in police custody. The Audiencia Nacional replied indicating that the necessary means of control had been adopted to exclude the hypothetical violation of fundamental rights.

After all these actions, the Prosecutor's Office issued the Decree (*Decreto*) of 12/06/2024, in which it closed the *Diligencias de investigación post-procesal 7/2023* carried out for the reopening of the case, concluding (after an analysis of 26 pages) that there was no justification for continuing the process forward. Specifically, some paragraphs of the aforementioned *Decreto* are transcribed below:

-Rationale II: *«(...) e) The statement of the physician who issued the medical report dated 01/23/11 has been made in these proceedings. The report dated 01/23/11 is the only medical report, of the many that were made during the incommunicado detention of Mr. Gonzalez, in which it is stated that the person examined refers that he was beaten during the detention.*

The doctor, in spite of the time that has elapsed, has been forceful in his statement in affirming that he concludes with complete certainty that there was no objective element that would allow the inference that Mr. Gonzalez had been beaten and emphasizes that the reference of the examined person was banal, without specifying the part of the body or the manner of execution of the blows, in spite of being asked about it. However, a thorough examination was carried out not only in the physical aspect but also in the neurological and psychological aspects and a complete blood test (SURI) was performed, the result of which corresponded to normal parameters. The physician clarified that in the presence of a banal reference by the patient, its reflection in the report should also be generic.

The subsequent radiological test, which the prisoner himself requested, did not reveal any findings of interest».

-Rationale V: *«After the complementary investigation in the Post-Trial Proceedings it cannot be concluded that the judicial authorities that intervened in the investigation of the possible crime*

of torture, mainly the Provincial Court, acted without a serious commitment or with an acquiescence that favoured the impunity of the denounced facts, not even negligently or by passivity, as the investigation carried out in the present proceedings has shown, which allows concluding in the same sense as the judicial instance. (...)»

-Rationale VI, on the identification of the agents of the *Guardia Civil*: *«It is true that the complainant and the ECtHR itself that compels us, indicated as a diligence of evidence to practice the identification of the agents of the Guardia Civil who had had contact with the detainee from January 18 to 22, 2011.*

It does not correspond to the Prosecutor who subscribes the decree to analyse the historical and social situation that was lived in Spain in January 2011 in relation to the terrorist group ETA, affiliated associations and its disappearance, but the analysis of the indications that were counted in the instruction to be able to conclude if we were before a suspicion or before rational elements of criminality that allowed to take in consideration as investigated to some author.

The absence of evidence of the commission of the crime, exhaustively analysed previously, prevents the opening of such a generic case, as it was intended, against all the agents of the civil guard who could have had any contact with the detainee, without having any minimally objective evidence that would support such investigation or that would allow maintaining the suspicion of the existence of torture.

The Constitutional Court has included the prohibition of "inquisitio generalis" within the right to a trial with all guarantees (art. 24.2 CE), which can also be included in the concept of the right to a fair trial, enshrined in Article 6.1 of the European Convention on Human Rights. In the words of STC 184/2003, of October 23, 2003, investigations that are based "on mere hypotheses or on pure and simple suspicion", that is, that do not have a minimum objective and material basis susceptible of eventual verification, are considered prospective.

The Supreme Court has also ruled on general causes, stating that subjecting a person to a prospective investigation is "entirely incompatible with the principles of a democratic rule of law" (STS 314/2015, May 4)».

The *Decreto* of 12/06/2024 of the Prosecutor's Office is attached as Annex V.

C. Conclusion.

Compensation has been paid. In addition, the Prosecutor's Office has carried out a re-examination of the case, opening a Post-Trial investigation Proceedings, in which some evidence has been practiced. As a result of these investigations, it is concluded that there are no grounds to continue with the proceedings.

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III. General measures.

The ECtHR in the present case found a violation of Article 3 in its procedural limb.

The content of the abovementioned Judgement does not reveal any systemic problem regarding the procedural of Article 3 of the Convention, neither the similar aspect of art. 14. so that the violation assessed by the ECHR is not the consequence of a lack of adequate regulation, but of the way it was applied in this case.

On the other hand, the general measures regarding the lack of effective investigation cases were examined by the Committee of Ministers in the cases **San Argimiro Isasa, 2507/07; and Etxebarria Caballero 74016/12**. The Committee concluded, in his resolution CM/ResDH(2017)281 of 21st December 2017, that the ECtHR were properly executed[5].

Nevertheless, in the following sections we will examine the recent developments of the Spanish legal framework, as well the recent case law of the domestic courts which reinforces the obligation to carry out effective investigations and the right and guarantees of the victims;. These recent developments make even more difficult that similar possible breaches of art. 3 could take place.

A. General measures against breaches of Article 3 of the Convention in its procedural aspect.

1.- The Public Prosecutor's Office

Pursuant to Article 124 of the Spanish Constitution:

1. The mission of the Public Prosecutor's Office, without prejudice to the functions entrusted to other bodies, is to promote the action of justice in defence of legality, the rights of citizens and the public interest protected by law, either ex officio or at the request of the interested parties, as well as to ensure the independence of the Courts and to seek the satisfaction of the interests of society before them.

2. The Public Prosecutor's Office exercises its functions through its own bodies in accordance with the principles of unity of action and hierarchical dependence and subject, in all cases, to the principles of legality and impartiality. (…)

[5] https://hudoc.exec.coe.int/ENG?i=001-177614

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The Public Prosecutor's Office has made particular efforts to prosecute the offences of torture and inhuman or degrading treatment as set out in its annual reports since 2007, which are available on the website www.fiscal.es.

With regard to the criteria followed by the State Prosecutor's Office in complying with the case-law of both the European Court of Human Rights and the Constitutional Court, the Public Prosecutor's Office has followed up on the criminal cases related to these issues.

Nowadays, as its statistical impact has decayed, in the current annual reports of the Public Prosecutor it is not included (unlike in the past years of 2008, 2009, 2010, 2011, 2012 and 2013[6]) they no longer include a specific chapter on torture or inhuman or degrading treatment, and the reference to these offences becomes specific to particular judgments or cases. Nevertheless, it comprises specific information on the prosecution against tortures and ill treatments:

- In the reports on the activities of the territorial bodies of the Public Prosecutors Offices[7].

- And the report of activities regarding the activities of the Coordinator Prosecutors and Delegates for Specific Matters, due to the fact that among the specific competences of the specialized Deputy Prosecutor for Hate Crime and against Discrimination in the following and prosecution of the crimes of tortures and ill treatments, committed by public agents, with a discriminatory motive[8]

In any case, the valuable information received from all the Spanish Public Prosecutor's Offices on the criminal proceedings carried out for these offences is a particularly useful tool, not only for assessing the degree of respect for the rights of persons detained and deprived of their liberty, but also for the mechanisms of judicial investigation in response to complaints of torture and other offences against moral integrity committed by public servants or for abuse in the exercise of their functions.

2.- ***Circular 2/2022* from the Public Prosecutor's Office.**

After this ECtHR judgment, **the Prosecutor's Office has issued *Circular 2/2022*, which regulates the possibility for the Prosecutor's Office to carry out post-procedural investigation proceedings, which has served as the basis for the re-examination of this case[9].**

[6] When a specific section under the heading Torture and degrading treatment in its annual activity reports corresponding to the years in which legal proceedings for torture or inhuman or degrading treatment were underway, linked in particular to the activity of the terrorist gang E.T.A.
[7] Chapter IV (TERRITORIAL BODIES OF THE PUBLIC PROSECUTOR'S OFFICE), Section 1 (Criminal Area), Subsection 1.2.3 "Torture crimes", of the 2021 Public Prosecutor Annual Report for its activities during 2020: https://www.fiscal.es/documents/20142/ddc76e26-b5e3-4793-1cbb-8cadbe0818a1 . Page 1173 et seq PDF.
[8] https://www.fiscal.es/documents/20142/ddc76e26-b5e3-4793-1cbb-8cadbe0818a1 . Page 1083 et seq. PD
[9] Circular 2/2022 of the Prosecutor's Office is attached as Annex VI.

3.- **Judiciary Police and Forensic Doctors**

Pursuant to Royal Decree 769/1987 of 19 June 1987 regulating the judicial police, members of the Security Forces and Corps who perform judicial police functions and are responsible for investigating serious crimes such as torture, receive specialised training from the police force itself and from the Centre for Judicial Studies of the Ministry of Justice as a prerequisite for joining these specialised units.

Particularly, it is important to recall the role of the Forensic Doctors, which are at detainees' disposal at all times to carry out any type of examination he might have needed. They act on a judicial mandate to ascertain the state of health of the detainees in situ.

According to the Organic Act 1/1985, of the Judicial Power:

"Article 479

(...)

4. Forensic doctors are career civil servants who constitute a National Corps of Senior Graduates at the service of the Administration of Justice.

5. The functions of forensic medical examiners are

a) Technical assistance to Courts, Tribunals and Public Prosecutor's Offices in matters within their professional discipline, issuing reports and opinions within the framework of judicial proceedings or in criminal investigation actions requested by them.

b) The assistance or medical supervision of detainees, injured or sick persons under the jurisdiction of courts, tribunals and public prosecutors' offices, in the cases and in the manner determined by law.

c) The issuing of reports and opinions at the request of the Civil Registry, in the cases and under the conditions determined by its specific legislation.

d) The issuing of reports and opinions at the request of individuals under the conditions determined by regulation.

e) The performance of teaching, expert or research functions, for reasons of general interest, in accordance with the instructions established by the Ministry of Justice or the Autonomous Community with jurisdiction in matters of Justice, within the framework of possible agreements or conventions.

f) The performance of research and collaboration functions deriving from their own function, under the terms contemplated in the regulations.

6. In the course of procedural or investigative proceedings of any nature initiated by the Public Prosecutor's Office, the personnel assigned to the Institutes of Legal Medicine and Forensic Sciences shall be under the orders of the Judges and Public Prosecutors, exercising their functions with full independence and under strictly scientific criteria."

Therefore, forensic doctors are public professionals of renowned competence and specialisation, who come under the authority of judges, magistrates, public prosecutors and those in charge of the Civil Registry. They enjoy the greatest guarantees of reliability and form part of a system with the characteristics and guarantees of judicial control.

As to the concrete way in which the examination was carried out, in order to ensure that the forensic report is drawn up in accordance with the highest quality standards developed by international preventive institutions, specific protocols have been drawn up. To this end, the Order of 16 September 1997 approving the protocol to be used by forensic doctors for the examination of detainees was issued; this protocol establishes a minimum framework for the medical assistance of the detainee, who must be given every guarantee.

In this line, in order to further develop the best performance of those relevant tasks, from the Ministry of Justice and the Forensic Medical Council, the following steps has been taken in the recent years:

1. In 2017, the Forensic Medical Council (CMF) produced a working guide for forensic medical assistance to persons deprived of their liberty.

https://www.mjusticia.gob.es/es/ElMinisterio/OrganismosMinisterio/Documents/1292430900358-Guia_de_trabajo_para_la_asistencia_medicoforense_a_personas_en_regimen_de_privacion_de_libertad_CM.PDF

2. On 27 January, following the Third Guideline of the Instruction of 27 December 2021 of the Subsecretariat of Justice, the proposing Unit (Directorate General for the Public Service of Justice) transferred the explanatory document of the regulatory proposal: "Draft Royal Decree approving the protocol for forensic medical examination of detained persons" to the General Secretariat in order to initiate its processing. Currently, a public consultation on this project, allowing the citizenship to submit their views, has been opened until 16th March 2022[10].

[10] https://www.mjusticia.gob.es/es/areas-tematicas/actividad-legislativa/normativa/participacion-publica-proyectos-normativos/proyectos-real-decreto

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3. The CMF Technical Scientific Committee is developing a good practice guide for the implementation of the protocol, which has been included in the editorial programme of the Department for the year 2022.

4. The Technical Scientific Committee of the CMF at its next session (24/02/2022) will set up a working group for the development of a protocol on death in custody, which has already been included in the editorial programme of the Department for the year 2022.

4.- **Procedural guarantees**

i. The obligation to carry out effective investigations.

Spanish legislation provides for the obligation to prosecute and investigate the existence of any criminal offence, such as ill-treatment or torture, so that the violation assessed by the ECHR is not the consequence of a lack of adequate regulation, but of the way it was applied in this case.

Article 264 of the Spanish Criminal Procedure Act obliges anyone who has knowledge of this type of crime to report it to the judicial authority, the Public Prosecutor's Office or a police officer. The Public Prosecutor's Office and the police are obliged to communicate the complaints received to the competent judicial authority for investigation.

Article 262 of the Spanish Criminal Procedure Act imposes this obligation on all civil servants who have knowledge of the offence in the exercise of their duties, with particular reference to medical, surgical or pharmaceutical professionals.

The judicial authority that receives the complaint is obliged to initiate the investigation *ex officio*, in accordance with Article 303 of the Code of Criminal Procedure.

It must be taken into account that Spanish legislation not only provides what is necessary for an effective investigation of denunciations of torture and inhuman or degrading treatment, but also that these investigations are endorsed by firm jurisprudential practice at the highest level, as we will see in the following section.

ii. Guarantees for the victims.

Several guarantees are granted for victims of any kind of crime, and of course those who allege to have suffered torture and/or ill treatment, in the Criminal Procedure Act of 1881, as well as the Law 4/2015, of 27 April, on the Statute of the Victims of Crimes.

Without being exhaustive, the main features can be summarized as follows:

- Pursuant to Article 1 of the Act 4/2015 :

Every victim has the right to protection, information, support, assistance and care, as well as to active participation in criminal proceedings and to respectful, professional, individualised and non-discriminatory treatment from the first contact with the authorities or officials, during the operation of victim assistance and support and restorative justice services, throughout the criminal proceedings and for an appropriate period of time after their conclusion, whether or not the identity of the offender is known and irrespective of the outcome of the proceedings".

- Pursuant to Article 109 of the Criminal Procedural Act (hereinafter « CPA »), when receiving the statement by the judge from the offended party, the clerk of the court will instruct him/her of the right to appear as a party in the process and to renounce or not to the restitution of the thing, reparation of the damage and compensation for the harm caused by the punishable act. They will also inform them of their rights under current legislation, and may delegate this function to personnel specialised in victim assistance.

- The victim can ask for being party in the criminal proceedings in any moment prior to the moment of the indictment submissions after the conclusion of the investigation phase (Article 109 bis CPA), or even after that adhering to the indictment submitted by the Public Prosecutor (Article 110). Even in the case that the victim does not wish to be a party of the proceedings, the Public Prosecutor not only will formulate the criminal indictment if there is legal basis for it, but also he/she will formulate the civil claim for reparation/restitution in the name of the victim, unless he/she expressly waives this right (Article 108).

- In the case that the investigating Magistrate would render a superseding decision, the victim can always challenge this decision if he/she considers that the investigation should continue (Articles 636, 779, 846 ter, 848, inter alia) The Criminal procedure Act, after the amendment made by the abovementioned Law 4/2015, of 27 April, on the Statute of the Victims of Crimes, makes clear that this decision should be served to the victim and he/she can challenge it, even in the case that he/she would not have still been part of the proceeding as offended party.

This review system (which includes the possibility of lodging an *amparo* appeal) is completed with the fact that the Spanish domestic courts have clearly assumed the ECtHR doctrine of the requirements of a sufficient investigation, which is explained in the following section.

5.- **Judiciary application of the ECtHR case-law.**

The ECtHR case-law, especially regarding the procedural obligations derived from Articles 2 and 3 of the Convention, has been applied by the Spanish domestic courts.

Among several examples, we can quote the following recent Judgements of the Constitutional Court that: a) apply the ECtHR case Law; b) and therefore uphold the *amparo* appeals in order to reopen investigating proceedings that were closed without a previous sufficient investigation.

i. Constitutional Court Judgement 13/2022 of 7th February 2022.

In this Judgement[11] the Constitutional Court, on the basis of its well-established, settled case-law and that of the European Court of Human Rights[12] on the obligation to conduct an effective and efficient investigation regarding allegations of ill-treatment by agents of the authorities during situations of deprivation of liberty, states that "the investigation carried out into the police conduct, considered by the appellant to be excessive and in violation of her dignity, was not sufficient, insofar as it did not facilitate the adequate clarification of the events complained of". Given that, on the basis of the audio recordings made by the appellant, the factual basis of the initial complaint was plausible, i.e., it constituted a suspicion of the facts, that is, it constituted a reasonable suspicion based on objective data.

The judgement upheld the *amparo* appeal, stating that, in the specific circumstances of the case assessed, *«it was relevant to try to clarify whether or not a strip search was carried out and, if so, to determine for what purpose and to what extent it was a measure proportionate to the circumstances».* And it concludes by recalling that this type of body search, as has been reiterated in previous decisions referring to the penitentiary environment, in view of its purpose, its content or the means used, can lead to particularly intense suffering or cause humiliation or debasement of the passive subject and therefore constitute humiliating and degrading treatment, prohibited by Article 15 of the Constitution.

Consequently, the upholding of the *amparo* action entails the annulment of the contested orders and the reversal of the proceedings so that the defendant may be granted judicial

[11] https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2022_006/2020-2113STC.pdf
https://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/27879

[12] Which is assessed in its Third Legal Ground. In particular the Third Legal Ground ends with a specific assessment of the ECtHR Judgements regarding the insufficient investigation on ill treament complaints:
"*The need for an effective investigation must be assessed more rigorously when the complainant is in a situation of incommunicado detention, which requires a greater effort on the part of the authorities to clarify the alleged facts (ECHR of 7 October 2014, Ataun Rojo v. Spain; of 7 October 2014, Etxebarria Caballero v. Spain; of 7 May 2015, Arratibel Garciandia v. Spain; and of 7 May 2016, Arratibel Garciandia v. Spain). Spain; of 7 October 2014, Etxebarria Caballero v. Spain; of 5 May 2015, Arratibel Garciandia v. Spain; and of 31 May 2016, Beortegui Martínez v. Spain). This in no way implies, however, that the need for an effective investigation is only applicable to cases of torture, inhuman or degrading treatment committed during incommunicado detention, but rather that it is precisely in these cases that an investigation must be imposed and that it is necessary for the investigation to be carried out, when the investigation must be imposed and assessed with greater rigour given that the alleged ill-treatment took place "in a situation of isolation and total absence of communication with the outside world, a context which requires a greater effort on the part of the internal authorities to establish the facts complained of" (ECHR of 7 October 2014, Etxebarria Caballero v. Spain, § 47, and 19 October 2014, Etxebarria Caballero v. Spain, § 47, and 19 October 2014, Etxebarria Caballero v. Spain, § 47, and 19 October 2014, Etxebarria Caballero v. Spain, § 47, § 47. Spain, § 47, and 19 January 2021, **González Etayo v. Spain, § 60**). Spain, § 60).*"

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protection by carrying out an effective and exhaustive investigation aimed at clarifying the facts denounced.

ii. *Constitutional Court Judgements 13/2022, of 7th February[13] and 12/2022 of 7th February.*

In similar terms, those recent Judgements recall the specific duty of an effective investigation, especially when the victims are under the custody of the State forces, with special assessment of the ECtHR case law (Legal ground 2 and 3 of the Judgement 13/2022, Legal Ground no. 2 of the Judgement 12/2022). And therefore both judgements upheld the *amparo* appeal and ordered the reopening of the investigations in order to redress the breach of the duty of an effective investigation for alleged ill treatments.

iii. *Constitutional Court Judgement 166/2021, of 4th October.*

In this Judgement[14], the Constitutional Court also applies the ECtHR case law in order to declare the violation of the right to effective judicial protection in relation to the right not to be subjected to torture or inhuman or degrading treatment, understanding that the judicial decision to dismiss the complaint of ill-treatment and torture against officers of the authority, as a result of a police intervention in a demonstration and, subsequently, in police stations, was arbitrary and premature, without a real investigation being carried out to clarify the facts.

In an exhaustive manner, the case law of the ECHR with respect to Article 3 is assessed and applied by the Constitutional Court, both in its substantive and procedural aspects. The development of the facts takes place in a different context to the B.S. case, but the Constitutional Court understands that the procedural requirements of Article 3 apply to all types of interventions, without prejudice to the fact that the majority of the pronouncements that the Court has had the opportunity to hear with respect to Spain have referred to the specific context of incommunicado detentions:

«(...) This does not imply, in any way, that the need for effective investigation is only applicable to cases of torture, inhuman or degrading treatment committed during incommunicado detention, but that it is precisely in these cases that the investigation must be imposed and that it must be carried out, when the investigation must be imposed and evaluated with greater rigour given that the alleged ill-treatment took place "in a situation of isolation and total absence of communication with the outside world, a context which requires a greater effort on the part of the internal authorities to establish the alleged facts" (ECHR of 7 October 2014, Etxebarria Caballero v. Spain, § 47, and 19 October 2014, Etxebarria Caballero v. Spain, § 47, and 19 October 2014, Etxebarria Caballero v. Spain, § 47, and 19 October 2014, Etxebarria

[13] https://boe.es/diario_boe/txt.php?id=BOE-A-2022-3800
[14] https://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/26809

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Caballero v. Spain, § 47. Spain, § 47, and 19 January 2021, ***González Etayo v. Spain,*** *§ 60). Spain, § 60)*

Numerous decisions of the European Court of Human Rights have found a breach of the positive procedural obligations deriving from Art. 3 ECHR in cases where, although the alleged ill-treatment had not taken place in the context of incommunicado detention, the investigation carried out by the judicial bodies had not been expedited by the necessary measures to clarify the facts. This is the case, for example, of the ECHR of 24 July 2012, B.S. v. Spain, in which the ECHR declared that the investigation had not been carried out by the judicial bodies by means of the necessary measures to establish the facts. Spain, in which the violation of the procedural aspects of Art. 3 ECHR was declared in the case of the dismissal of a complaint alleging ill-treatment during a police action carried out on the public highway». (Second Legal Ground)

The Constitutional Court doctrine in this judgement can be summarized as follows:

- It is necessary that suspicions of torture are revealed as being capable of being cleared up by means of an effective investigation.

- In cases where the alleged facts occur when the citizen is temporarily in the physical custody of the State, it is necessary to emphasise the guarantees in which the superior value of human dignity may be compromised due to a special situation in which the citizen is temporarily in the physical custody of the State.

- This entails a special mandate to exhaust all reasonable possibilities of investigation that may be useful to clarify the facts.

- And, as examples of application of this doctrine (fully aligned with the ECtHR case law), the Court recalls in the Third Legal Ground:

«Based on this doctrine, we have upheld amparo in cases in which the investigation had been concluded without having taken a statement from the complainant [for all, SSTC 34/2008, of 25 February, FJ 8; 52/2008, of 14 April, FJ 5, 107/2008, of 22 September, FJ 4; 63/2010, of 18 October, FJ 3 b); 131/2012, of 18 June, FJ 5; 153/2013, of 9 September, FJ 6, and 39/2017, of 24 April, FJ 4], without having heard the public defender who assisted the detainee in police custody (SSTC 52/2008, of 14 April, FJ 5; 130/2016, of 18 July, FJ 5, and 144/2016, of 19 September, FJ 4), without having received statements from the health professionals who assisted the complainant (STC 52/2008, of 14 April, FJ 5), or without having identified, and taken statements from, the agents of the State security forces under whose custody the complainant was in (SSTC 107/2008, of 22 September, FJ 4; SSTC 40/2010, of 19 July, FJ 4; SSTC 40/2010, of 19 April, FJ 4), or without having identified, and taken statements from, the agents of the State security forces under whose custody the complainant was in custody (SSTC

107/2008, of 22 September, FJ 4; 40/2010, of 19 July, FJ 4; 144/2016, of 19 September, FJ 4, and 39/2017, of 24 April, FJ 4)».

Other Courts.

This settled case law of the Constitutional Court is binding to the judiciary (Article 40 Organic Act 2/1979 of 3 October 1979 on the Constitutional Court.), which highlights the value of the abovementioned doctrine.

In any case, references made to this case law and the ECtHR case law in similar cases that the current one is constant in the decisions of all judiciary bodies. In order to quote some examples in which the Courts uphold the appeals from the victims demanding sufficient investigation, and expressly applying the ECtHR case law:

- Supreme Court Judgement of 12th July 2016[15], which expressly quotes the ECtHR case-law of the need of a sufficient investigation and upholds the cassation appeal in order to allow the proof requested by the victim of alleged tortures in an incommunicado detention.

- Provincial Court of Madrid, Order of 11/02/2021 of the 29th Section[16], and Order 17/10/2019 of the same section[17].

- Provincial Court of Valencia, Order of 11/05/2020 of the 2nd Section[18]

- Provincial Court of Barcelona, Order of 18/10/2018 of the 21st Section[19]

6.- **Other general measures regarding the respect for human rights of of detainees.**

Although the ECtHR does not state the existence of any systemic shortfall in the prohibition of tortures and ill-treatments during the use of force by the police, we would like to state that the regulation applicable to the detention situations guarantees the proportionality of the use of force as well the rights of detainees. And in addition, it is reinforced by several operational instructions given in order to ensure that no ill treatment is inflicted in the course of any detention.

i. Regulation on human rights of detainees and prevention of ill-treatment

[15] https://www.poderjudicial.es/search/AN/openDocument/e09bde0a12301b7c/20160714
[16] https://www.poderjudicial.es/search/AN/openDocument/c6a6c667ee53d44d/20210513
[17] https://www.poderjudicial.es/search/AN/openDocument/74f33f6c3d050c1b/20191204
[18] https://www.poderjudicial.es/search/AN/openDocument/9d5f0d31c5967388/20200608
[19] https://www.poderjudicial.es/search/AN/openDocument/1d83c3a723c034d0/20190115

In this regard, we can point out the following norms as the main milestones in the matter:

- *Criminal Proceeding Act of 1881.*

The essential procedural precepts governing the detention and treatment of detainees[20]:

- Articles 489 to 501, practice and procedure of detention for crime.

- Articles 520 to 526, rights and treatment of detainees. Pursuant to Article 520 «*Arrest and pre-trial detention shall be carried out in the manner least prejudicial to the person, reputation and property of the arrested or detained person*"; and among his/hers rights, it is included the "*The right to be examined by the forensic doctor or his or her legal substitute and, failing this, by the doctor of the institution in which he or she is being held, or by any other doctor employed by the State or by other public administrations*»

- Article 527 in relation to Article 509, incommunicado detention. Those articles set down the incommunicado detention as an exceptional measure, require a judicial resolution specifically reasoned, and require that «*the judge shall effectively monitor the conditions under which the incommunicado detention takes place, to which end he may request information in order to verify the state of the detainee or prisoner and the respect of his rights»*. This person will be examined by the Forensic Doctors, at least, twice every 24 hours.

Those guarantees were reinforced by the Organic Act 13/2015, of 5th October, which amended the Criminal Proceeding Act with a purpose of bringing it into alignment with the requirements of European Union law.

- *Organic Act 2/1986, of 13 March, of the Spanish Security Forces and Corps*

The Spanish Organic Act 2/1986, of 13 March, of the Spanish Security Forces and Corps (*Fuerzas y Cuerpos de Seguridad del Estado*) establishes the basic principles of police action.

[20] The guarantees foreseen in those articles have been reinforced by the amendments introduced by the Organic Act 13/2015, of 5 October, amending the Criminal Procedure Act to strengthen procedural guarantees and regulate technological investigation measures. According to its Preamble:
"This precept, in order to complete the status of the detainee under investigation, establishes the obligation for the police report to reflect the place and time of the arrest and the time when the detainee is brought before the court or released. In order to ensure the constitutional rights to honour, privacy and image of the detainee, following the doctrine of the European Court of Human Rights, which requires that detention be respectful of human dignity and that it does not constitute a greater burden than the detention itself, the obligation has been included in the legal text for those who order the detention, as well as those responsible for carrying it out, to safeguard these rights, as in fact the Instructions of the State Attorney General's Office and the Ministry of the Interior have already recalled. Such protection must not, however, lose sight of respect for the fundamental right to information, in the terms established in Article 20 of the Constitution and according to the doctrine of the Constitutional Court, as a manifestation of the Rule of Law.
The so-called "incommunicado detention" has also been revised in this reform, in order to adapt it to the requirements of European Union law. The new regulation of Article 527 allows this type of detention to be applied when the legally established conditions are met in accordance with the new wording given to Article 509. Furthermore, the judge is empowered to limit certain rights according to the needs of each case, without this restriction operating automatically and indiscriminately with respect to all, and for the time strictly necessary."

These principles constitute a real code that governs the action of members of all police collectives in Spain. It defines the limits of the use of force in general and the use of weapons in particular, and states that it is only legitimate in cases of serious risk to life or physical integrity, or to third parties, and always in accordance with the principles of proportionality, moderation and exceptionality (Article 5).

- *Organic Act 12/2007, of 22 October, on the disciplinary regime of the Guardia Civil.*

Within the catalogue of offences contrary to the correct performance of the duties assigned to the *Guardia Civil* in accordance with the Constitution and the rest of the legal system, they are specified in the area of the treatment of detainees as very serious offences, provided that they do not constitute a crime (Article 7):

- Any action involving discrimination or harassment on grounds of racial or ethnic origin, religion or belief, disability, age, sexual orientation, sex, language, opinion, place of birth or residence, or any other personal or social condition or circumstance.

- Serious hindrance to the exercise of fundamental rights or public freedoms.

- Inhuman, degrading or humiliating treatment of persons in their custody or with whom they have dealings in the course of their duties.

- Abuse of powers that causes serious harm to citizens, entities with legal personality, subordinates or the Administration.

- *Organic Act 4/2010, of 20 May, on the Disciplinary Regime of the National Police Force.*

In a similar vein, they are specified in the area of the treatment of detainees as very serious offences, provided that they do not constitute a crime (Article 7):

- Abuse of powers that causes serious harm to citizens, subordinates, the Administration or entities with legal personality.

- The practice of inhuman, degrading, discriminatory or humiliating treatment of citizens in police custody.

- Any action involving discrimination on grounds of racial or ethnic origin, religion or beliefs, disability, age or sexual orientation, sex, language, opinion, place of birth or

- Serious obstruction of the exercise of public freedoms and trade union rights.

ii. Operative instructions. The Inspection of Personnel and Security Services (IPSS)

A special attention to the guarantees and rights in detention situations has also be paid in the operative instructions given to the security forces. The list of the most important instructions, currently in force[21], is the following:

- INSTRUCTION NO. 5/2015 ISSUED BY THE SECRETARY OF STATE FOR SECURITY ON THE ORGANIZATION AND FUNCTIONS OF THE INSPECTION OF PERSONNEL AND SECURITY SERVICES. **The Inspection of Personnel and Security Services (IPSS),** with direct dependence of the Secretary of State for Security, carries out the tasks of inspection, verification and evaluation of the Services, Centers and Units, of the State Security Forces and Corps, as well as the actions carried out by the members of the respective Corps in the performance of their duties. It is, therefore, a unit independent of the chain of command of the Security Forces and Corps, which reports directly to the Secretary of State for Security and which **exercises inspection and recommendation functions, also in the field of guaranteeing the human rights of detainees**. This instruction reinforces these functions and specifies among its missions (Article Three, paragraph 9): «*To ensure that the State Security Forces and Corps comply with national and international standards against torture and other cruel, inhuman or degrading treatment or punishment*».

- ORDER INT/2573/2015, OF NOVEMBER 30, ESTABLISHING THE TECHNICAL SPECIFICATIONS TO BE MET BY VEHICLES INTENDED FOR DRIVING DETAINEES, PRISONERS AND CONVICTS. Ministerial Order that includes some issues that come to reinforce the **guarantees of detainees in their transfers, such as the obligation that the new vehicles used for this purpose are equipped with display devices that allow the observation of the detainees' passenger compartment and record images in an information storage device with sufficient capacity**. This Ministerial Order has been assessed by the National Mechanism for the Prevention of Torture of the Spanish Ombudsman as a significant advance (NPM report 2015).

- INSTRUCTION 11/2015, OF THE SECRETARY OF STATE FOR SECURITY, APPROVING THE "TECHNICAL INSTRUCTION FOR THE DESIGN AND CONSTRUCTION OF DETENTION AREAS". This instruction aims to ensure the life and physical integrity of persons detained or under police custody and for this purpose very precise and detailed technical instructions are issued on the **conditioning of detention areas, with the aim of ensuring the psychophysical integrity of detainees, also through adequate infrastructures and facilities**. The instruction is mandatory for all new constructions and also for refurbishments or adaptations of existing ones, unless

[21] We attach, as Annex 3, a report of the Ministry of Internal Affairs on this matter

technically unfeasible. The instruction has been assessed by the National Mechanism for the Prevention of Torture of the Spanish Ombudsman as a significant advance (NPM report 2015).

- INSTRUCTION NUMBER 4/2018, OF THE SECRETARY OF STATE FOR SECURITY, APPROVING THE UPDATE OF THE "PROTOCOL OF ACTION IN THE AREAS OF CUSTODY OF DETAINEES OF THE STATE SECURITY FORCES AND CORPS" AND LEAVING WITHOUT EFFECT THE INSTRUCTION 12/2015. The Instruction number 12/2015 approved the protocol of action in the Detainee Custody Areas of the State Security Forces and Corps which establishes the specific rules for the custody of detainees, with the **aim of guaranteeing the rights of the detainees and the safety of the detainees**, as well as of the police personnel. Point 7 of the aforementioned instruction contemplates the periodic **review of said protocol in order to adapt it to any new need**. To this end, the General Directorates of the Police and the Civil Guard have issued reports based on the experience of its application for more than two years, which show the need to update its content, modifying some aspects of the Protocol. Likewise, the reports of the Inspection of Personnel and Security Services and of national and international organizations related to this matter, in particular those issued by the Ombudsman, have also been taken into account. Thus, a new instruction has set down, which, if possible, **provides more guarantees with regard to the care of detainees during their police custody**.

- INSTRUCTION 14/2018, OF DECEMBER 11, 2018, OF THE SECRETARIAT OF STATE OF SECURITY, REGULATING THE OFFICIAL RECORD BOOKS, the purpose of which is the **digitalization of official record books** of the Secretariat of State for Security (DILISES), which replaces the non-computerized files and **reinforces the elements of protection of the rights of the persons under custody, increasing the procedural security in all the actions carried out with them**, as requested by several institutions, including the Ombudsman.

- INSTRUCTION NO. 8/2019, OF THE SECRETARIAT OF STATE FOR SECURITY, WHICH PUBLISHES THE GUIDE OF GOOD PRACTICES IN THE PROCEDURE OF COMPLAINTS AND SUGGESTIONS.

- INSTRUCTION NO. 8/2020 OF THE SECRETARIAT OF STATE FOR SECURITY ON THE ORGANIZATION AND FUNCTIONS OF THE PERMANENT INFORMATION AND COORDINATION CENTER (CEPIC). Through this Instruction, the Security Forces **are obliged to communicate within 24 hours to the CEPIC and this to the IPSS, the police actions in which the death or serious injury of third parties occurs or when they are in police custody or shots are fired by members of the Security Forces and Corps, even when they are not on duty**. These communications are monitored and assessed by the IPSS, verifying whether the action is in accordance with the procedure, making, if necessary, the recommendations or reminders it deems appropriate and urging disciplinary or criminal action, if necessary. These communications were already included in the ISES 5/2015, but this instruction adds the shooting by the FCSE, whether on duty or off duty.

** In addition, two projects have been promoted from the Inspection of Personnel and Security Services (IPSS):

1. First, the recent enforcement of the INSTRUCTION 1/2022 FOR THE CREATION OF A NATIONAL OFFICE FOR HUMAN RIGHTS GUARANTEES in the State Security Forces and Corps[22].

Pursuant to art. 3 of the above-mentioned Instruction, the National Office for Human Rights Guarantees

«It will have the mission of promoting and coordinating the actions of the National Police and the Guardia Civil to make visible and promote the commitment of the State Security Forces and Corps to respect Human Rights.»

2. Draft SES Instruction for the creation of a comprehensive detention procedure. This instruction would be motivated by:

a. the existence of various instructions on the subject that cause dispersion and duplication of provisions.

b. The need to contemplate situations that are not currently foreseen. Attention to external demands, such as those made by the Ombudsman.

c. Harmonization of the generic procedure with those others that may pose specificities, such as the detention of minors and foreigners.

d. Demand of the General Directorates of the Police and the *Guardia Civil*.

The draft instruction is currently being prepared and is expected to be approved by the end of 2022.

B. Publication and dissemination of the judgments

The judgments delivered by the Court in both cases were widely disseminated on the same date of their publication among domestic authorities and those courts concerned, as well as to

[22] Annex 4.- Instruction 1/2022, of the Secretary of State for Security, for the creation of a National Office for Human Rights Guarantees in the State Security Forces and Corps.

the general public through its publication on the Ministry of Justice's website. The translation of the Judgement has been also published[23].

In addition, numerous newspapers in Spain reported on the judgment and widely disseminated its content[24].

The ECtHR Judgement in this case, has also already taken into account by domestic Courts. For Instance,

- The Constitutional Court Judgement 13/2022, of 7th February, 3rd Legal Ground[25].
- The Constitutional Court Judgement 12/2022, of 7th February, 2nd Legal Ground[26]
- The Constitutional Court Judgement 166/2021 of 9th November, 2nd Legal Ground[27])

IV. Conclusion

The Kingdom of Spain considers that all the necessary measures in the execution of these judgments have been taken and therefore requests that the Department for the Execution of Judgements proposes that the Committee of Ministers adopt a final resolution concluding that supervision of the execution of the present case has been completed.

Madrid to Strasbourg, 23rd Oct 2024

The Co-Agent of the Kingdom of Spain

José Antonio Jurado Ripoll.

23 https://www.mjusticia.gob.es/es/area-internacional/tribunal-europeo-derechos/jurisprudencia-tedh/asuntos-espana-sido-parte/convenio-europeo-derechos/articulo-prohibicion-tortura
https://www.mjusticia.gob.es/es/AreaInternacional/TribunalEuropeo/Documents/Sentencia%20Gonz%C3%A1lez%20Etayo%20c.%20Espa%C3%B1a.pdf

24 https://elpais.com/espana/2021-01-19/el-tribunal-de-estrasburgo-condena-a-espana-por-no-investigar-a-fondo-si-la-policia-torturo-a-un-miembro-de-ekin.html
https://www.elmundo.es/espana/2021/01/19/6006c01dfdddffe33b8b4630.html
https://www.lavanguardia.com/politica/20210119/6185261/tedh-condena-espana-investigar-malos-tratos-miembro-ekin.html

25 https://www.boe.es/boe/dias/2022/03/10/pdfs/BOE-A-2022-3800.pdf
26 https://www.boe.es/boe/dias/2022/03/10/pdfs/BOE-A-2022-3799.pdf
27 https://www.boe.es/buscar/doc.php?id=BOE-A-2021-18369

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Annexes.

Annex 1.- Document of payment.

Annex 2.- Ex officio analysis of the Public Prosecutor Office on the execution of the ECtHR Judgement.

Annex 3.- Ministry of Internal Affairs: Operative rules guaranteeing rights of detainees

Annex 4.- Instruction 1/2022, of the Secretary of State for Security, for the creation of a National Office for Human Rights Guarantees in the State Security Forces and Corps

Annex 5.- Decree (*Decreto*) of 12/06/2024, from the Public Prosecutor's Office, in which the *Diligencias de investigación post-procesal* carried out for the reopening of the case were closed.

Annex 6. *Circular* 2/2022 from the Public Prosecutor's Office.

TO THE DEPARTMENT FOR THE EXECUTION OF JUDGMENTS OF THE ECtHR

COMMITTEE OF MINISTERS - COUNCIL OF EUROPE