SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Contact: Ireneusz Kondak
Tel: 03.90.21.59.86

Date: 29/01/2025

DH-DD(2025)109

Meeting:	1521st meeting (March 2025) (DH)
Item reference:	Updated Action Report (28/01/2025)

Communication from Spain concerning the case of A.C. AND OTHERS v. Spain (Application No. 6528/11) - *The appendices in Spanish are available upon request to the Secretariat.*

* * * * * * * * * * *

Réunion :	1521e réunion (mars 2025) (DH)
Référence du point :	Bilan d'action mis à jour (28/01/2025)

Communication de l'Espagne concernant l'affaire A.C. ET AUTRES c. Espagne (requête n° 6528/11) ***(anglais uniquement)*** - *Les annexes en espagnol sont disponibles sur demande au Secrétariat.*

MINISTERIO
DE JUSTICIA

ABOGACÍA GENERAL DEL ESTADO
DIRECCIÓN DEL SERVICIO IURÍDICO DEL ESTADO

ABOGACÍA DEL ESTADO ANTE EL TRIBUNAL EUROPEO DE DERECHOS HUMANOS Y OTROS ORGANISMOS INTERNACIONALES COMPETENTES EN MATERIA DE SALVAGUARDA DE LOS DERECHOS HUMANOS

UPDATED ACTION REPORT

APPLICATIONS:

A.C. and others vs. Kingdom of Spain (case number 6528/11 and joinder applications)

JUDGEMENT: 22 April 2014

FINAL ON: 22 July 2014

Information updated by the Kingdom of Spain on 28-01-2025

I. CASE SUMMARY

1. Facts

The case was brought by thirty Sahrawi applicants who claim to be eventually subject to retaliation and under potential risk of being tortured or suffer inhuman or degrading treatment if expulsed to Morocco.

They begged the ECtHR to declare:

- a violation of articles 2,3 and 5 of the ECHR.

- a violation of art. 13 of the ECHR, in relation to articles 2 and 3 thereto.

They relate those threats to the activities performed by Moroccan authorities after the outburst of violence which occurred when dismantling a demonstration in a camping site of tents at Gdeim Izik (Occidental Sahara). It was planted to vindicate better life and working conditions for Sahrawi people and against their alleged discrimination. This action took place between the 10 October and the 8 November 2010. Ten Moroccan policemen were killed during the final turmoil.

The claimants allegedly fled the Sahara immediately afterwards in frail dinghies and arrived to the coast of Fuerteventura, a Spanish island. They requested asylum before the Spanish authorities.

The subsequent administrative decisions considered the requests inadmissible. Their grounds were that their factual base was contradictory or clearly insufficient, stemming from vague and imprecise causes of the alleged persecution by the Moroccan authorities. They applied the provision in article 21 § 2. b) of Law 12/2009, of 30 October 2009, regulating the right of asylum[1].

[1] *Law 12/2009, of 30th October, regulating the right of asylum and international protection.*

"Article 21. Request for international protection posted at border crossings.

CORREO ELECTRÓNICO:
aetedh@mjusticia.es

C/ SAN BERNARDO, 45
28015 MADRID
TEL.: 91 390.47.78
FAX: 91 390.21.48

The applicants then applied for the administrative revision of those decisions, seeking them to be stayed in the meanwhile. The interim measure was granted but the revision was rejected.

The applicants then challenged the administrative decisions before the contentious-administrative jurisdiction (the Audiencia Nacional in the instant case), requesting the decisions to be stayed in the meanwhile. The Audiencia Nacional granted a provisional stay but lifted it in a decision adopted as a result of a procedure on interim measures.

The ECtHR granted the applicants a stay of the expulsion decisions while the case was adjudicated before it (via article 39 of the Rules of Procedure on interim measures).

The Audiencia Nacional adjudicated on the merits upholding the administrative decisions, in some of the applicant´s cases, before the ECtHR issued its judgments.

The ECtHR declares that although some of these national judgments had been issued by the Audiencia Nacional and even the later had been appealed before the Tribunal Supremo, it had not been informed of these facts before adjudicating the case.

2. Court´s assessment

The ECHR considers that the claims:

- On the first limb (arts. 2, 3 and 5 ECHR), they are premature, as the merits are being examined before the national Courts and the internal procedures had not been exhausted yet (§ 108 of the judgment).

- On the second limb (art 13 in conjunction with articles 2 and 3 ECHR) considers that there has been a violation because:

In principle:

« 99. La Cour reconnaît que les procédures d'asile accélérées, dont se sont dotés de nombreux États européens, peuvent faciliter le traitement des demandes clairement abusives ou manifestement infondées. (…) »

But in the instant case:

(…)
2. In addition, the Ministry of the Interior might be able to reject such a request in a motivated decision, which should be served within four days' time, provided that the request falls in any of the following cases:
(…)
b) If the applicant formulates incoherent, contradictory, incredible or insufficient pleadings, or pleadings which show plain contradiction with trusted information concerning his/her country of origin or –if stateless- her/his place of residence, clearly revealing that the request is completely unfounded as regards the fear of being subject to seizure or suffer serious harm."

« 98. Bien que les autorités espagnoles soient les seules compétentes pour se prononcer en dernier ressort sur l'existence ou non des motifs pouvant faire obstacle aux expulsions décrétées à l'égard des requérants, l'on ne saurait exclure qu'il existe suffisamment d'éléments pour surseoir à l'exécution des décision prises par l'Administration tant que les juridictions internes n'ont pas examiné de façon détaillée et en profondeur le bien-fondé des demandes de protection internationale présentées par les requérants. Certes, la Cour est consciente de la nécessité pour les États confrontés à un grand nombre de demandeurs d'asile de disposer des moyens nécessaires pour faire face à un tel contentieux, ainsi que des risques d'engorgement du système. »

(…)

« 100. La Cour constate qu'en l'espèce le caractère accéléré de la procédure n'a pas permis aux requérants d'apporter des précisions sur ces points, dans le cadre de leur seule possibilité de surseoir aux expulsions, la procédure quant au bien-fondé n'ayant pas en soi de caractère suspensif. Si la Cour reconnaît l'importance de la rapidité des recours, elle considère que celle-ci ne devrait pas être privilégiée aux dépens de l'effectivité de garanties procédurales essentielles visant à protéger les requérants contre un refoulement vers le Maroc (I.M. c. France, précité, §§ 147). »

3. Decision

The judgement declared:

- The inadmission on the first limb Articles 2,3 and 5 ECHR).

- That there has been a violation of article 13 in conjunction with articles 2 and 3 of the ECHR.

-That article 39 interim measure should be applicable until the date in which the judgment is final.

- That the applicants should remain in Spanish territory until the moment in which a final internal jurisdictional decision is adopted on the merits of the request for asylum.

II. INDIVIDUAL MEASURES

- **The applicant's residence in Spain until the moment in which a final decision was taken by national courts**

The Government refers on this point to the information and documents in support provided to the Committee of Ministers in its previous communications in the case ,attesting that all the required individual measures were adopted in respect of the applicants.

III. GENERAL MEASURES

1.- The general measures deriving from this judgment have already been fully adopted. In this sense, the European Court of Human Rights has acknowledged this fact, striking out of the list of cases the following similar applications:

- Applications 62799/11 and 62808/11 in cases O.G.S. and D.M.L. vs Spain. Decision of 20th January 2015[2].

[2] *Excerpts from the Decision of 20th January 2015 in case number 62799/11 and 62808/11 - O.G.S. and D.M.L vs Spain- :*

« 2. Procédures judiciaires

8. Le 10 octobre 2011, les requérants formèrent des recours contentieux administratifs devant l'Audiencia Nacional contre les décisions du ministre de l'Intérieur. En même temps, ils demandèrent la suspension de l'exécution de la mesure d'expulsion (suspensión cautelarísima), sur la base de l'article 135 de la loi no 29/1998 du 13 juillet 1998 sur la juridiction du contentieux administratif.

9. Le même jour, l'Audiencia Nacional rejeta leurs demandes de suspension, sans pour autant se prononcer sur le fond de leurs prétentions, à savoir le rejet de leurs demandes de protection internationale.

10. Les requérants saisirent alors la Cour de deux demandes de mesures provisoires sur le fondement de l'article 39 de son règlement. Ils craignaient pour leur vie et intégrité physique en cas de retour dans leur pays d'origine.

11. Le 11 octobre 2011, la Cour décida d'indiquer au gouvernement espagnol, en application de l'article 39 de son règlement, de ne pas procéder au renvoi des requérants.

12. Par un jugement du 27 décembre 2012, l'Audiencia Nacional rejeta le recours contentieux-administratif des requérants et confirma les décisions de rejet de leurs demandes de protection internationale.

13. Les requérants se pourvurent en cassation. Le 24 avril 2014, ils informèrent la Cour que, par un arrêt du 28 février 2014, le Tribunal suprême avait fait droit à leur pourvoi et, annulant le jugement de l'Audiencia Nacional, ordonné la recevabilité des demandes des requérants afin de procéder à leur examen de fond. Dans son arrêt, le Tribunal suprême nota qu'il avait eu l'occasion d'examiner des questions identiques à celles soulevées en l'espèce dans ses deux arrêts du 27 mars 2013. Conformément aux conclusions auxquelles il était parvenu dans ces deux affaires, la procédure administrative ordinaire était celle qui devait être suivie lors qu'une demande de protection internationale ne s'avérait pas être clairement abusive ou manifestement infondée de prime abord. Les demandes des requérants O.G.S et D.M.L. n'ayant pas suivi cette voie ordinaire, il appartenait d'annuler l'ensemble de la procédure administrative afin qu'elles soient réexaminées par voie administrative. Le Tribunal suprême nota en outre qu'il ne lui appartenait pas de décider sur le fond de la demande de protection internationale.

14. À ce jour, les demandes de protection internationale des requérants se trouvent en cours d'examen par les autorités administratives.

(...)

EN DROIT

(...)

B. Sur les griefs relatifs à l'article 13 combiné avec les articles 2 et 3 de la Convention

17. Sous l'angle de ces dispositions, les requérants se plaignent de l'absence de caractère suspensif des recours dont ils ont disposé à l'encontre de la décision de rejet de leurs demandes de protection internationale.

18. Le 23 juin 2014, le Gouvernement sollicita de la Cour de rayer les requêtes du rôle en ce qui concerne ce grief, au motif que les requérants ne pouvaient plus prétendre être des victimes potentielles d'une violation de la Convention.

19. La Cour relève qu'à ce jour, les demandes de protection internationale des requérants se trouvent pendantes d'examen par les autorités administratives suivant la procédure ordinaire. Conformément aux arguments du Gouvernement, non démentis par les requérants, l'introduction de la demande de protection entraine automatiquement la suspension de l'ordre d'expulsion jusqu'à ce qu'une décision sur le fond soit adoptée, en application de l'article 19 § 1 de la Loi 12/2009, relative au droit d'asile et à la protection subsidiaire. Par conséquent, les requérants ne peuvent à ce jour être expulsés du territoire espagnol. Par la suite, ils auront la possibilité, en cas de rejet de leurs demandes par voie administrative, d'interjeter un recours contentieux-administratif devant l'Audiencia Nacional.

20. A la lumière de ce qui précède, la Cour estime que les circonstances de l'article 37 § 1 b) de la Convention sont remplies et considère qu'il ne se justifie plus de poursuivre l'examen de ce grief au sens de cette même disposition. La Cour souligne que cette décision ne préjuge pas du fond de l'affaire, mais ne fait que constater l'impossibilité de mise en œuvre concrète de la mesure d'expulsion qui pesait sur les requérants. Si cette situation devait évoluer et s'ils l'estimaient toujours nécessaire, il reste loisible aux requérants de s'adresser à nouveau à la Cour. »

- Applications 45858/11 and 4982/12 in cases D.O.R. and S.E. vs. Spain. Decision of 29th September 2015.

- Application 45938/11 in case I.A.B.G. vs. Spain. Decision of 29th September 2015.

- Application 15109/2015 M.B. vs Spain, Decision of 13th December 2.016

A. Preliminary considerations: isolated dysfunction.

The violation found by the Court was an isolated dysfunction linked to the specific circumstances of the case, which among other facts involved the application in the instant cases of a very recent law, 12/2009 Act, of 30 October 2009, regulating the right of asylum; and prior to the current regulation of the Interim Measures in the Law 29/1998 of the contentious- administrative Jurisdiction, as amended by Law 37/2011.

As we will see in the following sections, the administrative and procedural rules, currently in force, as well as the judiciary practice, give the asylum seekers effective remedies to protect their rights.

B. Procedural guarantees

The effectiveness of the domestic remedies at hand for asylum seekers is supported by an array of procedural guarantees they enjoy, both in the administrative as well as in the subsequent judicial proceedings.

1. Administrative procedural guarantees in the context of the processing of requests for international protection

i. Guarantees during the administrative proceedings

According to Spanish Asylum Act (art. 19), any extradition of an asylum seeker, should be stayed until a decision is adopted on his or her asylum request.

The general guarantees foreseen in the Procedural Administrative Act 39/2019 apply for the asylum seekers (Seventh Additional Provision of the Asylum Act). Those general guarantees comprise the right of making any submission and provide any evidence in support of their petition at any moment of the proceeding. The incumbent Administration is obliged to assess all the allegations and evidence brought to its knowledge (Art. 53.1.e) 39/2015 Act).

Additionally, the asylum seekers enjoy additional specific guarantees apart from the general rights of any party in an administrative proceeding.

Particularly, pursuant to art. 16 of the Asylum Act, besides the right to have an interpreter and the right of medical assistance, they are entitled to ask for free legal assis-

tance in case of lack of economic resources (a lawyer appointed by the Professional Law Bars (art. 6 and 22 and ff. of the Free Legal Assistance Act 1/1996), among other rights.

Those rights are not only relevant in the administrative proceeding itself, but also for the subsequent judicial proceedings, as they allow an effective right of providing evidence in support of their asylum request, that will be added to the administrative record submitted to the judicial proceedings (art. 48 Contentious-Administrative Act 29/1998).

ii. Additional guarantees in case of rejection of the asylum request.

The rejection of an asylum request does not involve the automatic expulsion of the asylum seeker.

Pursuant article 37 (b) of Act 12/2009, rejection decisions may not determine the removal of the territory if the asylum. In any case, the national authorities must respect procedural requirements in order to decide a devolution, extradition or expulsion measure in accordance with the provisions contained in Organic Law 4/2000, of 11 January and its enforcing regulations. In particular, an expulsion fine requires an administrative proceeding, with the possibility for the asylum seeker to ask for the staying of the expulsion, by communicating the will to appeal it before the Courts.

For the sake of completeness, two situations must be differentiated: the most general situation in which the asylum seeker is already in Spanish territory; and the specific cases when the asylum seeker has being detained in the precise moment that he or she tried to cross the Spanish border (particularly, outside the legal posts for that purpose).

-When the asylum seeker is already in Spain, in order to be expulsed, an administrative sanctioning procedure must be followed that finally permit to impose the sanction of expulsion. In this administrative proceeding, all the guarantees of procedures that could lead to a penalty imposition must be observed. Among them, **Article 90.3 of 39/2015 Act, on the Common Administrative Procedure of Public Administrations**, allows to seek the stay of the enforcement of the penalty (expulsion order in this case) by a mere writing before the administrative authority communicating his or her will to challenge the expulsion order before the courts:

> *Article 9.0 Special rules for decisions in sanctioning procedures*
>
> *(...)3. The decision that ends the procedure shall be enforceable when no ordinary administrative appeal can be lodged against it, and the necessary precautionary measures may be adopted therein to guarantee its effectiveness until it is enforceable, which may consist of maintaining any provisional measures that may have been adopted.*
>
> *When the decision is enforceable, it may be suspended as a precautionary measure if the interested party informs the Administration of his intention to lodge a conten-*

tious administrative appeal against the final administrative decision. Said precautionary suspension shall end when:

a) The legally stipulated period has elapsed without the interested party having lodged a contentious-administrative appeal.

b) If the interested party has lodged a contentious-administrative appeal:

(1) No application has been made in the same procedure for the precautionary suspension of the contested decision.

2) The judicial body rules on the precautionary suspension requested, under the terms provided for therein.

-In the specific case of foreigners detained trying to enter Spanish territory illegally outside the established posts, according to the Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their social integration, developed by Royal Decree 557/2011, it is not necessary to follow a sanctioning procedure for expulsion[3]; so the above-mentioned specific provisions for this kind of procedures are not applicable. However, an administrative decision of return must be adopted and the Law safeguards with a similar level of guarantees the right of access to an effective remedy in favor of the individual concerned:

- First of all, a decision of devolution has to be written, lodged and duly notified to the foreigner, pursuant to the Organic Law 4/2000. As it is a short proceeding, the Law emphasizes the legal guarantees for the foreigner, which are developed by art. 23 of Royal Decree 557/2011:

  "Article 23. Returns.

  3. In any of the cases of paragraph 1, the foreigner in respect of whom proceedings are being followed to adopt a decision to return him ***shall have the right to legal assistance, as well as to the assistance of an interpreter, if he does not understand or speak the official languages being used. Both assistance shall be free of charge in the event that the interested party lacks sufficient economic resources, in accord-***

[3] Pursuant to art. 58 of the Organic Law 4/2000:

" (…)3. Expulsion proceedings shall not be required for the return of foreigners in the following cases:
(a) Those who, having been expelled, contravene the prohibition of entry into Spain.
b) Those who intend to enter the country illegally.

4. In the event that an application for international protection is formalized by persons who are in any of the cases mentioned in the previous paragraph, the return may not be carried out until it has been decided that the petition will not be processed, in accordance with the regulations on international protection.
Pregnant women may also not be returned when the measure may pose a risk to pregnancy or to the health of the mother.

5. The return will be agreed by the competent governmental authority for the expulsion.

6. When the return cannot be carried out within 72 hours, the judicial authority shall request the measure of internment foreseen for expulsion proceedings."

ance with the provisions of the regulations governing the right to free legal assistance.

4. When the return cannot be carried out within 72 hours, the judicial authority shall request the measure of internment foreseen for expulsion proceedings.

For the purposes provided for in section 3 of article 22 of Organic Law 4/2000, if during the situation of deprivation of liberty the foreigner expresses his will to file a contentious-administrative appeal or to exercise the corresponding action against the resolution of return once the administrative channels have been exhausted before the Delegate or Subdelegate of the Government or the Director of the Alien Internment Center under whose control he is, the latter will record it in a record that will be incorporated into the file.

(...)

6. Even when a return decision has been adopted, it may not be carried out and its execution shall be suspended when:

(a) Pregnant women are involved and the measure may pose a risk to gestation or to the mother's health; or sick persons are involved and the measure may pose a risk to their health.

b) An ***application for international protection is formalized, until a decision is made on the application or it is not admitted in accordance with the provisions of article 19.1 of Law 12/2009, of October 30, 2009, regulating the right of asylum and subsidiary protection***.

The admission for processing of the application for international protection will entail the authorization of entry and the provisional stay of the applicant"

- And, as we have highlighted, a devolution or return would not be executed if an asylum petition has been lodged; and moreover, pursuant art. 18.1.d of Law on Asylum the devolution administrative proceedings is itself suspended by the mere lodging of an asylum petition. And, in the specific case of petitions made in frontier posts, or made by people interned in Centers for Foreigners, an administrative petition for reconsideration, with suspensive effects, can be lodged (art. 21.4 and 25.2 Asylum Law).

To conclude, even in case of foreigners detained at the border when trying to entering in the Spanish territory by no legal posts:

- The asylum denial has not the effect of imposing the expelling of the foreigner, but it is needed an administrative decision of return,

- No execution of the devolution, if already adopted, can take place during the processing of the asylum request. In addition, the mere request for asylum paralyzes any return proceeding.

- And the administrative decision of return or devolution can be autonomously challenged before the Courts, when the foreigner can as well request for an interim measure, with the effect of preventing its execution until a decision is made (see next section).

2. Judicial guarantees.

Any asylum seeker may file a judicial appeal against the administrative decision rejecting its request, and also ask for the suspension of the removal or expulsion order, asking for the adoption of interim measures

It is particularly important to remember the Spanish Constitutional Court constant jurisprudence stating that administrative acts are not enforceable while a request for interim measures is processed before any court of justice, STC 148/1993, of 29 April, and 78/1996, of 20 May (3rd LG)[4], This is followed by the Supreme Court's jurisprudence (STS Administrative Chamber, 2nd Section, of 28/4/2014 in cassation appeal 4900/2011).

i. General rules on interim measures requests.

The regulation of the different procedural processing of the *interim measures* has been clarified in the Contentious-Administrative Jurisdiction Act 29/1998 after the amendment of 37/2011 Act.

Currently, the procedural rules contained in **Articles 129 to 136** of **29/1998 Act on contentious-administrative procedure** allow to request interim measures to suspend the expulsion whilst legal remedies on the merits are processed, provided that "*the execution of the act…may render judicial review moot*." (Article 130 of Act 29/1998). This can be done through four successive procedures:

- Request for an **urgent interim measu**re *inaudita parte*[1], called ***medidas cautelarísimas***, even before the claim against the contested act is filed (Article 136 of Act 29/1998), the judge must urgently adopt or deny the measure, subject to a report from the Public Prosecutor[1] and without the State being heard. Or request for the said urgent interim measures *inaudita parte*[1] at the very

[4] Summarizing this Constitutional Case Law, the Judgement 92/2002 of 22nd Abril, LG 3, stated:
"*the right to effective judicial protection guaranteed in art. 24.1 CE implies that citizens can resort to the Courts to challenge the acts of the Administration (arts. 106.1 and 117.3 CE) and obtain a ruling on the enforceability or suspension of the same (for all, STC 76/1992, of May 14, FJ 3). Secondly, also by imperative of art. 24.1 CE, when the competent judicial body rules on the enforceability or suspension submitted to it, its decision can be carried out, which prevents other State bodies, whether administrative or of a different jurisdictional order, from ruling on such a claim, thus interfering in the judicial process heard by the competent Court and thus rendering illusory and ineffective the protection that could be provided by the latter. Until a decision is made in this respect by the competent Court, the act cannot be executed by the Administration, because in such a hypothesis it would have become a Judge, but neither can it be executed by a different judicial body because this eventuality would prevent that Court, the competent one, from being able to effectively grant protection, as required by the fundamental right (STC 76/1992, FJ 3*)" https://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/4628

moment when the appeal is lodged and following the same procedure (Article 135 of Act 29/1998).

- **Ordinary interim measure**: in the event that the urgent interim measures is not be adopted, the ordinary procedure is followed in order to adopt the interim measure, and the respondent State being heard this time (Article 131 of Act 29/1998).

- Even when the urgent or ordinary interim measure is not adopted, this decision can be modified during the course of the procedure should the circumstances under which they were taken change (Article 132.1 in fine of Act 29/1998).

Following the consolidated Constitutional Court and Supreme Court case law, administrative acts are not enforceable while a request for interim measures is processed before a national court. Therefore, the stay is granted until the time for the judicial challenging has elapsed or the interim measure has not been requested or it has been dismissed by the Court.

It is also worth noting that applicants are always assisted by a counsel in such proceedings. It is compulsory to provide a counsel, which will be free of charge in case of lack of incomes, pursuant to the Free Legal Assistance 1/1996 Act. The counsel is provided for free, at the public expense, by the Bar, which has created a list of expert lawyers, specialized in immigration law. The designation is made by the Bar, which acts with complete independence. It is also compulsory that the applicant is assisted by an interpreter in a language he/she understands, during both administrative and the judicial proceedings.

- ***Urgent interim measures (medidas cautelarísimas)***

An applicant whose application for international protection has been rejected under the accelerated procedure can lodge with the *Audiencia Nacional* a request for urgent interim measures to stay his/her the removal. Such a request can be lodged before, simultaneously or after lodging a request for judicial review of the Minister of Interior's final decision to reject his/her international protection application.

Within the time of two days, the Court should render an Order assessing whether circumstances of special urgency concur or not. Despite the short period of time for doing such assessment, this should be regarded as sufficient in order to make a sufficiently motivated decision, as

- On one hand, the asylum seeker is able to defend properly his or her interest before the court, gathering evidence and having the guarantee of legal assistance during the previous administrative proceedings. It is also possible to annex to the request for interim measures a sufficient basis in defence of that request.

- On the other, the *Audiencia Nacional* is a Court, which assures that more than one judge will analyse and discuss the request, and it is also a court specialised on asylum claims, therefore able to appreciate *prima facie* if there is an extreme urgency or not[5].

- Although short, during this period the Audiencia Nacional can perfectly analyse both the evidence and the submissions of the applicant, as well as the administrative file supporting the rejection of the asylum plea when the applicant considers it necessary to bring it to the court, which entails a thorough scrutiny of the elements necessary to take a well assessed decision.

- The Audiencia Nacional has all the elements at hand to decide, taking into account that the Administration is not heard, precisely in order to avoid delays and just concentrate on the arguments and evidence brought up by the asylum seeker.

If the Court grants the urgent interim measure, afterwards, he/she will ask for pleadings from the part of the government (within three days) **or** summon the parties to a public hearing (within three days), in order to determine whether the interim measure should be continued or lifted (art 135.1 a) of the Law of Contentious-Administrative Jurisdiction).[6] Upon receipt of the Government's pleadings, expiry of the deadline for their submission or once the hearing was held, the judge shall decide whether the urgent interim measure is continued, lifted or modified. This decision can be appealed through a cassation appeal (with a previous request for reconsideration before the Court *a quo*, art. 87 C-A Jurisdiction Act). These are known as "medidas cautelarísimas" which can be adopted by the Courts *in audita parte* and even before the claim or appeal is made, in which case they must be confirmed afterwards during the judicial procedure[7] (art 136.2 of the Law of Contentious-Administrative Jurisdiction).

- ***2.- Ordinary interim measures***

[5] In addition, we can recall than the ECtHR usually processes the art. 39 Rules of the Court (interim measures) in few days: for instance one day in the case no. 38263/08 (see case of Georgia v. Russia (II) Judgement, 38263/08, para. 1 and 5), or in the same day (M.K. and others v. Poland, Nº 40503/17 42902/17 43643/17, para. 15-17)

[6] Article 135.

1. When the interested parties allege the concurrence of circumstances of special urgency in the case, the judge or court may, without hearing the opposing party, within two days by means of a writ:

a) Appreciate the circumstances of special urgency and adopt or deny the measure, according to Article 130. No appeal will be made against this order. In the same resolution the judicial body will hear the opposing party so that within a period of three days he or she can plead what he considers appropriate or he will summon the parties to a hearing that will be held within three days after the adoption of the measure. Once the allegations have been received or the deadline has expired or the hearing has been held, the judge or court will issue an order on the lifting, maintenance or modification of the adopted measure, which will be appealable according to the general rules.

[7] *2. In the cases of the previous section, the measures may also be requested before the filing of the appeal, being processed in accordance with the provisions of the preceding article. In this case, the interested party must request its ratification when filing the appeal, which must be done inexcusably within ten days of notification of the adoption of the precautionary measures. In the following three days, the Court Clerk will summon the appearance referred to in the previous article.*

The rejection of the urgent interim measure -*medidas cautelarísimas*- does not prevent an ordinary interim measures request. When lodging the request for urgent interim measures request, the applicant can ask, on a subsidiary basis, the adoption of an ordinary interim measures. Such request can also be lodged immediately after the judge has rejected the urgent interim measure. **In both situations, a request for ordinary interim measures would automatically suspend the enforcement of the removal until a specific decision is given on this request.**

In any case, on the basis of the current wording of art. 135.1.b) as amended in 2011[8] if the judge does not consider an urgent need for interim measure *inaudita parte*, still the ordinary procedure should be exhausted (the request is examined under the procedure provided for ordinary interim measures), so that pleadings from both parties would be listened.[9] **The suspensive effect would last at least until a final decision has been adopted on the ordinary interim measures.** Accordingly, should a specific appeal against the judicial denial of interim measures be filed, the administrative act under judicial review on the merits would not be enforceable until a final decision on interim measures is adopted.

Special rule for asylum appeals

A special rule in favor of the Asylum seeker is granted in Art. 29 of the Asylum Act, pursuant to that:

> *"Article 29. Appeals*
>
> *(...) 2. When an appeal is lodged and the suspension of the contested act is requested, the said application shall be deemed of special urgency in accordance with Article 135 of Act 29/1998, of 13 July, regulating the jurisdiction for judicial review."*

The national courts practice

Regarding interim measures concerning a decision of rejection of an asylum petition, in application of art. 29 of Asylum Act and art. 135 C-A Jurisdiction Act, the Audiencia Nacional´s current practice is the following:

[8] *When the interested parties allege the existence of circumstances of special urgency in the case, the judge or court, without hearing the opposing party, within a period of two days, may by order: (...)*

"(b) Not appreciate the circumstances of special urgency and order the processing of the precautionary incident in accordance with article 131, during which the interested parties may not request again any measure under this article."

[9] *If there are not urgent reasons alleged, both parties will be asked to formulate written observations for 10 days, and a decision should be taken in 5 days. A decision to celebrate a public hearing instead of written observations may be adopted if requested by any party. A request for extension of the time set for decision for the production of evidence can be requested, applying the general rules of procedure. The judge can decide even ex officio for relevant additional evidence to be performed before adopting a decision (application of article 61 LRJCA).*

- First, verify if there is *prima facie* a circumstance of special urgency for adopting a *inaudita altera parte* interim measure, pursuant to what has been exposed in the previous section

- When this special urgency is not appreciated by the court (namely if an imminent expulsion of the asylum seeker in the next days has not been scheduled, it will order the processing of the interim measure [10].

If it finally decides to grant an interim measure (both in the case of an urgent interim measure if maintained after hearing the Administration, or if it is finally granted after the ordinary proceeding of an ordinary interim measures), three rules should be followed by the court:

- The stay is maintained during the whole contentious-administrative proceedings until a final judgment is issued, pursuant to art. 132 of the contentious-administrative Act 29/1998:

  Article 132

  1. The precautionary measures shall be in force until a final sentence is passed which puts an end to the procedure in which they have been agreed, or until this procedure is terminated for any of the reasons foreseen in this Law.

- The Administration must respect the Order granting the *interim measure* immediately. Pursuant to art. 134 of the C-A Jurisdiction Act:

  Article 134.

  1. The order granting the measure shall be communicated to the corresponding administrative body, which shall order its immediate implementation (…)

[10] *We* can quote some examples:

- Order of *Audiencia Nacional*, Section 5th, of 14th October 2021 (Annex 12), which stated (LG 2nd):

  "In the present case, for the purpose of assessing the concurrence of circumstances of special urgency, the only thing on record is that the interested party is in a Detention Center, without stating when his mandatory departure from Spanish territory will take place (Article 37 of Law 12/2009), and that the denial of the reexamination was notified yesterday, but there is no evidence of circumstances of special urgency that justify a decision inaudita parte on the requested measure.
  By telephone communication with the CIE, it is indicated that his immediate expulsion is not foreseen.
  In any case, there is no record of any measure that would entail the immediate departure from Spanish territory of the applicant for international protection, since the only thing that is done, in the notification of the administrative resolution, is to inform him that: "If he lacks the necessary requirements to remain in Spain, the provisions of Article 37 of Law 12/2009 shall apply.
  (..)
  Consequently, the concurrence of circumstances of special urgency is not appreciated, so it is in the case of ordering the processing of the interim measure incident in accordance with article 131 of the Law of this Jurisdiction"

And as similar decisions:

- Order of *Audiencia Nacional*, Section 7th, of 11th October 2021 (Annex 13).
- Order of *Audiencia Nacional*, Section 6th, of 15th September 2021 (Annex 14).
- Order of *Audiencia Nacional*, Section 7th, of 12th July 2021 (Annex 15)

Cassation appeal

Any appeal lodged by the Government attorneys against an interim measure must respect the stay of the expulsion order.

Unlike what article 80.1 of the contentious- administrative Act rules with respect to simple appeals against decisions (recurso de apelación contra autos) only granting devolutive but not suspensive effects-, there is no similar legal provision regarding the cassation appeal for annulment ruling that this appeal has only devolutive effects, not suspensive ones.

We will expose separately the process followed in this cassation appeal, depending on whether the interim measure has been granted or not.

i.Interim measure granted.

When an interim measure has been granted at the first instance (Audiencia Nacional) it is maintained during the whole ongoing proceeding on the merits; that it to say, the stay granted by this decision upholding is maintained in either case of the following:

- Even if this decision is appealed by the Administration, despite this circumstance, the Administration shall implement the decision immediately (art. 134 Ley 29/1998) and the interim measure is maintained throughout the procedure on the appeal lodged by the Administration against the decision granting the interim measure.

- And even if the merits of the case are rejected by a Judgement; in this case a cassation appeal can be lodged against a judgment dismissing the contentious-administrative appeal, in which case the stay of the expulsion order must be prolonged through the processing of the appeal[11]. Pursuant to art. 132.2 C-A Jurisdiction Law:

  "The interim measures may not be modified or revoked due to the different advances made during the process with respect to the analysis of the formal or substantive issues that make up the debate, nor, due to the modification of the evaluation criteria that the Judge or Court applied to the facts when deciding the interim measure."

The only possibility for the Administration (Ministerio de Interior) to enforce the challenged administrative act during the cassation appeal against the decision rejecting the merits of the C-A appeal against it, is to specifically request a provisional enforcement of the judgment of instance[12]. The provisional execution of the Judgement in asy-

[11] Only, if the Judgement on the merits rejecting the Contentious-Administrative appeal is not challenged and therefore it becomes final; the Supreme Court has declared that this circumstance deprives the ongoing appeal against the interim measure order of any interest and, therefore, the appeal is stricken out of the list.

[12] This has clearly stated by the Supreme Court as a general rule for any interim measure granted. For instance The Supreme Court Judgement 21 -12-2016 (judgment 2695/2016) (Annex 6):

lum cases is rarely asked and, in any event, it could be only granted if the Supreme Court, after consulting all the parties, considers that there is no risk of irreversible damages impossible to repair and proper measures can be adopted (art. 91 and 84 of C-A Jurisdiction Act).

In conclusion, if an interim measure is granted at first instance, it is maintained during the cassation appeal lodged by the administration against the interim measure and, if this cassation appeal is rejected, during the whole proceedings on the merits regarding the request for international protection.

ii. Interim measure rejected.

In case that the Audiencia Nacional rejects the interim measure, the asylum seeker can ask for another interim measure if there is a change of circumstances (art. 132 of the C-A. Jurisdiction Law, previously mentioned).

For instance the Order of the Audiencia Nacional, 2nd Section, of 8th October (Annex 8):

---

b) The aforementioned doctrine cannot lead to the understanding that the Administration, in the case of dismissal judgments that confirm the assessment acts, even if they are not final, because the taxpayer has lodged an appeal in cassation, is obliged to execute the corresponding judicial decision, even if the contested assessment has been suspended, since it is a requirement of Art. 24 of the Constitution not to proceed with enforcement in these cases, the case being different when the suspension is not requested through the courts, or when it is requested and denied, and it is duly notified, as enforcement is possible and appropriate (Cfr. STS 5 February 2015, appeal in cassation 753/2014).

"E.- Once the suspension of a tax assessment has been agreed, in order for the Administration to be able to proceed with its enforcement, it is necessary either an express pronouncement by the Chamber agreeing to lift the precautionary measure or a final judicial decision, that is, by this Chamber of the Supreme Court, if an appeal in cassation has been lodged, confirming the contested tax assessment (Cfr. SSTS of 20 July 2016, appeal for the unification of doctrine 3358/2015, and of 5 July 2016, appeal in cassation 2559/2015).

-Also Supreme Court Judgement 2-7-19 RCA 4005/2017 (Annex 7):

There is, in short, no partial lifting of the suspension measure merely because only part of the content of the administrative act confirmed by a judgment at first instance is challenged; nor can it be presumed that the measure has been lifted in relation to the assessment by the fact that the appeal is only directed against the other part of that act (the penalty).

This is because, once the suspension of a tax assessment has been agreed in court, in order for the administration to proceed with its enforcement, it is necessary either for the court to expressly rule that the precautionary measure be lifted, or for a final judicial decision to be handed down (in the case of this Chamber of the Supreme Court, if an appeal in cassation has been lodged, which confirms or revokes the contested tax assessment).

> *"However, the challenged Resolutions do not contain a deportation order, since they grant each asylum seeker the possibility of regularizing his or her stay in Spain. There is no executive act ordering the appellants to leave our country. For this reason, it would be premature for the Chamber to suspend a departure order that has not yet been issued.*
>
> *If such a decision were to be made, the appellants could request the adoption of the appropriate measures."*

The rejection of an interim measure can be also challenged: first by a request for reconsideration before the same *Audiencia*, and, afterwards, through a cassation appeal (art. 87 C-A Jurisdiction Act)

Even in the case that the interim request is finally rejected by the *Audiencia Nacional*, this cannot lead to the conclusion that the individuals have not enjoyed an effective remedy, taking into account the following circumstances:

- Spanish Constitutional Court constant jurisprudence stating that administrative acts are not enforceable while a request for interim measures is processed before any court of justice until a decision is made in this regard,

- The Audiencia Nacional carefully examines, when refusing the *interim measure* the concurring circumstances, in order to appreciate that there is no need to grant the *interim measure*.

- After an interim measure regarding an asylum denial has being rejected, a new interim measure can be requested against the inmediate execution of the subsequent expulsion order. The asylum seeker can there ask for the stay of that expulsion order and, in case that stay is granted at the administrative appeal, then it should be prolonged through the judicial review of the eventual denial of the administrative appeal against the expulsion order.

3. Alignment of the Spanish Supreme Court' case law with A.C´s doctrine

3.1 Implications of the judgment of the ECHR

The ECtHR judgment on the A.C. application points out that in cases such as those of the applicant´s (where a coherent explanation of the reasons backing the request for asylum is contained in the administrative application, although some pieces of evidence may temporarily be lacking) a stay on the expulsion should be granted until a rasoned decision on the interim measures requested is adopted.

This means, for the sake of the execution of this judgment, that

1.- it is not required for the national authorities to wait for a judicial decision on the merits, and

2. a reasoned decision on the requested interim measures, no matter its name or its length, would satisfy the Court´s doctrine.

3.2 Judgement of the ECJ

In *Gnandi v. Belgium*[13], of 19 June 2018, Case C-181/16, the ECJ interpreted that the stay of the expulsion order should be prolonged until a judgment is issued by the incumbent court. While the Court recognises the importance of speedy remedies, it considers that they should not be given priority at the expense of the effectiveness of essential procedural safeguards designed to protect applicants against refoulement to another country.(100).

The judgment does not preclude a determining authority from adopting a return decision under Article 6(1) of Directive 2008/115 against a third-country national who has lodged an application for international protection, from the moment at which it rejects that application and, therefore, before the judicial review is resolved, but adds in its final statement 'provided that the Member State concerned ensures that all legal effects of the return decision are suspended pending the outcome of such an appeal, that the applicant may benefit during that period from the rights deriving from Council Directive 2003/9/EC' (see above, fourth ground of law). fourth ground of law above).

3.3. Judgments of the Supreme Court incorporating the case law of both international courts

The Spanish Supreme Court has already aligned its interpretation of the national law with that of the European Court of Human Rights, going even further, as requested by the Court of Justice of the European Union in *Gnandi v. Belgium*, requiring to staystay any order expulsion until a decision on the merits is issued at the first instance judicial level.

3.3.1 Judgment of the Supreme Court No1582/2022 of 29 November 2022.

In this judgment the Spanish Supreme Court quashed the former decision adopted by the Audiencia Nacional, in which it had rejected the requested interim measures to extend the benefits provisionally granted to the appellant during the administrative procedure as an asylum seeker and, specifically, authorisation to reside in Spain and to work.

The stay in national territory while the casational appeal is being resolved, both by application of Article 46.5 of Directive 2013/32/EU and Articles 129 et seq. implies recognising the appellant's right to access the labour market - ex Article 15.3 of Directive 2013/33/EU - and therefore the right to document himself in order to do so. Therefore, the application for interim relief requested, for the extension of the benefits provisionally granted to the appellant during the administrative procedure as an asylum

[13] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62016CA0181

seeker and, specifically, authorisation to reside in Spain and to work, should have been granted by the Audiencia Nacional.

3.3.2 Judgment of the Supreme Court No 1.250/2023, of 13rd October 2023

In this second judgment the Supreme Court has confirmed and reinforces its doctrine began in the former 2021 judgment.

In accordance with Art. 46 of EU Directive 2013/32, the Supreme Court affirms that the right to an effective judicial remedy entails that the applicant to whom the Administration has refused international protection obtains, in the judicial remedy lodged against that decision, a ruling which, as a general rule, recognises during the pendency of the appeal that his or her status as an asylum seeker remains unaltered and, therefore, that he or she is authorised to remain in Spain until the appeal is resolved and that during that stay he or she enjoys the reception conditions provided for in Directive 2013/33.

Only as an exception to that general rule, this right to remain in the territory may not be automatically recognised to manifestly unfounded or inadmissible applications.

3.4 Consequences of the new doctrine of the Supreme Court

The developments in the Supreme Court case law addressed the issue raised by the ECHR as indicated in point 3.1).

The aforementioned judgments impose the automatic suspension of the appeals against the rejection of asylum requests and the further expulsion orders of asylum seekers.

It goes even beyond the requirements of the ECtHR in the A.C. judgment, as it *de facto* extends such suspension to the entire appeal procedure and not only during the procedure of the interim measures.

3.5Approach of lower courts to the new case law of the Supreme Court.

The Audiencia Nacional is the incumbent national court that decides on the contentious-administrative appeals against the rejection of asylums requests, and also therefore on the medidas cautelarísimas (regulated in article 135 of the Contentious.Administrative procedural law2, applicable by means of art.29 of Asylum Law3) referred to in the A.C. case, as well as the ordinary interim measures.

Following the new Supreme Court´s caselaw, several recent decisions (Autos) from the Audiencia Nacional grant automatic suspension though the medidas cautelarísimas procedure: Auto 381/2024, de la Audiencia Nacional, de 23 de abril de 2024; Auto 382/2024, de 23 de abril de 2024; Auto 384/2024, , de 24 de abril de 2024; Auto 397/2024, de 29 de abril de 2024. As an example, in its Auto 382/2024, the Audiencia

Nacional concluded that it is only appropriate to adopt the medidas cautelarísimas accelerated procedure-when there are circumstances of special urgency, if not, the general rule¡ on ordinary medidas cautelares must be followed, always weighing up the interests at stake.

Some sections of the Audiencia Nacional have not yet aligned with the new principles established by the Supreme Court. Their decisions can be quashed by means of a cassation appeal before the Supreme Court who, in appliance of the aforementioned caselaw, would quash those rejecting decisions (autos).In these cases, the cassation appeal (recurso de casación), differently from the ordinary appeal (recurso de apelación) should have a suspensive effect and impede the expulsion order be executed.

Only in those cases in which those sections appreciate special urgency and decide to deny de *medida cautelarísima*, there is no possible appeal against those decisions, but they are offering a sufficiently reasoned decision, complying with the Court´s requirement.(see Annex B).

3.6. Possibility for the asylum seekers to extend the administrative stay of the expulsion order at the judicial level

In any case, any asylum seeker whose asylum request has been rejected, can

1.- appeal the expulsion order at the administrative level, asking for a stay of the expulsion

2.-in case that the stay is granted at the administrative level, in case he or she appeals the administrative refusal of his or her administrative appeal, can bring a judicial appeal againt that expulsion order, and the administrative stay of that order is automatically granted until the ordinary interim measure procedure is decided.[14]

3.7. Conclusion

1. A similar violation to that found by the Court in *A.C. and others v . Spain* is difficult to occur again. In fact, no other similar application has been lodged before the Court against Spain since 2013.

2. In case the incumbent court (Audiencia Nacional) did not follow this case law in a specific case, the asylum seeker could appeal to the Supreme Court, who would quash

[14] The suspension shall be extended after the administrative channel has been exhausted when, having previously been requested by the interested party, there is a precautionary measure and the effects of this extend to the contentious-administrative channel. If the interested party lodges a contentious-administrative appeal, requesting the suspension of the act that is the object of the process, the suspension shall be maintained until the corresponding judicial pronouncement on the request is made. (Art. 117.4 law 39/2015)

that decision and obliging the lower court to respect the suspension until a ruling on the merits of the case has been issued.

3. In those isolated cases in which an appeal is not offered by the final decision on the interim measures request, a thorough reasoning is offered, avoiding similar cases to that analysed by the Court in which no significant reasoning had been made (see Annex B).

4. In any case, any asylum seeker whose asylum request has been rejected, can appeal the expulsion order at the administrative level, asking for a stay of the expulsion order and that stay will automatically be extended until there is a final decision on the interim measure separate procedure before the incumbent Court (Audiencia Nacional).

IV. PUBLICATION AND DISSEMINATION OF THE JUDGEMENT

- The judgement has been translated into Spanish by the Ministry of Justice under the responsibility of the Agent of Spain before the ECHR, and sent to the Registrar for its dissemination through the HUDOC Database.

- It is available to the public in the webpage maintained by the Ministry of Justice under the responsibility of the Agent of Spain before the ECHR[15].

- It has been published in the Official Bulletin of the Ministry of Justice (June 2014).

- It was formally notified to the highest Tribunals, the State General Prosecutor and the Highest Static Authorities interested. It has been included in the judicial intranet, which is a daily worktool for judges and magistrates of all instances when adjudicating.

- It has been widely reported in Spanish media[16].

V. STATE OF EXECUTION OF THE JUDGEMENT

The Supreme Court has already adopted a new case-law assuring an automatic suspension for asylum-seekers appeals before the contentious-administrative jurisdiction, which has to be followed by lower courts. This well-established case law avoids per se that any similar violation of the Convention, as found by the Court in A.C. v. Spain judgment, can arrive again to the Court. This new caselaw assures the automatic suspension for the judicial appeals against the rejection of asylum seekers requests, and therefore implies a full compliance with the judgment of the European Court of Human Rights.

[15] *http://www.mjusticia.gob.es/cs/Satellite/Portal/es/areas-tematicas/area-internacional/tribunal-europeo-derechos/jurisprudencia-tedh/articulo-derecho-recurso*
[16] http://politica.elpais.com/politica/2014/04/22/actualidad/1398167666_678482.html
http://elpais.com/elpais/2011/02/01/actualidad/1296551831_850215.html

Despite of the thousands of contentious-administrative appeals launched against asylum petitions rejections per year (more than 2.000 in 2019; more than 3.000 in 2020), no more similar complaints nor interim measures have been communicated to Spain by the ECtHR.

The Government of Spain, according to what has just been observed, considers that it has discharged in full its obligation to keep the Committee of Ministers informed of the circumstances deriving from the full execution of the judgement, and therefore begs the Department for the Execution of Judgements to propose to the Committee of Ministers at the earliest convenience the closure of the supervision for the execution of this judgement.

Madrid to Strasbourg, on 28 January 2025

The Agent for the Kingdom of Spain

Alfonso Brezmes Martínez de Villarreal

ANNEXES

New Annexes to this updated Action report

Annex A –Grant of leave to appeal against the rejection of medidas cautelarísimas by the Audiencia Nacional

Annex B - Motivated rejection of the denial of interim measures by the Audiencia Nacional

Annexes already submitted in the fomer Action report

Annex 1.- Supreme Court Order of 12th February 2009

Annex 2.- Supreme Court Judgement of 15th February 2016

Annex 3.- Supreme Court Judgement of 25th February 2013

Annex 4.- Supreme Court Judgement of 22nd March 2011

Annex 5.- Audiencia Nacional Order of 16th March 2017

Annex 6.- Supreme Court Judgement of 21st December 2016

Annex 7.- Supreme Court Judgement of 2nd July 2019

Annex 8.- Audiencia Nacional Order of 8th October 2021

Annex 9.- Audiencia Nacional Order of 30th June 2021

Annex 10.- Audiencia Nacional Order of 5th July 2021

Annex 11.- Audiencia Nacional Order of 8th October 2021

Annex 12.- Audiencia Nacional Order of 14th October 2021

Annex 13.- Audiencia Nacional Order of 11th October 2021

Annex 14.- Audiencia Nacional Order of 15th September 2021.

Annex 15.- Audiencia Nacional Order of 12th July 2021

TO THE DEPARTMENT FOR THE EXECUTION OF JUDGEMENTS.

COUNCIL OF EUROPE