SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS SECRÉTARIAT DU COMITÉ DES MINISTRES

Contact: Ireneusz Kondak Tel: 03.90.21.59.86

DH-DD(2025)691

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting:

1537th meeting (September 2025) (DH)

Item reference:

Action Plan (10/06/2025)

Communication from Spain concerning the case of T.V. v. Spain (Application No. 22512/21) - The appendices in Spanish are available upon request to the Secretariat.

* * * * * * * * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion :

1537^e réunion (septembre 2025) (DH)

Plan d'action (10/06/2025)

Référence du point :

Communication de l'Espagne concernant l'affaire T.V. c. Espagne (requête n° 22512/21) (anglais uniquement) - Les annexes en espagnol sont disponibles sur demande au Secrétariat.





Date: 17/06/2025

DH-DD(2025)691: Communication from Spain. Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.



MINISTERIO DE LA PRESIDENCIA, JUSTICIA Y RELACIONES CON LAS CORTES ABOGACÍA GENERAL DEL ESTADO

SUBDIRECCIÓN GENERAL DE ASUNTOS CONSTITUCIONALES Y DERECHOS HUMANOS

DGI

ACTION PLAN

10 JUIN 2025

SERVICE DE L'EXECUTION DES ARRETS DE LA CEDH

T.V. (Application No. 22512/21)

Judgment Date: 10/10/2024 ; Date Final Judgment: 10/01/2025

Content

I. Procedural Background	2
A. The Judgement.	2
1 Subject of the case	2
2 Summary of relevant facts	
3 Violation found	3
II. Individual measures	4
A. Just Satisfaction	4
B. Regarding the reopening of the proceedings	5
1 Specific features of this case. Absence of a request by the Applicant	5
2 Ex officio analysis by the Public Prosecutor Office.	6
C. Conclusion	6
III. General measures	6
A. General measures against breaches of Article 4 of the Convention in its	
procedural aspect	7
1 Legislative measures	7
2 Policies	8
3 The Public Prosecutor's Office	8
4 Circular 2/2022 from the Public Prosecutor's Office	10
5 Judiciary Police and Forensic Doctors	10
6 Procedural guarantees	11
i. The obligation to carry out effective investigations	11
ii. Guarantees for the victims	12
7 Judiciary application of the ECtHR case-law	13
B. Publication and dissemination of the Judgements	13
IV. Conclusion	14
Annexes	14

C/ MARQUÉS DE DUERO, 4 28001 MADRID TEL.: 91 049 10 01

www.mjusticia.gob.es aetedh@mjusticia.es

CSV : GEN-8fe1-b623-0818-6242-e0e5-a1ad-bc88-524a DIRECCIÓN DE VALIDACIÓN : https://run.gob.es/hsbIF8yLcR FIRMANTE(1) : JOSE ANTONIO JURADO RIPOLL | FECHA : 10/06/2025 13:38 | Sin acción específica



DH-DD(2025)691: Communication from Spain.

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

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 human trafficking and forced prostitution.

2.- Summary of relevant facts

The application mainly concerns a complaint about the alleged failure of the national authorities to properly investigate the applicant's criminal complaint that she had been trafficked from Nigeria to Spain and sexually exploited between 2003 and 2007.

According to the applicant, in 2003, when she was 14 years old and living in Nigeria, C., an acquaintance of the family, offered to take her to Spain to work with a forged adult passport. In exchange, she would have to pay him 70,000 euros from her salary in Spain. She was not informed of the nature of her future work. She travelled from Lagos (Nigeria) to Paris and then to Madrid by plane. She then went to Arahal (a town south-east of Seville), where C. met her and took her to a house where he lived with his partner, U. Both physically abused her, threatened her and forced her to work as a prostitute. She remained under C.'s control until 2007, when she managed to escape. She continued to work as a prostitute in various regions of Spain until 2010.

The applicant filed a complaint in 2011 with the Unit against Illegal Immigration Networks and Document Fraud (UCRIF). Investigations were initiated by Investigating Court No. 2 of Marchena and the applicant was granted protected witness status. The investigating court ordered the Civil Guard to identify the victim, the alleged perpetrators and their whereabouts, and the address of the club R. where, according to her complaint, she had been forced into prostitution since the second month after her arrival in Spain. Two managers of the club were questioned in January and April 2013. However, the case was provisionally dismissed due to lack of evidence. The prosecutor lodged an appeal, which the investigating court admitted in April 2014 and ordered further proceedings. The police proceeded to identify and question C. and U., who denied the allegations.

Statements were also taken from witnesses for the defence of U. In 2015 and early 2016, two age assessment reports were prepared. Each of the reports concluded that the applicant was at least 18 years old at the time of the expert examinations.

2



The investigation was completed in September 2016 and referred to the Provincial Court of Seville. The forensic doctor's report concluded that the age corresponded to a person of at least eighteen years of age.

In December 2015, U.'s defence requested that the court dismiss the case and acquit him, referring to the results of the age assessment. The Public Prosecutor's Office also requested the provisional dismissal of the case, in view of the two reports on the applicant's age.

In January 2017, the Provincial Court of Seville provisionally dismissed the case, considering that, in light of the forensic doctor's report, the applicant's age at the time of the alleged events (in 2003) would have been 6 years old, which made it unlikely that she would have entered Spain with an 'adult' passport or engaged in prostitution in establishments open to the public.

The applicant appealed against the decision of the Provincial Court, which was upheld. She lodged an appeal for protection before the Constitutional Court, which was dismissed on the grounds that there had been no violation of fundamental rights.

Before the ECHR, the applicant alleged a breach of the positive obligations arising from Article 4 (prohibition of slavery and forced labour) in relation to Article 6 (right to a fair trial), in that the national legislation did not recognise the right to compensation for being a victim of trafficking, and Article 13 (right to an effective remedy) due to the lack of an effective remedy.

3.- Violation found

Firstly, regarding the admissibility of the application, the European Court of Human Rights¹ rejected the complaint regarding the alleged failure of the national authorities to adopt operational measures to protect her as a victim of human trafficking and to establish a legislative and political framework to deter this crime, on the grounds that this issue had not been raised in the domestic proceedings and, therefore, the domestic remedies available had not been exhausted.

It also rejected as manifestly unfounded the allegations relating to Articles 6 and 13, since, despite the fact that the applicant was informed of the possibility of claiming damages, she never attempted to bring a civil action for damages under Article 116 of the Criminal Procedure Act, nor did she justify why such an action, if brought, would necessarily be doomed to failure.

In its examination of the merits, the ECtHR found a violation of Article 4 in its procedural aspect, due to the lack of an effective investigation of the complaint.

3

¹ Hereinafter «ECtHR».



The ECtHR started from the fact that the applicant had consistently maintained her account of the events reported, and that the national authorities, in view of the credibility and the existence of reasonable grounds to believe that she was a victim of human trafficking, granted her protected witness status and a residence permit.

As regards the investigation carried out, the ECtHR stated that:

- The national judicial authorities did not act promptly in the investigation: the first investigative steps were taken in 2013, almost two years after the complaint was filed. Furthermore, there were subsequent periods of inactivity.

- Several obvious lines of investigation were not pursued in relation to the circumstances of her arrival in Spain and other possible clubs where she claimed to have been; nor were any inquiries made into police records on the age of women who may have worked in one of the clubs where the applicant claimed to have been. Regarding her allegations that she had been working at club R, the investigation was limited to identifying and taking statements from two club managers at the time of the events.

- The Provincial Court's decision to provisionally dismiss the case was based on superficial grounds, on an insufficient interpretation of the forensic doctor's report and without relying on any of the other evidence presented.

The ECtHR further states that the fact that the case was provisionally dismissed, rather than dismissed outright, is not relevant to the conclusion reached.

The ECtHR awarded the applicant €15,000 in respect of non-pecuniary damage and €12,000 in respect of costs and expenses.

II. Individual measures

A. Just Satisfaction

The deadline for payment of just satisfaction without interest expired on 10th April 2025, three months after the judgment became final.

The competent body for processing the payment in the Ministry of Justice (now, Ministry of Presidency, Justice and Relations with the Parliament) sent an e-mail to the applicant's lawyer on 24th January 2025 to initiate the proceedings for the payment of the just satisfaction. However, the lawyer took a long time to respond, with the applicant's lawyer's reply not arriving until 1st April 2025.

Therefore, the process for payment was initiated too late and too close to the expiration of the aforementioned three-month period for reasons not attributable to the national authorities, which has resulted in the impossibility of paying the amount within the maximum period of 3

4

months from the date when the judgement became final. At present, the payment is still pending, but being proceeded.

The mails dated 24th January 2025, from the competent body of the Ministry of Justice for the processing of the payment and the response from the lawyer dated 1st April 2025, as well as the previous mails informing of the difficulties in contacting the applicant's lawyer and successive mails informing about the steps taken to complete the payment, are annexed to the present Action Plan².

The status of the process for payment will be updated in the following report.

Regarding the reopening of the proceedings. Β.

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

Nowadays, the Criminal Procedures Act in its article (art.), 954.3 (as amended by Act 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 Judgements³.

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)⁴

5

MINISTERIO DE JUSTICIA



INFORME DE FIRMA, no sustituye al documento original | C.S.V. : GEN-8fe1-b623-0818-6242-e0e5-a1 ad-b685-524a| Puede verificar la integridad de este documento en la siguiente dirección: https://run.gob.es/hsb1F8yLcR

² Annex 1.

³ 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.

of of Order 20th April 2021 of the Second Chamber 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."

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 *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.

We are not aware of any of the parties having requested the reopening of the proceedings at this time. We will report any developments in this regard in the next Action Report, in which we will provide an update on the outcome of our requests for information from the courts on this matter.

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 been requested to the Public Prosecutor.

In the next Action Report, we will inform the execution service about the information received from the prosecutor's office in this regard.

C. Conclusion.

The individual measures focus on the payment of compensation and the possibility of reopening the investigation.

Following difficulties arising from the inability to locate the applicant's representative, the payment procedure continued. With regard to the possibilities of reopening the investigation, a report has been requested from the Public Prosecutor's Office.

6

We will report on the outcome of both topics in our Action Report.

III. General measures.



The ECtHR in the present case found a violation of article 4 in its procedural limb.

The content of the abovementioned Judgement does not reveal any systemic problem regarding the procedural of article 4 of the Convention, neither the similar aspect of art. 14, so that the violation assessed by the ECtHR 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), but also in the more recent resolutions adopted in cases González Etayo (20690/17), Arratibel Garciandía (58488/13), Ataún Rojo (3344/13), Beortegui (36286/14). The Committee concluded, in the resolutions on these cases (last ones in 2025), that the ECtHR judgements were properly executed⁵.

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. 4 could take place.

A. General measures against breaches of Article 4 of the Convention in its procedural aspect.

1.- Legislative measures

In the Annual Regulatory Plan for the year 2025 (*Plan Anual Normativo 2025*), the adoption of the 1st comprehensive Organic Act against Trafficking and Exploitation of Human Beings is planned for the year 2025.

The aim is to tackle for the first time jointly the fight against all forms of trafficking in human beings and against all forms of exploitation that constitute the purpose of trafficking, incriminating forced labour, servitude, slavery and all forms of forced subjection to exploitation.

To this end, it adopts a comprehensive approach according to which the response of the public authorities to trafficking and exploitation goes beyond the essential criminal response and also addresses prevention and awareness-raising in society as key elements for the eradication of these practices (stressing the role of demand and the importance of dismantling the business model and breaking the trafficking chain), as well as adequate assistance and protection for victims.

At the same time, there are currently provisions for the protection of victims of this crime. For example, Act 4/2015 of 27 April 2015 on the Statute of the Victims of Crime recognises the

⁵ For instance: <u>https://hudoc.exec.coe.int/ENG?i=001-177614</u>

specialised treatment that victims of trafficking require. Article 23 establishes that specific protection measures are adopted according to the nature of the crime and the seriousness of the harm caused to the victims, as well as the risk of repetition of the crime, as we will see below. For this purpose, special consideration shall be given to the needs of victims of trafficking in human beings.

2.- Policies.

With regard to trafficking in human beings, specifically for the purpose of sexual exploitation, the Government of Spain has approved several state plans of commitment to combat trafficking.

The following link provides access to the plans approved to date: <u>https://violenciagenero.igualdad.gob.es/planes-actuacion/tratamujeresyninas/</u>

Currently in force is the Operational Plan for the Protection of Human Rights of women and girls victims of trafficking, sexual exploitation and women in prostitution contexts (2022-2026) «Plan Camino», approved by the Cabinet on 20th September 2022.

This plan constitutes a central tool for the promotion of political action to address the contexts of prostitution of women and girls, as complex scenarios in which women can go through different situations of exploitation and abuse of human rights, articulating actions in the following key areas such as improving the information available on trafficking, sexual exploitation and prostitution, and the risks arising from these activities.

Currently, the State Strategy to combat male violence 2022-2025 is also in force, which, despite not being a specific instrument for the crime of trafficking, contains provisions, objectives and measures for the protection of victims of this crime.

3.- 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. (...)

8

The Public Prosecutor's Office has made particular efforts to prosecute the offences of trafficking, as can be read in its annual reports. We take the following quote from the 2024 annual report of the Public Prosecutor's Office⁶:

«4.2 Activity of prosecutors specialising in human trafficking and immigration in the field of criminal prosecution

4.2.1 Crime of human trafficking

The data recorded by the FGE show a total of 250 judicial proceedings for human trafficking offences (HTO) initiated in 2023, representing a significant increase of 22.5% compared to 2022. The autonomous communities with the highest incidence of human trafficking were Andalusia (52), Madrid (39), Valencia (30) and Catalonia (27). Seven pre-trial investigations were also initiated by the Public Prosecutor's Office.

In line with the above data, there has also been an increase in the number of follow-up proceedings for human trafficking offences opened by the Unit, which rose to 162 in 2023, representing a percentage increase of 29.01%, as 115 proceedings were initiated in 2022, according to the updated data in the supplementary report of September 2023 (110 according to the data in the report). The difference between the two increases, that of proceedings and follow-up proceedings (6.51%), may be due to several factors. On the one hand, follow-up proceedings do not only correspond to court cases initiated in 2023, but also to proceedings from previous years, as the initiation of court proceedings and the opening of follow-up proceedings are not always simultaneous. On the other hand, not all reports necessarily give rise to follow-up proceedings. In addition, the statistical data from the FGE show certain discrepancies due to registration problems in the computer applications of some public prosecutors' offices.

	2022	2023
TSH sexual	91	116
TSH laboral	18	40
TSH mendicidad	1	1
TSH actividades delictivas	3	3
TSH extracción de órganos	1	0

Taking into account the different types of trafficking, the data from the follow-up proceedings in 2023, compared to 2022, are as follows:

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.

⁶ https://www.fiscal.es/memorias/memoria2024/FISCALIA_SITE/capitulo_III/cap_III_4_2.html

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 these rights, but also for the mechanisms of judicial investigation in response to this kind of complaints.

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

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**⁷. This is the circumstance that enables us to request a report from the Prosecutor's Office on this point.

5.- 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 trafficking, 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 available to the court to examine detainees, examine victims, and assess any injuries they may have suffered or, as in this case, determine their age through medical and scientific reports.

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.



⁷ Circular 2/2022 can be visited at <u>https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-54</u>

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.

6.- Procedural guarantees

i. <u>The obligation to carry out effective investigations.</u>

Spanish legislation provides for the obligation to prosecute and investigate the existence of any criminal offence, such as trafficking, slavery and forced labour so that the violation assessed by the ECtHR 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 trafficking torture and inhuman or degrading

11

MINISTERIO DE JUSTICIA

INFORME DE FIRMA, no sustituye al documento original | C.S.V. : GEN-8fe1-b623-0818-624-c965-a1 ad-bc88-524a1 Puede verificar la integridad de este documento en la siguiente dirección: https://run.gob.es/hsblfs/J.cR

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 slavery and forced labour, in the Criminal Procedure Act of 1882, as well as the Act 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".

- In the present case, the applicant was granted protected witness status during 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 Act 4/2015, of 27 April, on the

12

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.

7.- Judiciary application of the ECtHR case-law.

Without prejudice to further elaboration in the Action Report, the ECtHR case-law, especially regarding the procedural obligations derived from articles 2 and 3 of the Convention, <u>but also applicable to art. 4</u>, has been applied by the Spanish domestic courts.

Among several examples, we can quote the following:

The <u>Constitutional Court Judgements 13/2022</u>, of 7th February and 12/2022 (same date) 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.

There are similar cases in which convictions have been handed down under the Spanish equivalent of Article 4 of the Convention: <u>the Supreme Court Decision (Auto) 912/2019 of 10th</u> <u>October 2019</u> upheld the conviction in a similar case in which there was a conviction because the evidence and the age of the complainant were consistent with the facts reported, unlike the present case in which the age of the complainant was not consistent with the facts denounced.

This helps us understand that this is not a systemic problem in the Spanish legal system, but rather an isolated case caused by specific circumstances.

B. Publication and dissemination of the Judgements

The judgement and a summary have been sent to national authorities and to the judicial bodies concerned (Seville Provincial Court and Marchena Court of First Instance and Preliminary Investigation No. 2).

13

The judgment has been translated into Spanish.



It has been widely reported in the media⁸.

IV. Conclusion

The Committee of Ministers will be promptly informed of any circumstances arising from its full execution with regard to individual and general measures. The corresponding action report will be then submitted informing of the outcome of the case.

Madrid, on 10th June 2025.

The Co-Agent of the Kingdom of Spain,



José Antonio Jurado Ripoll.

Annexes.

Annex 1.- Mails and documents related to the payment.

TO THE DEPARTMENT FOR THE EXECUTION OF JUDGEMENTS OF THE ECtHR

COMMITTEE OF MINISTERS - COUNCIL OF EUROPE



 ^{8 : &}lt;a href="https://www.eldiario.es/desalambre/tribunal-derechos-humanos-condena-espana-no-investigar-forma-adecuada-denuncia-victima-trata_1_11721851.html">https://www.eldiario.es/desalambre/tribunal-derechos-humanos-condena-espana-no-investigar-forma-adecuada-denuncia-victima-trata_1_11721851.html

 https://www.europapress.es/nacional/noticia-tedh-condena-espana-pagar-27000-euros-no-investigar-denuncia-mujer-dijo-ser-victima-trata-20241010120619.html