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Communication from Spain concerning the case of A.J. and L.E. v. Spain (Application No. 40312/23) - *The appendices in Spanish are available upon request to the Secretariat.*

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Communication de l'Espagne concernant l'affaire A.J. et L.E. c. Espagne (Requête n° 40312/23) **[anglais uniquement]** - *Les annexes en espagnol sont disponibles sur demande au Secrétariat.*



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ACTION PLAN

A.J. and L.E. (Applications No. 40312/23 and 40388/23) vs. Kingdom of Spain

Judgment Date: 23/10/2025 ; Date Final Judgment: 23/01/2026

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I. Procedural Background

A. The Judgment.

1.- Subject of the case

This case concerns the failure to thoroughly and effectively investigate the applicants' complaints of sexual assault involving chemical submission, with loss and destruction of potentially crucial evidence whilst in police custody not counter-balanced by other investigative measures.

2.- Summary of relevant facts

The case arises from an alleged incident of chemical subjugation (in 2016) to which the applicants (A.J., L.E.) were reportedly subjected. At the domestic level, the criminal proceedings resulted in a provisional dismissal confirmed by the Provincial Court of Navarre (in 2022), following the investigating authority's order to close the preliminary investigation without charging either of the two individuals under investigation for these acts, on the grounds that, whilst it was established that the applicants had sexual relations with the suspects (which the suspects themselves admitted), there was, however, insufficient evidence to suggest that the suspects had supplied chemical substances to the applicants for that purpose.

During the criminal investigation, Pamplona Investigating Court No. 1 noted that a significant portion of the physical evidence relating to the offence had disappeared or been damaged whilst in police custody (the investigation was conducted by Group V [UFAM] of the Provincial Judicial Police Brigade of the National Police Headquarters in Navarre).

In particular, (1) the expert report drawn up by the Forensic Police in Madrid, which contained the analysis of the mobile phone of one of the suspects (R.G.S.), disappeared entirely and could not be recovered; (2) the CCTV recordings from the bar where the claimants and suspects were found on the night in question (the place where the chemical substance may allegedly have been supplied) had been partially erased and tampered with whilst in police custody; (3) the hard drive used to store the investigation data from the mobile phones of both suspects had been wiped and overwritten, with the result that even the backup copies of that data were erased.

Furthermore, the Court highlights that one of the suspects (namely, R.G.S., whose mobile phone was referred to in the missing forensic police report) had a family relationship (brother-in-law) with one of the police officers belonging to the UFAM, the unit in charge of the investigation, until the officer in question was removed from that unit for this reason.



Consequently, Investigating Court No. 1 of Pamplona, which was hearing the main case, ordered by a ruling (2019) that a record of the relevant proceedings be drawn up, opening three separate files for the purpose of investigating the police's conduct in this matter. A confidential inquiry was also initiated within the police force, which was suspended pending the outcome of the criminal proceedings.

3.- Violation found

Among the general principles, the Court recalls that both Articles 3 and 8 of the Convention have a procedural dimension which entails positive obligations for States, including the obligation to criminalise and effectively prosecute any non-consensual sexual act, as well as the obligation to enforce these legal provisions through a prompt and thorough investigation and prosecution; these obligations must also be understood in the light of international standards (the Istanbul Convention, in this case), ensuring protection for victims and also aimed at preventing re-victimisation.

According to the Court, the obligation to investigate imposed on States by virtue of these provisions involves *'the duty of the domestic authorities to conduct an effective investigation into credible allegations of non-consensual sexual conduct. In order to be effective, the investigation must be capable of leading to the identification and punishment of those responsible, and must be thorough, impartial and timely'* (§ 81).

To this end, the secure collection, safekeeping and preservation of evidence are essential, such that the loss or destruction of evidence could undermine the effectiveness of the entire investigation, particularly in the case of video recordings. The Court recognises that the loss of any piece of evidence might be offset by the existence of other evidence, but this would require the alternative evidence to be of sufficient value so as not to impede the effective and full establishment of the facts.

Furthermore, the investigation must be carried out by persons and institutions independent of those under investigation (given the relationship in this case between one of the persons under investigation and a police officer assigned to the investigation); this independence also extends to the fact that the very police officers responsible for safeguarding the evidence may themselves be under investigation: 'Where evidence is lost or inadequately preserved by officials who may themselves be subject to investigation, this may call into question both the independence and the effectiveness of the investigative process...' (§ 86).

In applying this to the specific case, the Court emphasises the following:

The Spanish legal and institutional framework for the protection of victims of sexual offences set out by the Kingdom of Spain (Article 181(2) of the Criminal Code, special units of the State



Security Forces, and special protocols of the Ministry of Justice in cases of suspected chemical subjugation) is satisfactory.

The Court also acknowledges that the Kingdom of Spain's response to the applicants' claim was prompt (as soon as one of the applicants went to a medical centre [days after the events], the medical centre itself directly contacted the police, following the patient's account; the other applicant was sought out and contacted by the police as a result of the investigation carried out following the medical centre's report; similarly, the court acted promptly in taking her statement).

However, the loss and destruction of evidence at police headquarters in this case constitutes an insurmountable obstacle for the Court: both the missing expert report and the partial deletion of footage from the bar's CCTV cameras, as well as (as particularly emphasised by the Court) the deletion and overwriting of the hard drive containing the digital evidence and the backup copies are serious matters and not mere isolated errors or minor omissions (from which it may be inferred, *contrario sensu*, that not every isolated omission or error in the investigation would be treated in the same way), which have precluded the possibility of pursuing various lines of inquiry, which might have been decisive and ultimately prevented the case from being dismissed, particularly in these cases of chemical subjugation, where the administration of substances usually takes place in public places and, therefore, where video evidence (from the bar's CCTV cameras) might have proved decisive. In the present case, the other evidence gathered has not served to make up for the deficiency caused by the lost or compromised evidence.

All of this is compounded by the breach of the principle of independence of the investigating bodies, given the family relationship between one of the persons under investigation and a police officer from the UFAM. The Court notes that the individuals and bodies responsible for the investigation need not be entirely independent, but they must be 'sufficiently independent of the persons and structures whose responsibility is likely to be engaged' (§ 96), a condition which, at least during part of the investigation, was not met in this case.

The Court further regrets that the national authorities' response to the loss and destruction of evidence at police headquarters was not sufficiently rigorous, in particular due to the delay in investigating possible police misconduct. (It should be noted that a confidential investigation file has been opened but is suspended pending the criminal proceedings).

For all these reasons, the Court finds that Articles 3 and 8 of the Convention have been breached in their procedural aspects and orders Spain to pay 20,000 euros to each of the two applicants, plus 5,000 euros in costs and expenses (a total of 45,000 euros, all amounts being subject to any applicable tax), to be paid within three months of the judgment becoming final.



II. Individual measures

A. Just Satisfaction

The Court condemns the Kingdom of Spain to the payment of a just satisfaction to every applicant of EUR 20,000 to each of the two applicants, plus 5,000 euros in costs and expenses (a total of 45,000 euros, all amounts being subject to any applicable tax). The deadline for payment of just satisfaction without interest expired on 23rd April 2026, three months after the judgment became final.

Accordingly, following the Court's decision to award the applicant the above sums, every applicant has been paid prior to the period of three months from the judgment the amount for non-pecuniary damages and their part in the total amount of costs and expenses. Attached to this Action Plan, as **Annexes 1 to 2**, we provide the documents of payment.

B. Regarding the reopening of the proceedings.

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 Judgments¹.

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 Judgment, **it is only possible in**

¹ 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 Judgment, and it is not admitted to be lodged by the accusing party against an acquittal Judgment.



relation to convicting Judgments, and not in order to review another kind of decisions (for instance, acquittal Judgments or superseding decisions)².

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 Judgment 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 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*» or «*where the preliminary investigation reveals that an offence has been committed but there are insufficient grounds to charge a particular person or persons as perpetrators, accomplices or those who have concealed the offence*»³. 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 Judgment, an ex officio analysis has been requested to the Public Prosecutor (reopening investigation).

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

3.- Information from the domestic courts.

² Order of 20th April 2021 of the Second Chamber of the Supreme Court, <https://www.poderjudicial.es/search/AN/openDocument/68b066318106cb91/20210504> "The order of 4 March 2021 agreed to the flat dismissal, without considering the reasons why Mrs. [...] intends to appeal for review, because as we have said above, the extraordinary appeal for review can only be used against final convictions, which is not the case in this instance."

³



A request has been made to the domestic courts that heard the main case and the related proceedings for information on the status of those related proceedings and whether any new developments have prompted the investigation. The information obtained will be included in the Action Report.

C. Other individual measures.

4.- Compensation for State liability.

As was mentioned in our first Observation⁴, the applicants could have initiated the proceedings to claim pecuniary liability against the Public Authorities (*reclamación patrimonial frente a la Administración*), claiming compensation for the damage caused by the malfunctioning in the custody of the evidence. The time lapse is one year.

As we have no evidence that the applicants have tried it, the competent Authorities have been asked to provide a report on this matter. The information obtained will be provided in the Action Report.

5.- Information from National Police (internal affairs).

A request has been made to the National Police for information on the progress of the internal investigation (*información reservada*) opened against police officers in relation to their conduct in this case. The information obtained will be provided in the Action Report.

D. Conclusion.

The individual measures focus on the payment of compensation, the possibility of reopening the investigation, the eventual compensation for State liability, and the internal investigation (*información reservada*) opened against police officers in relation to their conduct in this case.

As for the just satisfaction, the amount granted by the ECtHR Judgment has been already paid.

With regard to the possibilities of reopening the investigation, a report has been requested from the Public Prosecutor's Office, and also from domestic courts.

As for the eventual compensation for State liability, is for the applicants to initiate the proceedings in one year time; competent Authorities have been asked to provide a report on this issue.

Regarding the internal investigation followed by the National Police against affected police officers, information has been requested.

We will report on the outcome of all these topics in Action Report.

⁴ Para. 41, 50, 55, 116,



III. General measures.

The ECtHR in the present case found a violation of articles 3 and 8 in its procedural limb.

The content of the abovementioned Judgment 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 Garcandía (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 Judgments 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. 3 could take place.

A. General measures against breaches of Articles 3 and 8 of the Convention in its procedural aspect.

1.- Legislative measures

Spanish law sufficiently preserves these rights, both at the constitutional and at the criminal level: the Criminal Code, as seen above, typifies both the crimes of torture and other crimes against integrity (articles 173 to 177 of the Spanish Criminal Code), and of course also typifies the crimes of sexual aggression and sexual abuse, including those perpetrated using chemical or similar means to subdue the victim (art. 180 of the Spanish Criminal Code).

Following the far-reaching reform introduced by Organic Act 10/2022 and its subsequent amendment by Organic Act 4/2023, the Spanish Criminal Code classifies chemical submission as a sexual assault offence with aggravating circumstances. Current legislation classifies chemical subjugation under the umbrella of offences against sexual freedom, without distinguishing between abuse and assault.

In Spain, any non-consensual sexual act is considered sexual assault; chemical subjugation is specifically covered in Article 180.1 of the Criminal Code as an aggravated sub-type. It applies when the perpetrator nullifies or impairs the victim's will through the use of medicines, drugs

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



or any other suitable natural or chemical substance. The use of these substances amounts to nullifying the person's free consent.

The protection of victims of sexual offences is primarily governed by Organic Act 10/2022 and the Statute on Victims of Crime. These regulations guarantee the right to comprehensive support, restraining orders, protection of privacy during legal proceedings and the right to be free from contact with the offender.

2.- Policies.

The Ministry of Justice operates the Offices for Assistance to Victims of Crime (*Oficinas de Asistencia a las Víctimas*), which offer comprehensive, free and specialised assistance to victims, including legal, psychological and social support. These are managed directly by the Ministry or by the autonomous communities to which this power has been transferred⁶.

The Ministry of Justice develops and disseminates a protocol for optional action, in the form of a good practice guide (*guía de buenas prácticas*), for cases of possible chemical submission (suspicion of chemical submission), which aims to guide and direct the actions of the forensic doctor and the clinical and scientific laboratories in such cases⁷.

Furthermore, the Ministry of Justice publishes a specific guide on forensic procedures for dealing with victims of crimes facilitated by psychoactive substances, which sets out the procedures to be followed by these officials in cases of suspected chemical subjugation. This guide is accessible online and in a variety of formats: *Guía de buenas prácticas para la actuación forense ante la víctima de un delito facilitado por sustancias psicoactivas: intervención ante la sospecha de sumisión química*⁸.

The Ministry of Equality has published a Guide to Rights for victims of gender-based violence and victims of sexual violence (*Guía de Derechos para víctimas de violencia de género y víctimas de violencias sexuales*), which is available online in several languages and includes information on rights relating to forensic procedures and legal representation, amongst other matters⁹.

As part of the general measures, the police have been asked to provide information on whether the ECtHR judgment in the present case has been covered in any training courses; similarly, information has been requested on whether any internal guidance has been issued as a result

⁶ Oficinas de asistencia a las víctimas de delitos violentos y contra la libertad sexual

⁷ <https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/InstListDownload/GuiaBuenasPracticas.pdf>

⁸ <https://libreriaonline.mjusticia.gob.es/Libreria/mostrarDetallePublicaciones.action?idPublicacion=11458>

⁹ https://violenciagenero.igualdad.gob.es/wp-content/uploads/GUIA-DE-DERECHOS-PARA-VICTIMAS-DE-VIOLENCIA-DE-GENERO-Y-VIOLENCIAS-SEXUALES_espanol_2024.pdf



of the ECtHR judgment. The findings of these enquiries will be reported in a future Action Report.

3.- Circular 2/2022 from 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. (...)*

The Prosecutor's Office has issued *Circular 2/2022*, which regulates the possibility for the Prosecutor's Office to carry out post-procedural investigation proceedings¹⁰. This is the circumstance that enables us to request a report from the Prosecutor's Office on this point.

4.- 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 sexual assault involving chemical submission, 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.

Within the Spanish State Security Forces there are specialised units for the prosecution of this type of crime, as well as for specialised assistance to victims:

- The National Police has the Family and Women's Attention Units (known as UFAM¹¹ in its Spanish acronym) which is also the unit that acted in this case during the investigation as Judicial Policier
- While the *Guardia Civil* has the Women and Minors Teams (EMUME)¹².

¹⁰ Circular 2/2022 can be visited at https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-54

¹¹ https://www.policia.es/es/colabora_ufam.php

¹² <https://www.guardiacivil.es/es/institucional/Conocenos/especialidades/emumes/index.html>



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.*

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

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

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

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

Therefore, forensic doctors are public professionals of renowned competence and specialisation, who come under the authority of judges, magistrates, public prosecutors and



those in charge of the Civil Registry. They enjoy the greatest guarantees of reliability and form part of a system with the characteristics and guarantees of judicial control.

As mentioned above, the Ministry of Justice publishes a specific guide on forensic procedures for dealing with victims of crimes facilitated by psychoactive substances, which sets out the procedures to be followed by these officials in cases of suspected chemical subjugation. This guide is accessible online and in a variety of formats: *Guía de buenas prácticas para la actuación forense ante la víctima de un delito facilitado por sustancias psicoactivas: intervención ante la sospecha de sumisión química*¹³.

5.- Procedural guarantees

i. The obligation to carry out effective investigations.

Spanish legislation provides for the obligation to prosecute and investigate the existence of any criminal offence, such as this kind of sexual assault, 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.

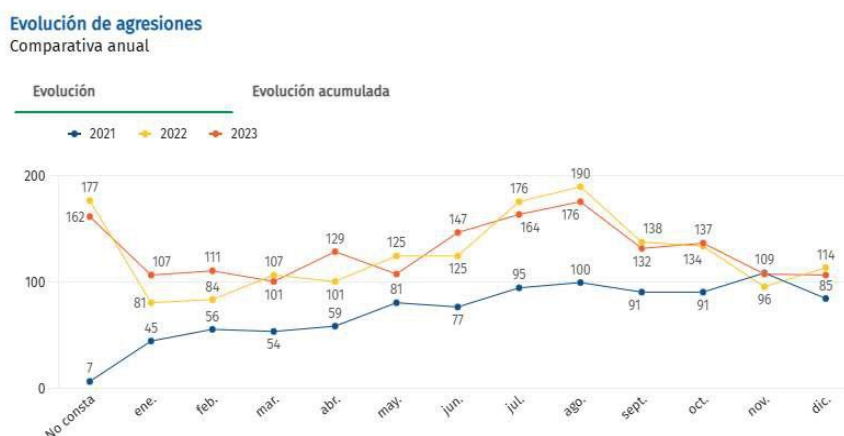
It must be taken into account that Spanish legislation not only provides what is necessary for an effective investigation of denunciations of this kind of crimes, but also that these investigations are endorsed by firm jurisprudential practice at the highest level, as we will see in the following section.

As evidence of this, we can provide data on alleged 'sexual assaults involving suspected chemical submission' that have been processed in Spain over the years (latest year available: 2023).

¹³ <https://libreriaonline.mjusticia.gob.es/Libreria/mostrarDetallePublicaciones.action?idPublicacion=11458>



On the following website, you can view and analyse the data, select different parameters and even create customised tables¹⁴. Here is the trend over the most recent years for which data is available¹⁵:



This website allows you to create tables based on your chosen parameters. In **Annex 3**, we provide a table on sexual assaults involving suspected chemical submission, broken down by year and month, by the victim's age group and by autonomous community, which includes the toxicological samples taken.

This is an example of the interest that the Spanish Authorities take in monitoring this type of crimes.

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 sexual assault, 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

¹⁴ [Agresiones sexuales con sospecha de sumisión química - Portal de Datos de Justicia](#)

¹⁵ [Agresiones sexuales con sospecha de sumisión química - Portal de Datos de Justicia](#)



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".

- The victim can be granted protected witness status during the proceedings, if requested.
- 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 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.

6.- 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, has been applied by the Spanish domestic courts.

Among several examples, we can quote the following:



The Constitutional Court Judgment 13/2022, 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 Judgment 13/2022, Legal Ground no. 2 of the Judgment 12/2022). And therefore both Judgments 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.

In the same vein, the Constitutional Court Judgment 1/2024, of 15th January 2024, which refers to ECtHR case law. This judgment is also significant in terms of the **need to carry out the relevant evidential procedures to dispel factual doubts, with the Spanish Constitutional Court adopting the European Court of Human Rights' standard of sufficient and effective investigation and extending it beyond cases of ill-treatment suffered whilst in police custody to all other cases (legal grounds II and III of the judgment):**

'In short, the requirement for an effective and sufficient investigation "does not mean that each and every requested or conceivable investigative measure must be carried out", but rather "that, in a context where there is still uncertainty as to what occurred, those measures which, a priori, appear capable of dispelling such factual doubts should be carried out. If there are reasonable grounds for suspecting ill-treatment and a means of dispelling them remains, an official investigation that results in the case being closed cannot be regarded as effective' (STC 34/2008, para. 8). In other words, the standard for a sufficient and effective investigation relates both to the absence of reasonable suspicion and to the value of continuing with the investigation (Supreme Constitutional Court Judgements 34/2008, Legal Ground 8; 52/2008, Legal Grounds 5; and 63/2008 of 26 May, Legal Ground 4).

(...)

The European Court of Human Rights has extended the standard of a sufficient and effective investigation to cases other than allegations of torture or ill-treatment allegedly suffered by detainees in police custody.

(...)

*Furthermore, this court has held that the constitutional requirement to conduct a thorough and effective judicial investigation **also applies to cases where preliminary proceedings initiated in respect of alleged criminal acts committed in contexts linked to gender-based violence or violence occurring within the family or intimate relationship against vulnerable victims are discontinued (SSTC 87/2020, of 20 July, and 131/2023, of 23 October)**. Thus, in these cases, it is not the prior existence of an institutional relationship of special subjugation to the State's police or repressive apparatus that justifies the application of the heightened standard of an effective and*



sufficient judicial investigation, but rather the material reality of that very special subjugation of the vulnerable victim to the alleged perpetrator.

In short, in accordance with the constitutional doctrine set out above and in line with the views expressed by the Public Prosecutor's Office in its written submissions, this court sees no impediment whatsoever to also applying the standard of an effective and sufficient investigation to a case such as the one now before us, in which, although no violation of the right to life (Article 15 of the Spanish Constitution) is alleged, the serious events under investigation (the alleged suicide of a detainee on police premises) nevertheless bear a certain resemblance to cases in which allegations are made of torture or ill-treatment allegedly suffered during police custody'¹⁶.

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 Judgments

The Judgment and a summary have been sent to national authorities and to the judicial bodies concerned.

The judgment has been translated into Spanish and published.

It has been widely reported in the media¹⁷.

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 23rd July 2026.

¹⁶ Emphasis added.

¹⁷ <https://ararteko.eus/es/el-tribunal-europeo-de-derechos-humanos-condena-espana-por-fallar-en-la-investigacion-de-dos>;
<https://elpais.com/espana/2026-01-19/del-juzgado-de-guardia-al-constitucional-como-la-balanza-de-la-justicia-se-inclino-del-lado-de-la-impunidad-en-la-sumision-quimica-de-pamplona.html>;
<https://www.rtve.es/noticias/20251023/tribunal-europeo-derechos-humanos-condena-espana-investigar-mal-dos-denuncias-por-violacion-sumision-quimica/16783215.shtml>;
<https://detrinidadyassociados.com/el-tedh-condena-a-espana-por-mala-praxis-en-una-denuncia-por-una-doble-violacion/>;



The Co-Agent of the Kingdom of Spain,



José Antonio Jurado Ripoll.

Annexes.

Annexes 1-2.- Documents related to the payment.

Annex 3.- Table on sexual assaults involving suspected chemical submission, broken down by year and month, by the victim's age group and by autonomous community, which includes the toxicological samples taken.

TO THE DEPARTMENT FOR THE EXECUTION OF JUDGMENTS OF THE ECtHR
COMMITTEE OF MINISTERS - COUNCIL OF EUROPE

