

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES

COMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRES



Contact: Clare Ovey
Tel: 03 88 41 36 45

Date: 17/10/2016

DH-DD(2016)1135

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: 1273 meeting (6-8 December 2016) (DH)

Item reference: Action report (06/10/2016)

Communication from Spain concerning the case of Blesa Rodríguez against Spain (Application No. 61131/12)

* * * * *

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 : 1273 réunion (6-8 décembre 2016) (DH)

Référence du point : Bilan d'action

Communication de l'Espagne concernant l'affaire Blesa Rodríguez contre Espagne (Requête n° 61131/12)
(anglais uniquement)



MINISTERIO
DE JUSTICIA



ABOGACÍA GENERAL DEL ESTADO
DIRECCIÓN DEL SERVICIO JURÍDICO 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

ACTION REPORT

APPLICATION: Blesa Rodríguez vs. Kingdom of Spain (case number 61131/12)

JUDGEMENT: 1/12/2015

FINAL ON: 1/3/2016

Information submitted by the Kingdom of Spain on the 6th October 2016.

I. CASE SUMMARY

The case was brought by Mr. Antonio Carlos Blesa Rodríguez who posted an application before the ECtHR under articles 6§1 and 41 ECHR.

He considered that two of the three judges who sat on the bench of the criminal Tribunal which decided on the merits and declared him guilty on charges of forgery brought forward by La Laguna University did not meet the impartiality requirements deriving from article 6§1 ECHR.

Allegedly:

a) Judge A. would have also seated on other bench formation which had agreed to quash a previous decision, adopted by the investigating judge, aimed at suspending the preliminary investigation against the applicant.

b) Judge Sa. would have also been, while performing his duties in the case, associate professor and administrator of the La Laguna University.

He also claimed for just satisfaction under article 41 ECHR.

The Supreme Tribunal upheld the first instance judgment, dismissing an appeal based on the bench's partiality. The Constitutional Court declared inadmissible the revision of that judgement, posted by the claimant and based on the grounds of a potential breach of his constitutional fundamental rights to a fair trial (*Recurso de Amparo*).

The ECHR considers that :

- a) As regards Judge A. , it shares the view of the Supreme Court and of the Constitutional Court , considering that the applicant had not exhausted internal remedies, at hand with respect of complaints of partiality (§§ 24-27 of the judgment). Therefore, the application is partially unadmitted (§ 1 of the final decision).
- b) As regards Judge Sa. , although nothing indicates that he might have been subjectively biased, he did not meet the Court's case-law criteria as to the objective test of impartiality. In the instant case, some ascertainable facts (being simultaneously associate professor and administrator of the La Laguna University), which would have been of sufficient importance although quite apart from the judge's conduct, might have reasonably raised the applicant's doubts and fears about his impartiality (§§ 41-45 of the judgment). To this respect, a violation of article 6§1 ECHR is declared (§2 of the final decision).

CORREO ELECTRÓNICO:

dhumanos@dsje.mju.es

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



c) The ECtHR considers that a sum of 4.000 € should be awarded to the applicant in respect of non-pecuniary damage under article 41 ECHR. From the expiry of the three months from the date in which the judgement becomes final simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

II. INDIVIDUAL MEASURES

• Just Satisfaction

The judgement was final on the 1st January 2016. The three month's lapse ended, in principle, on the 1st April 2016.

The claimant did not offer the personal and economic data needed to transfer the amounts due by bank account until the 12th April 2016, although he was requested to comply with this requirement on time. A reminder was sent by fax to his lawyer on the 8th March 2016.

The sum was paid on the 26th May 2016, within the three months' time-limit counting from the date in which the applicant furnished all relevant data, which ended on 8th June 2016.

• Other Measures

The claimant is legitimated by Spanish Law to seek a revision of the judgment, following the judgment of the ECtHR.

According to Organic Law 7/2015, of 21 July, amending Organic Law 6/1985, of 1st July, on the Judiciary.

"[...]"

PREAMBLE

[...]

II

[...]

It is also included a provision regarding the European Court of Human Rights' judgements that declares the violation of some of the rights recognised in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, stipulating that they will be reason enough to lodge an appeal on review strictly of the final judgement in the "a quo" process. Herefrom, the legal certainty is without doubt increased in a sensitive sector such as the protection of fundamental rights, foundation of political order and social peace, as declared in Article 10.1 of our Constitution.

[...]

Case number: 61131/12
Blesa Rodríguez vs. Kingdom of Spain
Judgement of 1/12/2015
Action Report



ABOGACÍA
GENERAL DEL
ESTADO

Sole Article. Amendment to Organic Law 6/1985, of 1st July, on the Judiciary.

The Organic Law 6/1985, of 1st July, on the Judiciary is amended as follows:

[...]

Three. A new article 5 bis is added to read as follows:

“Article 5 bis.

An appeal review may be lodged to the Supreme Court against a final judgement, according to procedural regulations of each jurisdictional order, when the European Court of Human Rights has declared that such judgement was passed in violation of any of the rights recognised in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, provided that the violation, due to its nature and seriousness, has a persistent effect and cannot cease in any other way than by means of this review.”

And, accordingly, Act no. 41/2015, of 5 October, amending the Code of Criminal Procedure in order to accelerate the criminal justice and to strengthen procedural safeguards states that:

“Sole Article. Amendment to the Code of Criminal Procedure.

Fifteen. Article 954 is amended to read as follows:

[...]

“3. A review of a final judgement may be requested when the European Court of Human Rights has declared that such judgement was passed in violation of any of the rights recognized in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols thereto, provided that the violation, due to its nature and seriousness, has a persistent effect and cannot cease in any other way than by means of this review.

In this event, the review can only be requested by whom, being entitled to lodge this review, had acted as claimant to the European Court of Human Rights. The requirement shall be formulated within a year of the said Tribunal’s Judgement has become final”.

Sole Transitory provision. Relevant law.

[...]

“2. Article 954 will also apply to judgements becoming final following their entry into force.

The event provided for in section 3 of article 954 will apply to judgements of the European Court of Human Rights becoming final following their entry into force”

[...]”

Therefore, upon the applicant’s request, the final judgment which condemned him can be quashed.



III. GENERAL MEASURES

- The judgement does not identify any systemic problem in the Spanish legislation. It only pin-points that, in the instant case, Section 219, subsections 9, 10 and 16 of the Organic Law 6/1985 of the Judiciary (§ 19 of the ECtHR judgment¹) should have been interpreted more broadly, in line with the ECtHR case-law.
- Article 10.2 of the Spanish Constitution, which binds the judiciary, establishes that :

"PART I

Fundamental rights and duties

Article 10

(...)

2. The principles relating to the fundamental rights and liberties recognised by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain."

Therefore this case Law is incorporated into our legal system and will be followed onward by all Tribunals.

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 ECHR².

¹ Section 219

"Grounds for withdrawal or, where appropriate, a challenge include:
(...)

9. Friendship or self-evident enmity between the juror and any of the parties.

10. The fact of having a direct or indirect interest in the dispute.

(...)

16. Having held public office or an administrative post where he or she previously could have known about the dispute and form an opinion likely to undermine his or her due impartiality.

²

[http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427767323?blobheader=application%2Fpdf&blobheadername1=Content-Disposi-](http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427767323?blobheader=application%2Fpdf&blobheadername1=Content-Disposition)



- Its translation into Spanish has been incorporated into the CENDOJ, judicial intranet at the disposal of all Spanish judges.
- It was formally notified to the General Council of the Judiciary, highest Tribunals, the State General Prosecutor and the other Highest Static Authorities interested.
- It has been widely reported in Spanish media³.

V. STATE OF EXECUTION OF THE JUDGEMENT

The Kingdom 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.

Therefore begs the Department for the Execution of Judgements to propose to the Committee of Ministers the closure of the supervision for the execution of this judgement.

Madrid to Strasbourg, on the 6th October 2016

The Agent of the Kingdom of Spain

Rafael A. León Cavero

P.S. Please see annexes:

- Annex 1.- ADOK document attesting the payment of just satisfaction.
- Annex 2.- Request of personal data to the applicant's lawyer
- Annex 3.- Confirmation of data having been furnished by the applicant

TO THE DEPARTMENT FOR THE EXECUTION OF JUDGEMENTS.

COMMITTEE OF MINISTERS

COUNCIL OF EUROPE

[tion&blobheadname2=Grupo&blobheadervalue1=attachment%3B+filename%3DSentencia_Blesa_Rodr%C3%ADguez_c._Espa%C3%B1a.pdf&blobheadervalue2=Docs_TEDH](#)

³ http://politica.elpais.com/politica/2015/12/01/actualidad/1448995388_600836.html

http://www.rtv.es/noticias/el-tedh-condena-a-espa%C3%B1a-por-un-juicio-parcial-a-un-catedr%C3%A1tico-de-la-laguna-144486.aspx#.V_ZINPmLSJA

http://www.elconfidencial.com/ultima-hora-en-vivo/2015-12-01/tribunal-condena-a-espana-por-un-juicio-parcial-a-un-catedratico-de-la-laguna_759443/