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Meeting: 1288<sup>th</sup> meeting (June 2017) (DH)

Item reference: Action report (22/03/2017)

Communication from Spain concerning the case of RODRIGUEZ RAVELO v. Spain (Application No. 48074/10)

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Réunion : 1288<sup>e</sup> réunion (juin 2017) (DH)

Référence du point : Bilan d'action

Communication de l'Espagne concernant l'affaire RODRIGUEZ RAVELO c. Espagne (Requête n° 48074/10)  
**(anglais uniquement)**

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MINISTERIO  
DE JUSTICIA

DGI

22 MARS 2017

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

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

**APPLICATIONS: 48074/10/RODRIGUEZ RAVELO and joinder executions in similar cases as detailed below**

**Information submitted by the Kingdom of Spain on the 8<sup>th</sup> March 2017.**

### **I. GROUP OF CASES**

This Action Report comprises several applications that are similar on their merits and outcome.

Application number	Case	Date of judgment	Final on
48074/10	Rodríguez Ravelo	12/01/2016	12/07/2017
53421/10	Jiménez Losantos	14/06/2016	14/01/2017

### **II. SUMMARY OF THE CASES**

These two cases were brought by applicants who posted writs before the ECtHR under article 10 ECtHR.

Both of them have in common a violation of the freedom of expression by national courts.

**A-** In the first case an Spanish lawyer, **Mr. Rodríguez Ravelo** was prosecuted and condemned because of expressions used in a written application containing value judgments regarding a judge and attributing blameworthy conduct to her. In that application Mr Rodriguez Ravelo indicated that the facts, as set out by the district judge in her decision did not reflect the reality, and attributed blameworthy conduct to the district judge, such as wilfully deciding to distort reality, unhesitatingly lying or, further, issuing an untruthful report containing false and malicious information.

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Criminal proceedings were instituted against Mr Rodriguez Ravelo for the suspected offence of libel. He was sentenced to a daily fine of 30 euros for nine months and a custodial penalty in the event of default. The judgment indicated that the expressions used by Mr Rodriguez Ravelo seriously impaired the honour of the district judge and went well beyond the legitimate right of defence. Mr Rodriguez Ravelo lodged a number of unsuccessful appeals against that decision, so he raised a claim at the European Court, after the Spanish Constitutional Court declared an appeal by Mr Rodriguez Ravelo inadmissible on 28 June 2010.

The European Court found that Mr Rodriguez Ravelo's conduct showed a lack of respect towards the district judge and, indirectly, the justice system. He had made value judgments regarding the judge and had also attributed blameworthy conduct to her. In a case such as this it was perfectly acceptable to punish conduct of that kind coming from a lawyer. The Court also underlined that the aim of the Spanish sentence had a legitimate aim, that is to protect the Spanish Judge from Puerto del Rosario, and guarantee the Judiciary's authority and impartiality, in the sense of article 10 2 of the Convention.

Nevertheless, the Court considered that, although serious and discourteous, the terms used by Mr. Rodriguez Ravelo had not been uttered in the courtroom as such, since they had been expressed in writing and only the judge and the parties had been aware of them. The statements had mainly concerned the manner in which the judge concerned had conducted the case and, although aggressive, they had been submitted in the context of defending his client's interests.

The Court held that the fact of being convicted in criminal proceedings, coupled with the severity of the penalty imposed on Mr Rodriguez Ravelo, was capable of having a chilling effect on lawyers in situations where they were called upon to defend their clients. The criminal courts examining the case had therefore failed to strike a fair balance between the need to maintain the authority of the judiciary and the need to protect Mr Rodriguez Ravelo's freedom of expression. The fact that the applicant had paid the fine imposed on him, and accordingly had not served the custodial sentence, did not in any way alter that conclusion.

In those circumstances the Court found that Mr Rodriguez Ravelo's sentence, which even carried a risk of imprisonment, had not been proportionate to the legitimate aim pursued and had accordingly not been necessary in a democratic society. There had therefore been a violation of Article 10 of the Convention.

- Just satisfaction (Article 41): The Court held that Spain was to pay the applicant 8,100 euros (EUR) in respect of pecuniary damage and that the finding of a violation of Article 10 of the Convention was in itself sufficient just satisfaction for any non-pecuniary damage that might have been sustained by Mr Rodriguez Ravelo.

- Separate opinion: Judges Nicolaou and Silvis expressed separate opinions, which were annexed to the judgment. In the separate opinion of Judge Nicolaou, several ECtHR former pronouncements are quoted to support his conclusion supporting Spanish judges decision against Mr. Rodriguez Ravelo.

**B-** The second case concerns the criminal conviction in Spain of **Mr Jiménez Losantos**, a journalist, for making comments about the mayor of Madrid which were considered to be insulting.

On 27 June 2006 A.R.G., the mayor of Madrid at the time, lodged a complaint against Mr Jiménez Losantos, considering that he had insulted him during the radio programme *La mañana*, run by Mr Jiménez Losantos, by making a number of criticisms of statements made by the mayor about the Madrid terrorist attacks of 11 March 2004 ("11-M").

On 11 June 2008 Mr Jiménez Losantos was convicted by Madrid judge no. 6, who found that the journalist's comments had clearly exceeded the limits on freedom of expression and amounted to the offence of proffering and broadcasting serious insults. The judge observed that the truth of Mr Jiménez Losantos's allegations had not been proved; that the latter had attributed to the mayor things that he had not said; that the comments made were clearly insulting or hurtful, and had been intended to tarnish the mayor's image and dignity gratuitously and purposelessly with a view to publicly discrediting him. Mr Jiménez Losantos was ordered to pay a fine of 100 euros (EUR) per day for 12 months, and given a default custodial sentence. The judgment was upheld by the Madrid Audencia Provincial on 14 May 2009, and the Constitutional Court declared an appeal by Mr Jiménez Losantos inadmissible on 29 March 2010.

Relying on Article 10 (freedom of expression), Mr Jiménez Losantos complained before the European Court that he had been convicted on account of his comments and alleged that the domestic courts' interpretation of the facts was biased.

The ECtHR considers that the interference made by the national judge was well founded on Spanish law supporting national regulation and aimed legitimate objectives (protection of a personal reputation).

Nevertheless, the ECtHR concludes that Mr. Jiménez Losantos expressions where, in general, a political criticism against a public person in a matter of general interest, even the national courts having found those expressions untrue, and having followed Constitutional interpretation of the limits freedom of expression. The Court considers that the journalist's freedom of expression was used between the limits of a democratic society, taking into account his work as a journalist and that of politician of the offended, as well as the general right of information of citizens.

Weighing all three aspects, the ECtHR concludes that national judge didn't balance adequately the rights of expression (article 10 of the Convention) and that of private life and reputation (article 8 of the Convention), being the penal response and the pecuniary penalty finally imposed an exceptional remedy that wasn't necessary in the case under revision, and that those measures may have a discouraging effect and could affect journalists' professional future. In conclusion, nevertheless being appropriate national court's decisions, the sanction is considered to be disproportionate in relation with the pursued objective.

- Just satisfaction (Article 41): Mr Jiménez Losantos did not submit a claim for just satisfaction.
- Separate opinion: Judge Lozano Cutanda expressed a separate opinion, which was annexed to the judgment, in which supports Spanish Judge's decision, considering it adequate and proportionate to the objective of protecting private life's right, under article 9 of the Convention, for which reason concludes that no violation of freedom of expression was committed in that decision, taking into account that the journalist's expressions where clearly untrue and clearly exceeded the provocative statements protected by freedom of expression .

### III. INDIVIDUAL MEASURES

#### • Just Satisfaction

As regards to the payment of the sums awarded for just satisfaction, the following chart attests the fulfilment of this obligation in due time by the Kingdom of Spain:

The compensation, in the Rodríguez Ravelo case has been paid within the deadline set by the Court (see attachment).

In the Jiménez Losantos case the applicant did not request compensation, thus it has not been awarded by the Court.

Application number	Case	Sum awarded Just Sat. + costs €	Deadline	Date of payment (ADOK)
48074/10	Rodríguez-Ravelo	8.100 €	12-06-2016	01-06-2016
53421/10 NO SATISFACTION REQUESTED	Jiménez Losantos	- NO SATISFACTION REQUESTED	-	-

- **Other Measures**

The claimants have not served any time of deprivation of liberty due to their convictions, as the custodial penalty in the event of default was not put in action.

The applicants have been placed, insofar as possible, in the same situation as if they had never been convicted for their offences.

All the data regarding the claimants have been cancelled from the National Registry of Criminal Causes (Criminal records) by administrative resolutions adopted on 8<sup>th</sup> March 2017 (Annex 3).

Nevertheless, as already explained in recent action reports, the Supreme Tribunal has elaborated detailed instructions in the sense that any person who has undergone criminal proceedings and wishes to reopen them following a final judgement of the ECHR can file a revision appeal according to the existing Spanish Law on Criminal Proceedings. The last of these agreements is dated on the 21st October 2014. Moreover, the applicants, following the final judgement of the ECHR, can file a revision appeal according to the recent 2015 amendment of the Spanish Law on Criminal Proceedings. The applicants have not asked to date for such reopening in the instant case so far.

#### **IV. GENERAL MEASURES**

A- In the Rodríguez Ravelo case the Court states that in such situations the disciplinary sanction already provided for by Law , should be preferable to the criminal

sanction. Therefore, in future cases concerning lawyers at litigation activity the case-law of the Court, as such settled, will apply.

B- In The Jimenez Losantos case the Court does not exclude that the Spanish law (Criminal Code) itself, as currently drafted, may be in conformity with article 10 of the Convention in certain cases:

*«51. Lastly, regarding the penalty imposed to the claimant, it's absolutely legitimate that the institutions of the State are protected by the competent authorities as guarantees of the institutional public order and a penal answer to defamation acts is not disproportionate and therefore incompatible with article 10 de la Convention (Lindon, Otchakovsky-Laurens et July, précité, § 59), (...)*

*52. In line with its case-law, the Court considers that a penalty of 100 EUR a day during 12 months (paragraphe 18), for a continued crime of serious offences followed by publicity, is not compatible with the freedom of expression guaranteed by article 10 of the Convention, but in exceptional circumstances that do not (v, mutatis mutandis, Otegi Mondragon, § 59).*

C. Some recent examples of relevant recent jurisprudence of our supreme courts (Constitutional Court and Supreme Court) show that the principles reaffirmed by the European Court of Human Rights in these judgments are indeed applied.

-Judgement 112/2016 of the Spanish Constitutional Court (20/06/2016):

*(iii) proportionality in the penal restriction when exercising the right to freedom of speech. Lastly, also the CCJ 177/2015 reveals the threats derived from the use of ius puniendi in the response given by the State against an eventual exercise, whether overreached or not, of the right to freedom of speech owing to the lack of proportion which might imply to resort to this power and the discouraged effect that it could create. Thus, the said decision states that the limits to which the right to freedom of speech is subject to, should always be weighted with scrupulous rigour, given the preferential position occupied by freedom of speech, whenever this freedom is in conflict with another fundamental rights or interests of considerable social and political relevance supported by criminal law. Thereupon, it should be mentioned that, when this happens, those restrictions must always be interpreted in such a way that the right to freedom of speech has not been denatured, which would force the penal judge to bear in mind its constitutional content in order "not to*

run the risk that Criminal law turns in a deterrent against the exercise of freedom of speech, which is highly undesirable in a democratic State” [LP 2.(d)]

-Judgement 65/2015 of the Spanish Constitutional Court (BOE núm. 122, de 22 de mayo de 2015):

*It has not to be ignored that, in relation with what has been said, undue criticisms with no basis to the Judge in the practice of his functions may affect not only his professional honourability but also, as said before, to the confidence in justice (v. Judgement of the EChTR 11 July 2013, casoe Morice v. Francia, paragraphe 107), which is one of the crucial basements of State of Law.*

(...)

*The Judge knowing confronted positions based, respectively, in the defense of honour and the defense, on the other hand, of proper and legitimate freedom of expression must, as said before, balance between one and the other legal situation regarding the circumstances of the case; the content and context of the expressions said or written; its afflictive intensity over other's honour; the posible public interest of the matter about which those expressions were made; the public condition (as a person of social notoriety or public authority) or private of whom has been affected his or her ex art. 18.1 CE (honour and private intimacy); the generic or, on the other hand, individualised nature of expressions that can be used in name of freedom of expression ex art. 20.1 a) CE and may cause a harm to other rights(..). All of which are examples in our case-law (SSTC 46/1998, de 2 de marzo, FFJJ 2 a 5; 174/2006, de 5 de junio, FJ 4, and 9/2007, FJ 4).*

- Judgement of the Spanish Supreme Court (Civil Section) 482/2016 (04/02/2016):

7. What has been stated in previous paragraphs allows it to apply the doctrine set forth by this Chamber which, in similar cases, has long recognized that *freedom of information and speech gains great importance and a prevalent position where they conflict with rights granted by Article 18.1 of the Constitution, whether the parties involved* (Members of Parliament who made the assessment and the person they refered to, namely the applicant, whose public nature has been already justified) or the subject on which it has been reported and debated ( public works at a very high cost, involving delays, deficiencies and budgetary deviations; irregularities in public procurement; the suspicion of promoting private interest at the expense of collective interest, etc.), and the fact to publicize certain news or express a critical view in the matter is not only lawful but necessary to give full effect to the right of citizens to know how public affairs are being governed.



#### D. Publication and dissemination of the cases:

The judgements have 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.

- They are available to the public in the webpage maintained by the Ministry of Justice under the responsibility of the Agent of Spain before the ECHR. 1. The judgments have been widely disseminated to the judicial bodies directly concerned, to all the authorities within the judiciary and the prosecutor, translated into Spanish and at the disposal of the public in the Ministry's webpage:
- [http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427852931?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadername2=Grupo&blobheadervalue1=attachment%3B+filename%3DSentencia\\_RODRIGUEZ\\_RAVELO\\_c\\_Espa%C3%B1a.pdf&blobheadervalue2=Docs\\_TEDH](http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427852931?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadername2=Grupo&blobheadervalue1=attachment%3B+filename%3DSentencia_RODRIGUEZ_RAVELO_c_Espa%C3%B1a.pdf&blobheadervalue2=Docs_TEDH)
- [http://www.mjusticia.gob.es/cs/Satellite/Portal/1292428062044?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadername2=Grupo&blobheadervalue1=attachment%3B+filename%3DSentencia\\_JIMENEZ\\_LOSANTOS\\_c\\_Espana.pdf&blobheadervalue2=Docs\\_TEDH](http://www.mjusticia.gob.es/cs/Satellite/Portal/1292428062044?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadername2=Grupo&blobheadervalue1=attachment%3B+filename%3DSentencia_JIMENEZ_LOSANTOS_c_Espana.pdf&blobheadervalue2=Docs_TEDH)
- Of course they have been sent to HUDOC too.
- 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.
- Both judgements have been widely reported in Spanish media<sup>i</sup>, especially that of Mr. Jimenez Losantos, a well-known journalist.

## **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 8<sup>th</sup> March 2017

The Agent of the Kingdom of Spain

Rafael A. León Caverio

### **P.S. Please see annexes:**

-Annex 1.- All documents cited in footnotes with hyperlinks

-Annex 2.- Zip file with Documents ADOK, proof of payment of just satisfaction, evidence of the dates in which bank account data has been furnished by the applicant after the initial deadline and, eventually, revision of final national judgments.

-Annex 3 – Administrative resolutions cancelling causes in the National Registry of Criminal Causes

**TO THE DEPARTMENT FOR THE EXECUTION OF JUDGEMENTS.**

**COMMITTEE OF MINISTERS - COUNCIL OF EUROPE**

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[http://www.abc.es/espana/canarias/abci-tribunal-estrasburgo-ampara-abogado-canario-condenado-criticar-juez-201601131347\\_noticia.html](http://www.abc.es/espana/canarias/abci-tribunal-estrasburgo-ampara-abogado-canario-condenado-criticar-juez-201601131347_noticia.html)

<http://www.laprovincia.es/fuerteventura/2016/01/13/estrasburgo-da-razon-abogado-fernando/781174.html>

[http://www.ararteko.net/contenedor.jsp?seccion=s\\_fnot\\_d4\\_v1.jsp&title=TEDH%3A+Caso+de+ROD+RIGUEZ+RAVELO+vs.+Espa%F1a&contenido=10693&tipo=8&nivel=1400&layout=contenedor.jsp&codResi=1&language=es&codMenu=411&codAdirecto=38](http://www.ararteko.net/contenedor.jsp?seccion=s_fnot_d4_v1.jsp&title=TEDH%3A+Caso+de+ROD+RIGUEZ+RAVELO+vs.+Espa%F1a&contenido=10693&tipo=8&nivel=1400&layout=contenedor.jsp&codResi=1&language=es&codMenu=411&codAdirecto=38)

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<http://www.libertaddigital.com/espana/2016-06-14/strasburgo-condena-a-espana-por-el-caso-jimenez-losantos-1276576288/>

[http://politica.elpais.com/politica/2016/06/14/actualidad/1465898995\\_955150.html](http://politica.elpais.com/politica/2016/06/14/actualidad/1465898995_955150.html)

[http://www.elespanol.com/espana/20160615/132736728\\_0.html](http://www.elespanol.com/espana/20160615/132736728_0.html)

[http://www.abc.es/sociedad/abci-tribunal-europeo-ampara-libertad-expresion-losantos-frente-ruiz-gallardon-201606141442\\_noticia.html](http://www.abc.es/sociedad/abci-tribunal-europeo-ampara-libertad-expresion-losantos-frente-ruiz-gallardon-201606141442_noticia.html)