Spain

EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENTS

MAIN ACHIEVEMENTS IN MEMBER STATES

The present survey presents short summaries[1] of a selection of the main reforms and achievements reported in final resolutions since the Convention system was amended in 1998 by Protocol No. 11, with a clear focus on recent reforms referring, however, also to important earlier developments.

In view of the wealth of cases closed, the selection concentrates on those which have led to changes of legislation or government regulations or the adoption of new policies or general guidelines from superior courts. As a rule, the survey does not cover information on measures aiming at providing individual redress to applicants.

The presentation is organised country-by-country and reforms are, in principle, presented in the order corresponding to the thematic domains used in the Council of Europe's specialised database HUDOC EXEC and the Committee of Ministers' Annual Reports on the Supervision of the Execution of the European Court of Human Rights' judgments.

Many reforms address issues which appear to be on-going challenges in the member State. The effects of reforms adopted at one point in time may thus need to be monitored and possibly re-evaluated as conditions change.[2]

[1] The summaries are the sole responsibility of the Department for the execution of the judgments of the European Court of Human Rights.
[2] The presentation is limited to the information provided at the time of the adoption of the final resolution. It is recalled in this context that the Committee of Ministers has issued Recommendation (2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

Actions of security forces and effective investigations

The Public Prosecution Service made particular efforts to prosecute crimes of torture and inhuman or degrading treatment, as stated in its annual reports since 2007. Following the ratification, in 2006, of the Optional Protocol to the UN Convention against Torture, the Ombudsman's Office, as National Prevention Mechanism, began its activities in 2010. In 2008, the Constitutional Court developed its case law, underlining the absolute prohibition of torture and the authorities' obligation to carry out effective investigations into such acts. Legislation in 2015 established the pecuniary liability of the administration in cases in which a person suffers harm and a causal link between that harm and the functioning of a public service can be proven.

San Argimiro Isasa (2507/07+)
Final Resolution CM/ResDH(2017)281

Right to liberty and security

The *habeas corpus* procedure was regulated in 1984, providing immediate access to court for every person claiming to have been illegally detained.

Barberà, Messegué and Jabardo (10590/83)
Final Resolution CM/ResDH(94)84

The disciplinary sanction of house arrest for members of the Guardia Civil was abolished in 2007.

Dacosta Silva (69966/01)
Final Resolution CM/ResDH(2010)110

Functioning of justice

Fairness of proceedings

As concerns criminal proceedings, the possibility of cassation on the grounds of a violation to a constitutional right as well as the possibility to request the annulment of judicial acts which are proved to violate the principle of a fair hearing, the right to be assisted by counsel or the rights of the defence were introduced by organic law in 1988.
Case-law developed by the Constitutional and the Supreme Courts underlined the rights of the accused, in particular with regard to the accusatorial procedure, equality of arms, publicity, the presumption of innocence and the rights of the defence.

Barberà, Messegué and Jabardo (10590/83)
Final Resolution CM/ResDH(94)84

Additional safeguards as regards the composition of military courts and the procedural rules applicable to ensure these courts' impartiality were introduced in 2003.

Perote Pellon (45238/99)
Final Resolution CM/ResDH(2005)94

According to constitutional court jurisprudence from 2002, implemented by the ordinary courts and codified in 2015, courts of appeal are no longer competent to decide a case on the merits without a full hearing, if it involves the overturning of an acquittal at first instance. The possibility (already recognised in the practice of the highest national courts) to request the reopening of judicial proceedings following a judgment by the European Court was introduced and the victim's status was strengthened by law in 2015.

Igual Coll (37496/04+)
Final Resolution CM/ResDH(2017)69

Access to a court

The 1998 Law on Conflicts of Jurisdiction in Administrative Cases resolved the controversy over the identification of the first day of the time-limit for lodging an appeal against judgments (i.e., the date of notification or the date of publication).

Miragall Escolano and Others (38366/97+)
Final Resolution CM/ResDH(2001)158

Remedies against excessive length of proceedings

In a first reform wave, that occurred between 1982 and 1990, 600 new courts were created, that is, an average of more than six new courts per month, including single-judge courts, social courts and juvenile courts. The territorial organisation of the judicial system was improved in 1988 and led to the creation of 1,570 new judicial posts (judges, clerks of court and administrative officers). The 2011 law on the acceleration of proceedings and the 2012 law on mediation in civil and commercial cases improved the efficiency of civil, labour, criminal, enforcement, administrative and bankruptcy proceedings, while progress was made concerning legal aid. In 2015, amendments of the Constitutional Law on the Judiciary, the Civil Procedure Code and the Criminal Procedure Code made courts' organisation more flexible and user-friendly.

Unión Alimentaria Sanders S.A, (11681/85)
Final Resolution CM/ResDH(90)40

The victim's status in criminal proceedings was strengthened in 2015. A common administrative procedure for all public administration was introduced in 2015. The use of communications and information technologies in the administration of justice was regulated by law in 2011, improving case-management and the administration of justice.

Moreno Carmona (26178/04)
Final Resolution CM/ResDH(2018)35

No punishment without law

The case concerns the "Parot doctrine" that was adopted in 2006 by the Supreme Court, establishing that sentence reductions for good behaviour, including remission for work performed, were to apply to each sentence individually and not to the maximum term. In response to the European Court's judgment which found that the above case-law contravened the principle of non-retroactivity of criminal law, the criminal courts discontinued the application of the "Parot doctrine" and this was endorsed by the Criminal Division of the Supreme Court in 2013. The Constitutional Court has sent all cases pending before it back to the *Audiencia Nacional* for new decisions. As a result, all persons affected by the "Parot doctrine" have been released.

Del Rio Prada (42750/09)
Final Resolution CM/ResDH(2014)107

Protection of private and family life

Access to one's child and international child abduction

Child abduction by a parent, while previously considered a disobedience, was criminalised in 2002, thereby allowing the issuing of an international arrest warrant, and thus making it easier for Spanish courts to request international action including under the Hague Convention.

Iglesias Gil et A.U.I. (56673/00)
Final Resolution CM/ResDH(2006)76

The former Law for Legal Protection of Minors was replaced in 2015 by new legislation improving the legal system for the protection of childhood and adolescence, referring to the European Convention on the Adoption of Children, the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse as well as the European Convention on the Exercise of Children's Rights. The law addressed, in particular, the situation of unaccompanied foreign minors while a national authority was created to focus exclusively on child protection.

Saleck Bardi (66167/09+)
Final Resolution CM/ResDH(2018)150

Right to home/noise pollution

A 2003 Royal Decree on the assessment and management of environmental noise defined the national strategy on noise, inclduing action plans and information to the population. A 2007 Royal Decree on acoustic zoning, quality

Martínez Martínez (21532/08)
Final Resolution CM/ResDH(2017)223

objectives and acoustic emissions established environmental quality objectives both indoors and outdoors and set maximum noise levels. Lastly, relevant case-law was developed by the Constitutional Tribunal, the Supreme Court and regional Supreme Courts.
Since 2002, the legislation on protection against exposure to noise intrusion has been developed. Notable developments include quality objectives for both indoors and outdoors, as well as maximum noise levels. As to jurisprudence, there are positive examples showing that domestic courts have progressively taken into account the jurisprudence of the ECtHR on noise pollution.

Protection against religious discrimination

In 2015, the possibility for Evangelical Church ministers to have their earlier years of pastoral service prior to their integration into the social-security scheme taken into account for the calculation of the minimum period necessary to be entitled to retirement pensions was recognised by Royal Decree 839/2015.

Manzanas Martin (17966/10)
Final Resolution CM/ResDH(2016)205