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Item reference: Updated action report (12/12/2016)

Communication from Spain concerning the Igual Coll group of cases against Spain (Application No. 37496/04)

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

Référence du point : Bilan d'action mis à jour

Communication de l'Espagne concernant le groupe d'affaires Igual Coll contre Espagne (Requête n° 37496/04) ***(anglais uniquement)***

MINISTERIO
DE JUSTICIA

ABOGACÍA GENERAL DEL ESTADO
DIRECCIÓN DEL SERVICIO IURÍDICO 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: 37496/04 Igual Coll and joinder executions in similar cases as detailed below

Information submitted by the Kingdom of Spain on the 14th October 2016, revised on 12th December 2016.

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
37496/04	Igual Coll	10/03/2009	10/06/2009
17122/07	Marcos Barrios	21/09/2010	21/12/2010
15256/07	García Hernández	16/11/2010	16/02/2011
16096/08	Almenara Álvarez	25/10/2011	25/01/2012
23002/07	Lacadena Calero	22/11/2011	22/02/2012
21460/08	Valbuena Redondo	13/12/2011	13/03/2011
49183/08	Serrano Contreras	20/03/2012	20/05/2012
5606/09 17516/09	Vilanova Goterris Llop García	27/08/2012	27/11/2012
26234/12	Nieto Macero	08/10/2013	08/01/2014
18054/10	Sainz Casla	12/11/2013	12/02/2014
47530/13	Porcel Terribas y otros	08/03/2016	08/06/2016
61112/2012	Gómez Olmeda	29/03/2016	29/06/2016

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Case number: *37496/04 Igual Coll vs Spain*

And joinder execution in cases*:*

17122/07 Marcos Barrios
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21460/08 Valbuena Redondo
05606/09 Vilanova Goterris
26234/12 Nieto Macero
47530/13 Porcel Terribas y otros
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23002/07 Lacadena Calero
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17516/09 Llop García
18054/10 Sainz Casla
61112/12 Gomez Olmeda

II. SUMMARY OF THE CASES

These cases were brought by applicants who posted writs before the ECtHR under articles 6§1 and 41 ECtHR.

All of them have in common that they were acquitted of all criminal charges by the national first instance judges.

The Public Prosecutor and, in some cases, the private prosecutor, filed appeals against acquittal before the upper Criminal Tribunals (Audiencia Provincial).

The Audiencia Provincial, without holding a public hearing or in a public hearing in which no personal evidence could be produced, condemned the applicants.

They exhausted the internal remedies, filing an Amparo Appeal before the Constitutional Court that was either unadmitted or rejected on the merits.

They alleged that the right to a fair trial –in the sense of having been condemned without the possibility of practising all relevant evidence (in particular, cross examining of parties, witnesses and experts) before the Tribunal- (article 24 of the Spanish Constitution and article 6§1 of the ECHR) had been breached.

The Constitutional Tribunal considered that no breach of the right to a criminal fair trial had been proved, as either the Higher Courts had not modified the statement of facts but only its legal relevance, or had modified the facts taking exclusively into account means of proof (i.e. documents) that did not require further examining in a new public hearing.

The applicants also claimed for just satisfaction under article 41 ECHR.

The ECtHR, when adjudicating all these cases, considers that :

a) *"(…) a public hearing is necessary where the appellate court is called upon to examine anew facts taken to have been established at first instance and reassess them, going beyond strictly legal considerations"* (Igual Coll § 36 and Gómez Olmeda § 33).

b) *"In this regard, the Court has found that where an appellate court is called upon to carry out an assessment of the subjective element of the offence, as has been the case, it would in the circumstances have been necessary for the court to conduct a direct and personal examination of the evidence given in person by the accused who claims that he has not committed the act alleged to constitute a criminal offence (see Lacadena Calero, cited above, § 47)."* (*Gómez Olmeda* § 35)

c) Therefore, holds that there has been a violation of article 6§1 of the Convention.

d) The ECtHR considers, in most of these cases, as shown below, that a sum 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

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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.

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:

Application number	Case	Sum awarded Just Sat. + costs €	Deadline	Date of payment (ADOK)
37496/04	Igual Coll	None	10/09/2009	
17122/07	Marcos Barrios	None	21/03/2011	
15256/07	García Hernández	None	16/05/2011	
16096/08	Almenara Álvarez	8.000 4.000	25/04/2012	07/03/2012
23002/07	Lacadena Calero	8.000 5.000	22/05/2012	07/03/2012
21460/08	Valbuena Redondo	8.000 5.000	13/06/2011 (Extended to 19/6/2012[1])	24/04/2012[2]
49183/08	Serrano Contreras	13.000 5.000	20/08/2012	10/02/2012
5606/09 17516/09	Vilanova Goterris Llop García	(2 x) 3.000 (2 x) 7.500	27/02/2013 27/02/2013	21/02/2013 21/02/2013
26234/12	Nieto Macero	2.904	08/04/2014	09/12/2013
18054/10	Sainz Casla	8.000 5.000	12/05/2014	26/12/2013
47530/13	Porcel Terribas y otros 3	(4 x) 6.400	08/09/2016 (x4)	09/09/2016[3] (x4)
61112/2012	Gómez Olmeda	6.400 20138,62	29/09/2016	09/09/2016

- **Other Measures**

The Constitutional Court issued a leading judgment number 245/1991 of 16th December, which opened the possibility for the condemned persons to seek the revision of final criminal judgments when the ECtHR had declared a violation of article 6 of the Convention.

[1] The applicant did not furnish bank account data until 19/03/2012.

[2] The applicant did not furnish bank account data until 19/03/2012.

[3] One of the applicants died in the meanwhile and documents concerning inheritance were awaited.

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18054/10 Sainz Casla
61112/12 Gomez Olmeda

The case-law of the Spanish Constitutional Court is binding for all the judiciary, according to article 87[4] of its Organic Law, 2/79, of 3rd October 1979.

Therefore, upon request of the incumbent applicants, the Supreme Tribunal could revise their national final criminal judgment in order to comply with the judgment of the ECtHR[5].

In its Decision of 5th November 2014[6] the Supreme Tribunal establishes, in line with the general Decision of the Plenary Formation of this Tribunal of 21st October 2014, that any judgment of the ECtHR should be considered as valid ground to seek revision of any criminal final judgment according to article 954.4 of the Law on Criminal Procedure, notwithstanding the -then- pending obligation of the Parliament to issue a more clear regulation to this respect.

In fact the Supreme Tribunal has revised the national final criminal judgments in every case in which the applicants before the ECtHR have so requested, as shown in the following chart:

Application number	**Case**	**Revision Appeal**	**Judgment of the Supreme Tribunal**	**Outcome**
37496/04	Igual Coll	Not recorded, so far		
17122/07	Marcos Barrios	Not recorded, so far		
15256/07	García Hernández			
16096/08	Almenara Álvarez	Casación nº 20385/2012	145/2015 of 12th March[7]	Quashing final judgment. New hearing on appeal before new judgment on the merits
23002/07	Lacadena Calero			
21460/08	Valbuena Redondo			
49183/08	Serrano Contreras	Casación nº 20590/2014	330/2015, of 19th March[8]	Partially quashing final judgment, in the part affected by the ECtHR adjudication
5606/09	Vilanova Goterris	Casacion nº 20957/2014	633/2015 of 23rd October[9]	Quashing final judgment = acquittal

[4] *"Article 87*
1. The judgements of the Constitutional Court shall be binding on all public authorities.
2. The courts shall provide the Constitutional Court, as a matter of priority and urgency, with any legal co-operation and assistance it may request."

[5] As we already informed the *Department for the Execution of ECtHR Judgments* when forwarding our action plan on this set of repetitive cases.

[6] http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7209458&links=tedh%20%2220321%2F2013%22&optimize=20141119&publicinterface=true

[7] http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7342529&links=%2220385%2F2012%22&optimize=20150407&publicinterface=true

[8] http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7412242&links=%2220590%2F2014%22&optimize=20150622&publicinterface=true

[9] http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7507699&links=%2220957%2F2014%22&optimize=20151102&publicinterface=true

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17516/09 Llop García
18054/10 Sainz Casla
61112/12 Gomez Olmeda

17516/09	Llop García	Casación nº 20321/2013	177/2015 of 26th March[10]	Quashing final judgment = acquittal
26234/12	Nieto Macero	Not recorded, so far		
18054/10	Sainz Casla	Nor recorded, so far		
47530/13	Porcel Terribas y otros 3	Nor recorded, so far		
61112/2012	Gómez Olmeda	Not recorded, so far		

The Parliament has recently modified the Organic Law of the Judiciary and the Law on Criminal Procedure so that the applicant 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.

[…]

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.

10 http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7383199&links=%2220321%2F2013%22&optimize=20150519&publicinterface=true

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/her can be quashed.

One final specific remark should be added regarding the Serrano Contreras case. This is the sole case within this set in which the Court has also found a violation of Article 6 of the Convention also because of the excessive length of domestic proceedings. Nonetheless in the frame of this execution procedure there are no individual measures to be taken as the domestic proceedings ended and the question of the general measures is monitored in the framework of the Moreno Carmona group of cases, which concerns the excessive length of judicial proceedings.

IV. GENERAL MEASURES

- The judgements identified a systemic problem in the Spanish legislation in some cases.

According to former wording of article 791 of the Law Criminal Procedure an appellation hearing could only be agreed by the competent second instance criminal Court upon the request of a party or on its own motion only if "it deemed it necessary to reach a sound decision".

The appellate Court had full competency, when adjudicating on second instance, to quash the previous acquittal or to aggravate the previous condemnation.

Therefore, if the Second Instance Criminal Court decided not to convene an oral hearing when deciding on appellation of a first instance judgement in which the accused persons had already been acquitted or received a lesser punishment, there was a risk of skipping the practice of personal means of proof that might be needed for a fait trial before convicting the accused for the first time or aggravating the previous condemnation.

As the ECtHR rightly points out in the Gomez Olmeda Judgment § 33 :

"(…) a public hearing is necessary where the appellate court is called upon to examine anew facts taken to have been established at first instance and reassess them, going beyond strictly legal considerations (see, Igual Coll, cited above, § 36)".

- To prevent this from happening, it two courses of action were followed:

  a) A case-law adjustment when interpreting the law, so that the appellate Court would grant public oral hearing in such cases.

  b) An amendment of the Law on Criminal Procedure, to further clarify the question.

- As regards the adjustment in the case-law:

- The Constitutional Tribunal in its Plenary formation´s leading judgment 167/2002 of 18th December, followed by several judgments (126/2012 of 18th June, 22/2013 of 31st January, 43/2013 of 25th February, among others) has consolidated a constitutional doctrine in this sense [11] . In its Plenary judgment 88/2013 of 11 April, in Recurso de Amparo 10.713/2013[12],

[11] " *7. El alcance de las garantías constitucionales para quien resulta condenado en la segunda instancia, tras revisar una previa absolución, fue objeto de un detenido análisis, inspirado en la doctrina del Tribunal Europeo de Derechos Humanos (entre otras, SSTEDH de 26 de mayo de 1988, caso Ekbatani c. Suecia, o de 27 de junio de 2000, caso Constantinescu c. Rumania), por el Pleno de este Tribunal Constitucional en la STC 167/2002, de 18 de diciembre, FFJJ 9 a 11, según la cual el respeto a los principios de publicidad, inmediación y contradicción, que forman parte del contenido del derecho a un proceso con todas las garantías (art. 24.2 CE), impone inexorablemente que toda condena articulada sobre pruebas personales se fundamente en una actividad probatoria que el órgano judicial haya examinado directa y personalmente en un debate público, en el que se respete la posibilidad de contradicción.*

A partir de ello, se ha consolidado una doctrina constitucional, reiterada en numerosas resoluciones (entre las últimas, SSTC 126/2012, de 18 de junio, FJ 2; 22/2013, de 31 de enero, FJ 4; o 43/2013, de 25 de febrero, FJ 5), según la cual resulta contrario a un proceso con todas las garantías que un órgano judicial, conociendo a través de recurso, condene a quien había sido absuelto en la instancia o empeore su situación como consecuencia de una nueva fijación de los hechos probados que encuentre su origen en la reconsideración de pruebas cuya correcta y adecuada apreciación exija necesariamente que se practiquen en presencia del órgano judicial que las valora —como es el caso de las declaraciones de testigos, peritos y acusados (así, entre otras, SSTC 197/2002, de 28 de octubre, FJ 4, o 1/2010, de 11 de enero, FJ 3)—, sin haber celebrado una vista pública en que se haya desarrollado con todas las garantías dicha actividad probatoria."
(STCo 88/2013, of 11st April, § 7)

[12] http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/23401

gathering all the relevant case-law on this subject of the ECtHR, it also made clear that the public hearing would be needed even when the subjective elements of the criminal offence were to be reassessed if, although not altering the statement of facts, the personal evidence already produced before the first instance Court would need to be reinterpreted.

- Accordingly, the Supreme Tribunal, in judgments 333/2012 of 26th April, 39/2013 of 31st January,400/2013 of 16th May, 517/2013 of 17th June and, finally, among others, 731/2015 of 19th November[13], rejects quashing acquittal judgments when a public hearing has not been performed in second instance, based on the above mentioned ECtHR case-law. Therefore, the Supreme Tribunal has unadmitted such pleas as manifestly ill-founded in several decisions (Autos) even before the procedural stage devoted to the consideration of the merits[14].

- A clear proof that the Spanish judiciary has abiden by the ECtHR case-law deriving from these cases, which has been internally transposed by the Constitutional Court and the Supreme Tribunal, can be found in the recent ECtHR judgment of 20th September 2016[15] in case 16033/12, Hernández Royo vs Spain. In its §§ 36 -41 the ECtHR refers to the correct case-law of the Spanish Constitutional Court, applied by the Second Instance Court, considering that, in the instant case, there has not been a violation of article 6 § 1 of the Convention[16].

13
http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7546677&links=%22731%2F2015%22&optimize=20151204&publicinterface=true

*"**CUARTO.-** El Tribunal Europeo de Derechos Humanos, en sentencias como las de 10 de marzo de 2009 (caso Igual Coll), 26 de mayo de 1988 (caso Ekbatani), 21 de septiembre de 2010 (caso MarcosBarrios) o 16 de noviembre de 2010 (caso García Hernández) aprecia vulneración del Art. 6 1º del CEDH cuando la revisión condenatoria se realiza modificando la apreciación de los hechos, y considera, "a contrario sensu", que es admisible la revisión de sentencias absolutorias, aun cuando no se celebre nueva audiencia del acusado, si se trata exclusivamente de decidir sobre una cuestión estrictamente jurídica, es decir de modificar la interpretación de las normas jurídicas aplicadas por el Tribunal de Instancia, (Ver SSTEDH de 10 de marzo de 2009, caso Igual Coll c. España , § 27; 21 de septiembre de 2010, caso Marcos Barrios c. España, § 32 ; 16 de noviembre de 2010, caso García Hernández c. España , § 25; 25 de octubre de 2011, caso Almenara Álvarez c. España, § 39 ; 22 de noviembre de 2011, caso Lacadena Calero c. España , § 38 ; 13 de diciembre de 2011, caso Valbuena Redondo c. España , § 29; 20 de marzo de 2012, caso Serrano Contreras c. España , § 31; o STEDH de 27 de noviembre de 2012, caso Vilanova Goterris y Llop García c. España)."*

14 For example, Auto 1464/2015 of 5th November in cassation appeal 1531/2015, among several others.
Consult at
:http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7548205&links=%221464%2F2015%22&optimize=20151207&publicinterface=true

15 http://hudoc.echr.coe.int/eng?i=001-166742

16 *"**b) Application de ces principes en l'espèce***
36. La Cour constate que la cause portée devant elle présente certaines particularités par rapport aux affaires susmentionnées. En effet, il n'est pas contesté qu'une audience a eu lieu devant l'Audiencia provincial de Saragosse, à laquelle était présent le deuxième requérant. La Cour observe également que le premier requérant avait été personnellement assigné à comparaître, qu'il n'était pas présent le jour de l'audience et que le représentant des requérants, présent quant à lui devant l'Audiencia provincial, n'a pas fourni d'explication sur cette non-comparution. Elle note aussi que, au cours de l'audience, les deux témoins proposés par la partie accusatrice privée ont été entendus.
37. À ce propos, la Cour relève que, dans son arrêt notifié le 25 octobre 2011, le Tribunal constitutionnel a reproché aux requérants de ne pas avoir fait usage des possibilités dont ils disposaient pour demander à être entendus devant l'Audiencia provincial. La Cour souscrit à cette approche, et elle estime que les requérants auraient en effet pu, dans un premier temps, demander à être entendus au moment où la juridiction d'appel les a informés de l'existence d'un recours à l'encontre du jugement du 25 juin 2008. Elle rejette sur ce point l'argument des requérants, qui se sont retranchés derrière les limitations du code de procédure pénale. Comme rappelé par la haute juridiction, il est suffisamment avéré que la jurisprudence constitutionnelle permet de réadministrer les preuves de nature personnelle (tels les témoignages) déjà administrées devant la juridiction de première instance en cas de contestation de faits établis (paragraphe 18 ci-dessus).

- On top of that, the Law on Criminal Procedure has been amended by Law 41/2015, of 5th October. The amendment is aimed at strengthening procedural safeguards[17]. As regards the aims of the enhancement on criminal appellation we can cite para. IV of its preamble. It clarifies that:

  " (…) It has been considered necessary to further regulate the criminal appellation with new legal provisions concerning the cases in which the appellant's plea consist in the possible mistake in the evaluation of the means of proof [by the first instance judge] and on which might be the scope of the adjudication that the second instance criminal court can deliver in such cases, with the aim of aligning the law to the constitutional doctrine and, in particular, with the requirements derived from the immediacy principle.

  As to the first, when the prosecutor´s plea is grounded on such a mistake, either to quash an acquittal judgment or to aggravate the punishment, he/she should elaborate on the reasons why he/she deems that the judgment is based on insufficient reasoning or is absent of rationale, or that it is manifestly ill-founded according to common experience standards or omits any motivation as to the evidence that has been produced, being relevant, or the evidence whose nullity has been unduly declared.

  In these cases, the competency of the appellate Court will be limited to quashing the first instance judgment, if need be, being obliged to determine the effects of such declaration, that is to say, whether it is limited either to quashing the first instance judgment alone, or annul-

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38. Par ailleurs, la Cour note, à l'instar de la haute juridiction, que, après l'audition des témoins devant l'Audiencia provincial, le représentant des requérants a omis de proposer l'interrogatoire de ses clients, alors que celui-ci lui aurait permis de contester les déclarations desdits témoins.
39. La Cour revient ensuite sur la question de savoir si, en l'espèce, l'audience des accusés en appel constituait une exigence dérivée des droits de la défense. À cet égard, il convient de se référer au raisonnement du Tribunal constitutionnel, qui, après avoir cité exhaustivement la jurisprudence de la Cour, a considéré que la juridiction d'appel avait effectué une nouvelle appréciation des faits établis par le juge pénal et qu'il était par conséquent nécessaire d'entendre les requérants. Après avoir analysé de manière très détaillée les démarches entreprises par l'Audiencia provincial, le Tribunal constitutionnel a estimé, au moyen d'arguments qui ne peuvent être considérés comme arbitraires ou déraisonnables, que l'assignation personnelle des requérants, décidée d'office par la juridiction d'appel, avait permis à ces derniers d'être entendus et avait par conséquent garanti le droit des intéressés à se défendre. La Cour souscrit à cette conclusion et est d'avis qu'aucun manque de diligence ne peut être reproché à l'Audiencia provincial quant au droit des requérants à ce que leur cause soit entendue équitablement. En effet, eu égard à la nature des questions soulevées en appel (lesquelles incluaient l'administration de nouvelles preuves), l'Audiencia, à sa propre initiative, a procédé à convoquer personnellement les requérants à l'audience publique, ce qui leur aurait permis d'intervenir, si tel avait été leur souhait. Le premier requérant ne s'est pas présenté à l'audience, sans que son représentant ait justifié l'absence (paragraphe 7 ci-dessus). Quant au deuxième requérant, il était présent à l'audience avec son représentant, mais n'a pas souhaité intervenir. La Cour prend note de ces éléments et considère que ce sont les requérants eux-mêmes qui ont renoncé à l'exercice de cette possibilité offerte par l'Audiencia provincial (voir, mutatis mutandis, Kashlev c. Estonie, no 22574/08, §§ 45-46 et 51, 26 avril 2016).
40. La Cour estime enfin nécessaire d'examiner le grief des requérants portant sur la nécessité d'administrer à nouveau la totalité des preuves déjà administrées devant le juge pénal. Elle rappelle que, si la Convention garantit en son article 6 le droit à un procès équitable, elle ne réglemente pas pour autant l'admissibilité des preuves en tant que telle, matière qui relève au premier chef du droit interne (Schenk c. Suisse, 12 juillet 1988, §§ 45-46, série A no 140, Teixeira de Castro c. Portugal, 9 juin 1998, § 34, Recueil des arrêts et décisions 1998-IV, et Heglas c. République tchèque, no 5935/02, § 84, 1er mars 2007). En effet, la tâche de la Cour consiste à examiner si la procédure, y compris le mode d'obtention des preuves, a été équitable dans son ensemble.
41. À la lumière des arguments qui précèdent, la Cour n'aperçoit pas de raisons valables de s'écarter des conclusions auxquelles sont parvenues les juridictions internes, et, en particulier, le Tribunal constitutionnel. En effet, les requérants avaient la possibilité d'être présents à l'audience et de s'exprimer à cette occasion sur la nouvelle appréciation des faits, mais ils n'en ont pas fait usage. Par conséquent, la Cour conclut qu'il n'y a pas eu violation de l'article 6 § 1 de la Convention. »

[17] https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-10726

ling the prior public hearing too and, in this last case, determining whether the first instance court should change its formation in order to warrant the bench impartiality."

Accordingly, if the appellate Court considers that a mistake on appreciation of the means of evidence might have happened it will quash the first instance judgment and will oblige the first instance court to:

- Either reconsider the evidence which was produced before it, issuing a new judgment, if there has been no breach of the right to a fair trial in the public hearing.

- Or, when otherwise, order for a public hearing to be held anew before it, with a new formation if the impartiality principle so commands.

It is expressly stated that *"The appellate judgment cannot either condemn the accused who was acquitted in first instance or aggravate the condemnation when a mistake in the evaluation of the mean of proof is established according to para. 3 or Section 790.2" (Section 792.2).*

V. PUBLICATION AND DISSEMINATION OF THE JUDGEMENT

- 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[18].

- 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 media[19].

VI. STATE OF EXECUTION OF THE JUDGEMENT

[18] http://www.mjusticia.gob.es/cs/Satellite/Portal/es/areas-tematicas/area-internacional/tribunal-europeo-derechos/jurisprudencia-tedh/articulo-derecho-proceso#Su_1288782520579

[19] http://www.elmundo.es/elmundo/2012/11/27/castellon/1354016326.html

http://www.ideal.es/granada/provincia-granada/201603/08/estrasburgo-condena-espana-tras-20160308140017.html

http://politica.elpais.com/politica/2016/03/29/actualidad/1459239386_021211.html

http://www.20minutos.es/noticia/1974160/0/fallo-contra-espana/condena-estrasburgo/no-oir-apelacion/

Case number: *37496/04 Igual Coll vs Spain*

***And joinder execution in cases**:*

17122/07 Marcos Barrios
16096/08 Almenara Álvarez
21460/08 Valbuena Redondo
05606/09 Vilanova Goterris
26234/12 Nieto Macero
47530/13 Porcel Terribas y otros
15256/05 García Hernández
23002/07 Lacadena Calero
49183/08 Serrano Contreras
17516/09 Llop García
18054/10 Sainz Casla
61112/12 Gomez Olmeda

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 14th October 2016

The Agent of the Kingdom of Spain

Rafael A. León Cavero

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.

TO THE DEPARTMENT FOR THE EXECUTION OF JUDGEMENTS.

COMMITTEE OF MINISTERS

COUNCIL OF EUROPE