

In the case of Díaz Ruano v. Spain\*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,  
Mr F. Gölcüklü,  
Mr F. Matscher,  
Mr S.K. Martens,  
Mr R. Pekkanen,  
Mr A.N. Loizou,  
Mr J.M. Morenilla,  
Mr B. Repik,  
Mr P. Jambrek,

and also of Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 22 April 1994,

Delivers the following judgment, which was adopted on that date:

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\* Note by the Registrar. The case is numbered 42/1993/437/516. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

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## PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 8 December 1993, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 16988/90) against the Kingdom of Spain lodged with the Commission under Article 25 (art. 25) by a Spanish national, Mr Antonio Díaz Ruano, on 12 July 1990.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Spain recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 2 and 3 (art. 2, art. 3).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30). The President gave his lawyer leave to use the Spanish language (Rule 27 para. 3).

3. The Chamber to be constituted included ex officio Mr J.M. Morenilla, the elected judge of Spanish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 January 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr F. Matscher, Mr S.K. Martens, Mr A.N. Loizou, Mr L. Wildhaber, Mr B. Repik and Mr P. Jambrek (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr R. Pekkanen, substitute judge, replaced Mr Wildhaber,

who was unable to take part in the further consideration of the case (Rule 22 paras. 1 and 2).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Spanish Government ("the Government"), the applicant's representative and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38).

5. On 16 March 1994 the Agent informed the Registrar that the Government and the applicant had reached a friendly settlement and invited him to attend the signature of the agreement. As his prior commitments made it impossible for him to accept this invitation, the Registrar instructed Mr P. Mahoney, Head of Division in the registry, to represent him on that occasion. On 28 March in Barcelona the Agent of the Government and the applicant's lawyer signed the agreement in the presence of Mr Mahoney, who was given a copy of the text.

In a letter received on 7 April 1994, the Secretary to the Commission informed the Registrar that the Delegate had no comments to make.

6. On 22 April 1994 the Court decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from the usual procedure had been met (Rules 26 and 38).

#### AS TO THE FACTS

7. Mr Antonio Díaz Ruano lives in Ingenio (Grand Canary) and is a farmer.

In the course of a police inquiry into several thefts Mr Manuel Jesús Díaz Santana, the applicant's son, aged twenty-one, was arrested at his home at 10 a.m. on 13 October 1982. Another person - Mr F.G.C. - was also arrested in connection with the same inquiry.

8. After the death of Mr Díaz Santana while in police custody (see paragraph 10 below), a police officer was charged with homicide and tried by the Las Palmas Audiencia Provincial. In its judgment of 6 December 1986 that court found the following facts relating to the events which took place after the arrest of the applicant's son to be established.

9. The two prisoners arrived, in handcuffs, at the police station in Telde (Grand Canary) at 11 a.m. Whereas Mr F.G.C. was taken to a cell, the applicant's son, who was calm and polite and whose handcuffs had been removed, waited on a bench in the entrance to the police station.

In accordance with the legislation in force, a lawyer was officially assigned to assist the prisoners. Mr Díaz Santana was questioned by two detectives between 6.00 p.m. and 7.15 p.m. in the presence of his lawyer. He denied taking any part in the alleged offences and remained calm, although he showed some signs of tiredness. He then returned to his seat in the entrance hall. The detectives next questioned his fellow prisoner, who confessed and was taken to prison. Once the interviews were over, the lawyer left the police station and the applicant's son was informed that he would be spending the night there.

10. The two detectives then went to a nearby bar where they drank a glass of whisky. On their return, maintaining that the applicant's son had asked to see them in private, they began to question him again, but this time without the lawyer. They gave Mr Díaz Santana to understand that his situation would be improved if he provided them with information to assist them with their inquiries, but he continued

to proclaim his innocence. As the discussion progressed, he began to lose his composure and showed signs of anxiety. At 9.50 p.m., while in a state of great agitation and feeling himself to be the object of harassment, he seized a gun from the shoulder holster that one of the detectives was wearing. The gun's safety catch was off and he fired it at the other detective, who, using his police weapon, shot him and injured him in the head. Mr Díaz Santana was quickly taken to hospital but died during the journey.

11. The autopsy report dated 14 October 1982 noted that, in addition to the cause of death (a cerebral haemorrhage caused by the impact of the bullet), there were numerous superficial marks on different parts of the body. The pathologists stated on 24 October that they could not specify whether these marks had been caused before or after the gunshot, but affirmed that they must have been inflicted before death. They were, however, prepared to accept the possibility that they had not been caused by ill-treatment.

12. On 6 December 1986 the Las Palmas Audiencia Provincial found the detective who had shot the applicant's son guilty of homicide with the extenuating circumstance of self-defence ("eximente incompleta de legítima defensa") and sentenced him to two years and four months' imprisonment. He was also ordered to pay compensation to the victim's family, the State being declared liable for such compensation in the event of his failure to pay. The court took the view that the police officer could not be completely exonerated as he had provoked the victim by harassing him. It found further that there was insufficient evidence to determine the cause of the marks on the victim's body.

13. Mr Díaz Ruano, who had joined the proceedings as a civil party, the convicted detective and counsel for the State appealed on points of law.

On 6 June 1989 the Criminal Division of the Supreme Court upheld the appeals filed by the detective and counsel for the State. Finding that the police officer had acted in self-defence, it quashed his conviction. In a dissenting opinion appended to the judgment, two judges expressed the view that the defendant could not be completely exonerated, because the prisoner's attack had been in response to provocation on the part of the police officers.

14. On 29 January 1990 the Constitutional Court declared inadmissible an appeal (recurso de amparo) by the applicant alleging breaches of Articles 15 (right to life and prohibition of torture and inhuman or degrading punishment or treatment) and 24 (right to effective judicial protection) of the Constitution.

#### PROCEEDINGS BEFORE THE COMMISSION

15. Mr Díaz Ruano applied to the Commission on 12 July 1990. He alleged that his son had been subjected to torture and inhuman and degrading treatment while in police custody, in breach of Article 3 (art. 3) of the Convention, and complained that he had been questioned without a lawyer being present, in violation of Article 6 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c).

16. On 9 December 1992 the Commission declared the complaint relating to the absence of a lawyer during the interview inadmissible but found the remainder of the application (no. 16988/90) admissible. It considered in addition that the case also raised issues under Article 2 (art. 2) (right to life).

In its report of 31 August 1993 (Article 31) (art. 31), it expressed the opinion that there had been no violation of Articles 2 and 3 (art. 2, art. 3) of the Convention, by seven votes to five and eight votes to four respectively. The full text of its opinion and of the dissenting opinion contained in the report is reproduced as an

annex to this judgment\*.

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\* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 285-B of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

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#### AS TO THE LAW

17. On 28 March 1994 the Agent of the Government and the applicant's lawyer signed the following agreement in Barcelona:

"1. In case no. 16988/90, examined by the European Commission of Human Rights, which adopted its report relating thereto on 31 August 1993, the Kingdom of Spain undertakes to pay the applicant the sum of 6,000,000 pesetas (six million pesetas) on account of the events which gave rise to the application.

2. The payment of the above sum, which covers all the costs and expenses incurred by the applicant, shall be made as an ex gratia settlement and shall not in any way constitute an acknowledgement by the Spanish authorities that the provisions of the Convention have been violated in the aforesaid case.

3. Regard being had to the undertaking given in paragraph 1, the applicant and the Spanish Government request the European Court of Human Rights to strike case no. 42/1993/437/516 out of the list under Rule 49 para. 2 of the Rules of Court, since the agreement reached is of a kind to provide a solution of the matter.

4. In addition, the applicant declares that he considers the case settled and that he will not institute any further proceedings before the national or international authorities in respect of the events which gave rise to the above application."

18. The Delegate of the Commission was consulted (Rule 49 para. 2 of the Rules of Court) and indicated that he had no comments to make.

19. The Court takes formal note of the friendly settlement reached by the Government and the applicant. It discerns no reason of public policy (ordre public) why the case should not be struck out of the list (Rule 49 paras. 2 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 55 para. 2, second sub-paragraph, of the Rules of Court on 26 April 1994.

Signed: Rolv RYSSDAL  
President

Signed: For the Registrar  
Herbert PETZOLD  
Deputy Registrar