

Press release issued by the Registrar

**CHAMBER JUDGMENT
IGUAL COLL v. SPAIN**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Igual Coll v. Spain* (application no. 37496/04).

The Court held unanimously that there had been a **violation of Article 6 § 1** (right to a fair trial) of the European Convention on Human Rights in that the applicant had been convicted on appeal without having been examined at a public hearing.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 3,429.34 euros (EUR) in respect of pecuniary damage and EUR 2,000 for non-pecuniary damage. ([The judgment is available only in French.](#))

1. Principal facts

The applicant, César Igual Coll, is a Spanish national who was born in 1964 and lives in Valencia (Spain).

In a judgment delivered on 5 September 2002, following a public hearing, he was acquitted of wilfully deserting his family by not paying maintenance to his wife and son, on the ground that, being unemployed, he did not have the means.

The applicant's former wife appealed. In January 2003 the appellate court (*Audiencia Provincial*) found the applicant guilty, without holding a public hearing, and ordered him to serve eight weekends in prison and to pay the outstanding amounts. It observed that the applicant, an engineer, had not made any effort to look for a job to be able to pay the maintenance and had not shown that it was impossible to find one.

An appeal by the applicant to the Constitutional Court, in which he complained that there had been no public hearing in the appellate proceedings, was dismissed. The court held that the *Audiencia Provincial* had based its findings on facts taken to have been established at first instance and that he had been convicted on the basis of sufficient objective evidence.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 14 October 2004.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Elisabet **Fura-Sandström** (Sweden),
Boštjan M. **Zupančič** (Slovenia),
Alvina **Gyulumyan** (Armenia),
Egbert **Myjer** (Netherlands),
Ineta **Ziemele** (Latvia),
Luis **López Guerra** (Spain), *judges*,

and also Santiago **Quesada**, *Section Registrar*.

3. Summary of the judgment²

Complaints

Relying in particular on Article 6 § 1 (right to a fair trial) and Article 6 § 2 (presumption of innocence), the applicant complained that he had been convicted on appeal without a public hearing after having been acquitted at first instance, and that his conviction had been based on insufficient evidence. He further complained, under Article 13, that after he had been acquitted at first instance, he had not been able to appeal against his conviction by the *Audiencia Provincial*. Lastly, relying on Article 4 § 2, the applicant submitted that the obligation to pay maintenance compelled him to work excessively long hours, amounting to forced labour.

Decision of the Court

Article 6 § 1

The Court observed that the *Audiencia Provincial* had reached the opposite conclusion to that reached by the first-instance court – which had acquitted the applicant after a public hearing – following an examination of his intentions and conduct and the possibility for him to increase his income on account of his professional qualifications.

The *Audiencia Provincial* had therefore gone beyond strictly legal considerations in carrying out a fresh assessment of the facts. The Court considered that a public hearing was an essential requirement in such circumstances.

The Court concluded that the fact that the applicant was convicted on appeal, without having been examined in person, was not compatible with the requirements of a fair trial and that a public hearing should have been held in the appellate court. It therefore found a violation of Article 6 § 1.

Article 6 § 2

² This summary by the Registry does not bind the Court.

Having regard to its conclusion under Article 6 § 1 of the Convention, the Court considered that no separate issue arose under Article 6 § 2.

Article 13

Although the applicant's complaint concerned the right to an effective remedy, the Court pointed out that the right of appeal was guaranteed only by Article 2 of Protocol No. 7 and that Spain had yet to ratify that protocol. This part of the application was therefore incompatible *ratione personae* with the provisions of the Convention, in accordance with Article 35 §§ 3 and 4 of the Convention.

Article 4 § 2

The Court dismissed this complaint as manifestly ill-founded.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.