EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Application no. 54633/22
María Isabel GARRIDO HERRERO
against Spain

The European Court of Human Rights (Fifth Section), sitting on 5 February 2026 as a Committee composed of:

Diana Sârcu*, President*,
María Elósegui,
Sébastien Biancheri*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 54633/22) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 16 November 2022 by a Spanish national, Ms María Isabel Garrido Herrero ("the applicant"), who was born in 1960, lives in Santander and was represented by Mr M. Hartmann, a lawyer practising in Santander;

the decision to give notice of the complaints concerning Articles 2, 3 and 13 of the Convention to the Spanish Government ("the Government"), represented by their Agent, Mr A. Brezmes Martínez de Villareal, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged discontinuation of the applicant's daughter medical treatment and the allegedly inadequate investigation into the circumstances surrounding her death. It shares background with *Garrido Herrero v. Spain*, no. 61019/19, 11 October 2022.

A. The circumstances surrounding the death of the applicant's child

2. The applicant's daughter was born on 29 July 2005. In March 2010 she was involved in a traffic accident and, as a result, she was paralysed and left in need of assisted ventilation. She was taken care of by the applicant, who was herself a doctor.

3. On 4 March 2012 the child had a cardiorespiratory arrest following temporary disconnection from the ventilator while she was at home. She was admitted to Virgen de la Arrixaca Hospital in Murcia (hereinafter, Arrixaca Hospital), where several tests were performed. On 8 March 2012 the child was diagnosed with severe hypoxic-ischaemic encephalopathy with a "practical situation of brain death".

4. On 8 March 2012 the applicant asked for the voluntary discharge of her child. Between 8 March and 3 April 2012, the child was being treated at the Alicante Hospital. She was subsequently discharged and transferred to her home.

5. On 3 May 2012, while receiving respiratory physiotherapy at the Santa Lucía Hospital (Cartagena), the child showed hypothermia, hypotension and bradycardia. She was diagnosed with "presumption of clinical brain death", to be confirmed by an additional examination, and was transferred to Arrixaca Hospital.

6. At Arrixaca Hospital an encephalography was performed, which showed a "lack of brain activity compatible with brain death".

7. On 4 May 2012 six doctors of Arrixaca Hospital sent a report to the duty judge informing him of the above-mentioned test results and asking for "appropriate measures to be taken". On the same day, the Murcia Investigating Court no. 7 rejected the request, considering that it was not an extremely urgent issue, as it seemed to concern the discontinuation of treatment rather than forced treatment of a patient.

8. On the same day, upon request of the applicant, her daughter was voluntarily discharged from hospital.

9. According to a report of Santa Lucía Hospital of 9 May 2012, following the brain death diagnosis, the Direction of the Hospital indicated that the medical assistance provided to the applicant's daughter should be suspended "with due prudence". However, according to that same report, she continued receiving the required care to maintain cardiovascular, digestive and urinary functions.

10. On 22 May 2012 a private doctor issued a report concluding that there was a pattern of low voltage in encephalography not reacting to external stimuli but there was no isoelectric line ("*trazado isoeléctrico*") showing brain death.

11. Between June and November 2012 the child was treated on various occasions at Torrevieja and Alicante Hospitals. Several reports of Torrevieja Hospital issued during that period refer to a situation of persistent vegetative state.

12. On 19 December 2012 the child was admitted to La Fe Hospital (Valencia), where she was diagnosed with permanent vegetative state.

13. Ten doctors of La Fe Hospital issued a report addressed to the Hospital's Bioethics Committee, stating that the child had been diagnosed with permanent vegetative state, as she had been for more than nine months in persistent vegetative state and that regaining consciousness was highly unlikely. They stated that it was not medically indicated to provide any life support treatment, as it would amount to a clear therapeutic obstinacy. They considered that the management should comprise the following:

> 1.Do-not-resuscitate order.
>
> 2.Limitation of therapeutic efforts, namely, no new advanced life support measures, including any treatment requiring a paediatric intensive care unit.
>
> 3.Maintaining an adequate state of hydration and nutrition.
>
> 4.Nursing care of maximum quality to avoid complications that could be prevented.
>
> 5.Palliative care of maximum quality, including medication to alleviate pain and suffering; maintaining the respiratory treatment with ventilator and the medication; and ensuring as much as possible her dignity in the process of dying ....

14. The Bioethics Committee of La Fe Hospital confirmed that the management proposed by the medical team was adequate.

15. From 28 December 2012 to 14 January 2013 the applicant's daughter was in care at Torrevieja Hospital. The Bioethics Committee of Torrevieja Hospital agreed with the recommendations of La Fe Hospital, limiting the treatment to palliative care. The recommended treatment included medications, indications about nutrition, the use of ventilator, and certain specific care measures that could be done by the applicant (such as ulcer treatment and replacement of the cannula).

16. On 15 January 2013 the Torrevieja Investigating Court no. 2, acting as duty judge, confirmed the involuntary discharge of the child. The court noted that, according to the information submitted, the child was in a situation of irreversible deep coma, for which she could not be treated at the hospital, and that the bioethics committees of La Fe and Torrevieja Hospitals had advised against resuscitation and other measures that could imply therapeutic obstinacy. A forensic doctor had also advised to confirm the discharge, as the child's life was artificially maintained and there was no cure for her condition. The applicant appealed against this decision, but it appears that, due to the subsequent death of the child, no further decisions were taken on this matter as it became devoid of purpose.

17. In the following weeks, the applicant's daughter was at home, and she was frequently assisted by a homecare unit of Torrevieja Hospital.

18. On the morning of 11 February 2013 the applicant's daughter suffered severe respiratory failure with general cyanosis. The nurses who were assisting her at her house and the doctor of the emergency services (SAMU) that came to the applicant's house to render assistance provided ventilation with a bag valve mask. After some 40 minutes, the SAMU doctor confirmed a situation of asystole and ceased ventilation. The applicant applied cardiopulmonary resuscitation on the child, to no avail. That afternoon, the assisted ventilation was removed upon request of the forensic doctor present at the house and the child died.

B. Criminal proceedings lodged by the applicant

19. On 7 April 2017 the applicant lodged a criminal report against 25 persons, including several doctors involved in her child's treatment, members of bioethics committees, staff of the regional healthcare service and of the children protection services. She accused them of attempted homicide, refusal to provide medical assistance and prevarication.

20. Following the confirmation of its jurisdiction, on 28 November 2017 the Investigating Court no. 8 asked the applicant to submit some documents.

21. On 11 December 2017 the applicant submitted several documents, including two forensic reports prepared at her request. One of the reports concluded that the suspension of medical care based on a wrong diagnosis of brain death in March and May 2012 had had decisive influence on the child's death. The other report concluded that the refusal of health care from 7 May 2012 onwards had precluded a favourable prognosis for the child and that the child's death had been due to the serious negligence of the hospitals and the emergency services involved.

22. On 1 March 2018 the Investigating Court no. 8 declared the complaint admissible and ordered to conduct preliminary proceedings ("*diligencias previas*"). It accepted the evidence submitted by the applicant but did not order the examination of the doctors, considering that additional previous information was needed. It further ordered the submission of the child's medical report and indicated that, once the file was received, a forensic report would be issued on possible medical malpractice and neglect of duties. The applicant did not challenge this decision.

23. On 7 May 2018, upon request of the public prosecutor, supported by the applicant, the Investigating Court declared the investigation complex and extended its time limit, noting that it involved many persons and required a complex forensic report.

24. In November 2018 the applicant requested the recusal of the forensic doctor arguing that he had issued a forensic report in other related criminal proceedings and that he might be friends with some of the doctors involved.

The request was dismissed by the Investigating Court and, on appeal, by the Murcia *Audiencia Provincial*.

25. The ensuing forensic report, dated 18 February 2019, analysed the medical care provided to the child in the five different hospitals where she had stayed and observed that she had always received the necessary medical assistance to maintain her life. The forensic expert observed that there was "no causal relation between the child's death and a poor care or lack of medical treatment in any of the hospitals where she was treated". The report concluded:

> "A breach of the lex artis by any of the [healthcare professionals involved] cannot be established.
>
> She received at all times the treatment and care that were adequate to her health conditions.
>
> There is no relation between her death and any suspension of care, as this was not implemented at any time ('*no se llevó a efecto en ningún momento'*)".

26. On 28 March 2019 the forensic doctor confirmed his report before the Investigating Court. The applicant did not participate in the hearing, despite having been informed of it. She subsequently submitted written allegations challenging the conclusions of the forensic report.

27. On 17 June 2019 the Investigating Court ordered the stay of the proceedings, considering that the elements of the offence of homicide were not present. It noted that the forensic expert, who had been heard by the judge, had concluded that the treatment and assistance provided had been adequate, and that there was no other forensic report that could disprove that evidence. The applicant appealed against this decision.

28. On 16 January 2020 the Investigating Court rejected the applicant's appeal. It reiterated that there was not prima facie evidence of the commission of an offence. There were no elements to cast doubt on the forensic doctor's report and his recusal was not called for. The applicant had had the opportunity to question him but had failed to do so. The expert reports prepared at the applicant's request contained some elements indicating negligence, but the possible responsibility arising from the medical decisions taken in relation to the applicant's child was to be addressed by the civil, rather than criminal, courts.

29. On 2 June 2020 the Murcia *Audiencia Provincial* dismissed the applicant's appeal and ordered the discontinuation of the proceedings, on the grounds that the legal time limits for the investigation had been exceeded (see relevant rules and amendments in *Garrido Herrero*, cited above, §§ 42-44). The *Audiencia Provincial* thus ordered the final discontinuation of the proceedings ("*archivo libre y definitivo*"). It also indicated that the decision was to be served on the 25 persons indicated in the criminal report for them to be informed of the criminal proceedings, as they had not yet been aware of the existence of a criminal complaint against them.

30. Further appeals before the Supreme Court and the Constitutional Court were declared inadmissible on 1 July 2021 and 20 July 2022, respectively.

C. Other related complaints lodged by the applicant before the domestic authorities

31. Prior to the proceedings described above, in 2014 the applicant had lodged another criminal complaint concerning the death of her child. On 8 April 2016 the Cartagena Investigating Court no. 3 ordered to stay the proceedings, observing no indications of negligence. On 26 July 2016 the Murcia *Audiencia Provincial* dismissed the applicant's appeal. It stated that, according to the available information, namely the medical and forensic reports, the cause of the death had been brain death. There had been no causal link between the child's death and the suspension of medical care, as no suspension had taken place. The care provided had always been adequate and had not been discontinued despite the diagnosis of brain death. Comprehensive treatment had been provided and no action had been taken that could have reduced her life expectancy. The reports submitted by the applicant had been merely theoretical, as the doctors who prepared them had not treated the child. It could not thus be concluded that the child's death had been caused by medical negligence related to the diagnosis or the treatment received.

32. The applicant had also lodged two compensation claims alleging the State's liability based on the medical malpractice of the doctors of the different hospitals involved in her daughter's care. Those claims had been dismissed by the administrative authorities of the Valencian Community and Murcia, based on several expert reports. The applicant had subsequently lodged judicial claims against those decisions. The Valencian Community High Court of Justice had dismissed the first claim, and the proceedings continued before the Supreme Court. Regarding the second claim, the proceedings are apparently still pending before the Murcia High Court of Justice. No updated information about the outcome of those proceedings has been received by the Court.

THE COURT'S ASSESSMENT

33. The applicant complained that the medical decisions concerning her child had put her life at risk and had amounted to inhuman or degrading treatment. She further claimed that the criminal proceedings lodged in this connection had been ineffective. She relied on Articles 2, 3 and 13 of the Convention.

34. Having regard to its case-law and the nature of the applicant's complaints, the Court, being the master of the characterisation to be given in law to the facts of a case (see, for instance, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), is of the view that the issues raised should be addressed from the perspective of Article 2 of the Convention alone.

35. The Government argued that the application should be declared inadmissible for non-exhaustion of domestic remedies, at least partially. The Court considers it unnecessary to establish whether the applicant exhausted all effective domestic remedies within the meaning of Article 35 § 1 of the Convention, since the application is in any event inadmissible for the following reasons.

A. The substantive aspect

36. The applicant argued that the medical decisions suspending and/or limiting her child's treatment had put her life at risk.

37. The Government disagreed and stressed that the applicant's child had always been adequately taken care of, in accordance with objective medical and bioethical criteria.

38. The Court has stressed the distinction between the intentional taking of life and "therapeutic abstention", that is, the withdrawal or withholding of treatment that had become unreasonable (see *Lambert and Others v. France* [GC], no. 46043/14, § 124, ECHR 2015 (extracts), and *Parfitt v. United Kingdom* (dec.), no. 18533/21, § 36, 20 April 2021).

39. In the present case, according to the information in the file, the applicant's child continued to receive medical care despite the diagnosis of brain death, regardless whether that diagnosis was right or wrong (see paragraphs 9 and 11 above). The request made by the medical team of the Arrixaca Hospital to the duty judge did not specify the measures to be taken, and in any event was not granted (see paragraph 7 above). The decisions limiting the medical intervention specified that several aspects of the child's treatment would be maintained (see paragraphs 13 and 15 above), and the child was connected to a ventilator and received medical care at her home until the moment of her death (see paragraphs 17 and 18 above). It thus appears, as indicated by the forensic expert (see paragraph 25 above), that no suspension of medical care was ever implemented. Regarding the "Do Not Resuscitate" notice (see paragraphs 13 and 14 above), the Court notes that as late as on the day of the child's death, ventilation was provided by the emergency services and the nurses assisting the child at her home (see paragraph 18 above and, *mutatis mutandis*, *Glass v. the United Kingdom* (dec.), no. 61827/00, 18 March 2003).

40. Furthermore, the domestic court concluded, on the basis of the forensic expert's report, that there had been no causal link between the actions

of the health practitioners and the child's death. The Court reiterates in this regard that, except in cases of manifest arbitrariness or error, it is not the Court's function to call into question the findings of fact made by the domestic authorities, particularly when it comes to scientific expert assessments, which by definition call for specific and detailed knowledge of the subject (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 199, 19 December 2017).

41. In view of the foregoing, the Court concludes that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

B. The procedural aspect

42. The applicant affirmed that the authorities had failed to fulfil their procedural obligations in respect of her child's death.

43. The Government submitted that an effective investigation had been carried out not only in the framework of the criminal proceedings, but also in connection with the two administrative proceedings lodged by the applicant.

44. The general principles regarding the States' procedural obligation under Article 2 of the Convention in the context of health care have been summarised in the case of *Lopes de Sousa Fernandes*, cited above, §§ 214-21 and, more recently, in the case of *Harutyun Karapetyan v. Armenia*, no. 53081/14, §§ 67-75, 29 October 2024.

45. In the present case, the applicant availed herself of two distinct legal avenues provided by domestic law, in order to establish the circumstances and responsibilities surrounding her child's medical care: she lodged two criminal complaints and two administrative complaints (see paragraphs 31 and 32 above and, for the relevant legal framework, *Garrido Herrero*, cited above, §§ 41-47, concerning criminal liability, and *Vicent Del Campo v. Spain*, no. 25527/13, § 16, 6 November 2018, concerning liability deriving from the functioning of public services).

46. Concerning the criminal proceedings at stake, the Court observes that the applicant had the possibility to participate actively in the proceedings and availed herself of her procedural rights to influence their course (see *Lopes de Sousa Fernandes*, cited above, § 226). It cannot be considered that she was placed at a procedural disadvantage vis-à-vis the medical practitioners involved, as they did not participate in the proceedings (ibid.).

47. The Investigating Court took several investigative measures: it requested the child's medical files, obtained a forensic report, and heard the forensic expert (contrast *Garrido Herrero*, cited above, §§ 84-86). The applicant was provided with an opportunity to put questions to the forensic expert but failed to do so (see *Harutyun Karapetyan v. Armenia*, no. 53081/14, § 97, 29 October 2024). Besides, she was able to submit additional forensic reports prepared at her request, as well as the documents

she considered relevant, which were also examined by the Investigating Court.

48. On the basis of the available evidence, the Investigating Court concluded that there was no prima facie evidence of the commission of an offence, without ruling out the possible existence of a negligence, which could be examined by the civil courts. Such approach is consistent with the Court's case law (see *Lopes de Sousa Fernandes*, cited above, § 214-15).

49. In sum, the Court does not find sufficient grounds to conclude that the criminal proceedings were inadequate or not sufficiently thorough. It recalls in this regard that the procedural obligation must not be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities and that Article 2 does not entail the right to have third parties prosecuted - or convicted - for a criminal offence (see *Harutyun Karapetyan*, cited above, § 74).

50. The Court further takes into account that the applicant also lodged two related compensation proceedings (see paragraphs 32 and 45 above) and that her main argument to consider them ineffective was that they could not establish criminal responsibilities.

51. The Court reiterates in this regard that, in its view, an action for compensation is in principle the most appropriate avenue for establishing any alleged causal link between the actions of medical practitioners and their consequences and to shed light on the doctors' alleged responsibility (see *Lopes de Sousa Fernandes*, cited above, §§ 138 and 235). It also recalls that the right to have third parties prosecuted or sentenced for a criminal offence cannot be asserted independently (see *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VIII).

52. In view of the foregoing, it cannot be said that the legal domestic system in the present case failed to deal adequately with the applicant's case. Without prejudging the outcome of the pending administrative proceedings, the Court concludes that the respondent State fulfilled its positive obligation under Article 2 of the Convention.

53. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 March 2026.

Martina Keller Deputy Registrar	Diana Sârcu President