



## Failure to hear the applicant and witnesses on appeal flouted the requirements of the right to a fair trial

In its committee judgment in the case of [Camacho Camacho v. Spain](#) (application no. 32914/16) the European Court of Human Rights has unanimously held, that there had been:

**a violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights

The case concerned Mr Camacho Camacho's conviction on appeal after being acquitted at first instance. He was sentenced to imprisonment and fined, even though he and several witnesses had never been questioned and despite the fact that the appellate court had reassessed the subjective aspects of the case.

The Court held that the assessment carried out by the *Audiencia Provincial* had been so substantial as to require the applicant and the witnesses to be questioned. It found that there had been a violation of the adversarial principle.

*The judgment is final.*

### Principal facts

The applicant, Antonio Camacho Camacho, is a Spanish national who was born in 1980 and lives in Bonavista (Tarragona).

On 30 April 2008 Ms C., a lawyer representing the applicant's wife, obtained custody of their daughter, a minor. On 7 May 2008 Ms C. was the victim of an assault. The applicant and two others were charged with the offence. Following a public hearing, by judgment of 15 March 2013, Criminal Court no. 3 acquitted the defendants. The victim, Ms C., and the public prosecutor's office appealed.

The *Audiencia Provincial*, by judgment of 7 October 2013, declared the judgment null and void on the grounds of a serious error in assessing the evidence. The *Audiencia Provincial* only partly accepted the facts declared proven by the criminal court, and called a witness's credibility into doubt. It ruled, without a public hearing, that the circumstantial evidence pointed to the applicant as having been involved in the acts in question. It remitted the case to Criminal Court no. 3.

On 15 January 2014 the criminal court, having reconsidered the evidence, once again held that there was insufficient evidence of the applicant having committed the offences in question, and once again acquitted him. The public prosecutor's office appealed.

By a decision of 27 May 2015 a new bench of the *Audiencia Provincial* rejected the evidence adduced by the public prosecutor's office. On 15 July 2015 the *Audiencia Provincial* held a public hearing. No evidence was considered, and the public prosecutor's office pointed out that the examination of the applicant had been rejected and could therefore no longer take place. At the end of the hearing the applicant, who attended but was not questioned, spoke last, denying any involvement in the impugned facts.

On 29 July 2015 the *Audiencia Provincial* found the applicant guilty and sentenced him to imprisonment, fined him and ordered him to pay compensation to the victim. According to the *Audiencia Provincial*, the evidence gathered at first instance supported the following interpretation: the applicant had planned the assault on Ms C. in response to the rejection of his application for custody of his daughter during the civil proceedings.

On 1 September 2015 the applicant applied to have the judgment delivered by the *Audiencia Provincial* set aside, but his application was rejected. The applicant then lodged an *amparo* appeal with the Constitutional Court. On 26 January 2016 his appeal was declared inadmissible on the grounds that he had not demonstrated its “special constitutional importance”.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 25 May 2016.

Relying on Article 6 § 1, the applicant complained that the *Audiencia Provincial* had modified the declared facts as proven at first instance after a subjective assessment of the evidence which he argued had flouted the principles of immediacy and adversarial proceedings.

Judgment was given by a Committee of three judges, composed as follows:

Paulo **Pinto de Albuquerque** (Portugal), *President*,  
Helen **Keller** (Switzerland),  
María **Elósegui** (Spain),

and also Fatoş Aracı, *Deputy Registrar*.

## Decision of the Court

### Article 6 § 1

The Court observed that a hearing had been held before the *Audiencia Provincial*, attended by the applicant and his representative. It nevertheless noted that no direct, personal and adversarial hearing of the applicant and the witnesses had taken place during proceedings. The *Audiencia Provincial* had consequently set aside the judgment delivered at first instance and convicted the applicant without questioning him or the witnesses.

Furthermore, the Court noted that, contrary to the judgment at first instance, the *Audiencia Provincial* had considered it as an established fact that the applicant had known, before the attack on counsel for his former partner, of the judgment in the civil proceedings concerning his daughter’s custody and of its outcome adversely affecting his interests.

However, neither the first-instance nor the appellate court’s case file contained any evidence definitively establishing that fact. That conclusion should not have been considered as an inference and had required further witness statements. Indeed, when a court drew an inference concerning the subjective aspects of a case, the defendant’s conduct could not be legally assessed until a prior attempt has been made to prove the reality of the conduct, which necessitated substantiating intent on the part of a defendant.

The Court thus considered in the instant case that a reassessment had been made of the subjective aspects of the facts without any personal questioning of the applicant enabling the latter to contest, under adversarial proceedings, the new assessment of the case by the *Audiencia Provincial*. Moreover, the statement given by one of the witnesses providing the applicant with an alibi had been called into question by the *Audiencia Provincial*, without any questioning of witnesses on appeal.

The Court concluded that the extent of the examination conducted by the *Audiencia Provincial* would have required a hearing of the applicant and the witnesses. There had therefore been a violation of Article 6 § 1 of the Convention.

### Just satisfaction (Article 41)

The Court held that Spain was to pay the applicant 6,400 euros (EUR) in respect of non-pecuniary damage and EUR 6,000 in respect of costs and expenses.

*The judgment is available only in French.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

#### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel: +33 3 90 21 42 08

**Denis Lambert (tel: + 33 3 90 21 41 09)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

**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.