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

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No violation of right to respect for correspondence within the context of political-party monitoring

In today's **Chamber** judgment[1] in the case of Tena Arregui v. Spain (application no. 42541/18) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to respect for private life and correspondence) of the European Convention on Human Rights.

The case concerned the collecting and release of some of Mr Tena Arregui's emails by the UPyD party (of which he had been a senior member) during an operation to monitor suspicions that other members had made backroom deals with the Ciudadanos party.

The Court found in particular that there had been no failure to protect Mr Tena Arregui's right to respect for his correspondence, as, when discontinuing the criminal investigation, the Spanish courts had given ample reasons as to why the monitoring operation did not constitute an offence.

Principal facts

The applicant, Rodrigo Tena Arregui, is a Spanish national who was born in 1962 and lives in Madrid.

Until 2015 Mr Tena Arregui was a member of the board of Unión, Progreso y Democracia (UPyD), a Spanish political party. At the relevant time, he was in favour of a coalition with the Ciudadanos party.

Following the expulsion of a UPyD member, Mr P., on suspicion of negotiating with Ciudadanos, the party reviewed Mr P's correspondence on party email accounts for the months prior to that time. In June 2015 a report, which showed emails from Mr Tena Arregui to Mr P., was circulated by the organisational manager, Mr F., to senior members of the party.

Mr Tena Arregui officially complained within the party structures, to no avail, following which he made a criminal complaint. Criminal proceedings were opened concerning unlawful disclosure of secrets, which were then discontinued by the Madrid *Audiencia Provincial* on appeal. It found that the report had been commissioned in order to detect any potential wrongdoing occurring within UPyD's structure. The party's internal policy prohibited the use of official email accounts for personal purposes or in a way that could harm the party. As it did not find it sufficiently proven that Mr F. had acted with any intention outside this purpose, it concluded that the offence was not sufficiently proven.

An application to have that decision declared null and void and a later *amparo* appeal by Mr Tena Arregui were unsuccessful. The Constitutional Court, in its decision on the *amparo* appeal, stated that the *Audiencia Provincial*'s reasons for dismissing the case had been adequate, and stated that the fundamental rights relied on by Mr Tena Arregui could be protected not only by criminal law but by other legal remedies as well.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

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Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life and correspondence), the applicant complained of the interception and disclosure of his emails and of the subsequent court decisions in that connection.

The application was lodged with the European Court of Human Rights on 30 August 2018.

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

Georges **Ravarani** (Luxembourg), *President*,
Lado **Chanturia** (Georgia),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
María **Elósegui** (Spain),
Kateřina **Šimáčková** (the Czech Republic),
Mykola **Gnatovskyy** (Ukraine),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

The Court noted that UPyD had hired a private company to monitor the emails received by one of its members, who they had suspected had been involved in negotiations with another political party. Among those emails were some sent by Mr Tena Arregui from his private email account, which had been a serious intrusion in his private correspondence.

However, that this had taken place within a political party was vital context. It reiterated that political parties were essential cogs of democracy, and stated that the relationship had not been that of employee-employer in this case. Nevertheless, the domestic authorities had to ensure that the monitoring of correspondence and other communications was accompanied by adequate safeguards against abuse.

Mr Tena Arregui was not arguing that the law or the investigation had been inadequate; he was in fact arguing that the *Audiencia Provincial*'s decision to discontinue the related criminal proceedings had not been supported by sufficient reasons. The Court noted that the Spanish Constitutional Court had found those reasons to be coherent and in line with protecting the fundamental rights involved. The national courts had ruled out an offence having taken place, noting that the actions had taken place within a political party; the searches had been limited to particular terms in Mr P.'s party account; such accounts had been liable to be monitored under party rules; and there had been no ulterior motive other than protecting the interests of the party. That reasoning had been neither arbitrary nor unreasonable.

The court noted that several civil remedies had been available to Mr Tena Arregui, but he had chosen not to use them.

There had been no failure to protect Mr Tena Arregui's right to respect for his correspondence, and there had therefore been no violation of Article 8.

The judgment is available only in English.

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Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Neil Connolly (tel.: + 33 3 90 21 48 05)
Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)
Denis Lambert (tel.: + 33 3 90 21 41 09)
Inci Ertekin (tel.: + 33 3 90 21 55 30)
Jane Swift (tel.: + 33 3 88 41 29 04)

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.