



Decision to discontinue investigation into death of Spanish journalist in Iraq because of lack of jurisdiction was not arbitrary

In today's **Chamber** judgment¹ in the case of [Couso Permuy v. Spain](#) (application no. 2327/20) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 (right of access to court) of the European Convention on Human Rights.

The case concerned the killing in 2003 of the applicant's brother, a camera operator on mission in Iraq, and the decision to discontinue the criminal proceedings opened in Spain to investigate.

The Court noted that legislative reform restricting the Spanish courts' jurisdiction in such cases had led to the decision to discontinue the proceedings in 2015. In particular, the new wording of the law meant that the national courts could only have jurisdiction if the US servicemen accused of the killing were physically present in Spain.

The Court found that the reasons given to justify the reform – the risk of overburdening the courts and practical difficulties in obtaining evidence in such cases – had been legitimate. Indeed, there had been nothing arbitrary or manifestly unreasonable in the Spanish courts' limiting litigation to only those cases where there was a sufficient link to Spain.

Moreover, the applicant *had* been able to bring his complaints before the Spanish courts and a very thorough criminal investigation had been carried out. In any event, it would not have been possible to proceed to trial because the US authorities would not surrender the accused servicemen and Spanish law did not allow trials *in absentia*.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant, David Couso Permuy, is a Spanish national who was born in 1979 and lives in Valencia (Spain).

The applicant's brother, José Manuel Couso Permuy, a Spanish camera operator, was killed on 8 April 2003 during the coalition forces' military invasion of Iraq. A US battle tank opened fire on the Hotel Palestine where his brother was staying, along with most of the international press, in Baghdad. His brother was severely wounded and died a few hours later in hospital.

Soon after, the applicant and other members of the victim's family brought a criminal complaint (which incorporated a civil action for compensation) in Spain against three US servicemen. At the time, Spanish law – the Institutional Law on the Judiciary – recognised unrestricted universal jurisdiction for serious crimes committed against Spanish nationals outside Spain's territory.

Over the ensuing 12 years the Spanish authorities investigated the case. The investigating judge ordered, among other things, that: a number of witnesses be heard, including journalists who had been present at the Palestine Hotel during the shooting, and the former Spanish Ministers of Foreign

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.

Affairs and Defence; and that television footage of the tank opening fire on the Palestine Hotel be viewed. The judge also repeatedly requested information from the US authorities. They informed the Spanish courts that the US forces involved in the killing of the applicant's brother, believing themselves to be under enemy fire, had acted in self-defence and that there was no evidence of any crime or wrongdoing. As a result, there would be no criminal investigation in the US. The Spanish courts also requested judicial cooperation from the Iraqi authorities, while a Spanish judicial commission carried out a field visit to the scene of the shooting in Baghdad.

The evidence obtained led to three members of the US military being charged in 2011 with a war crime and homicide. The investigating judge ordered search and arrest warrants against the three US servicemen, asking Interpol for assistance with their extradition to Spain. All the requests were unsuccessful.

In the meantime, legislative reform had gradually been introducing new criteria to restrict universal jurisdiction for offences committed outside Spain. First, in 2009, the Institutional Law on the Judiciary had been amended to require some connection or link to Spain for the national courts to have extraterritorial jurisdiction. The nationality of the victim had been considered to be a sufficient connection and the proceedings to investigate the killing of the applicant's brother had thus continued after that legislative reform.

However, in March 2014, another legislative reform had introduced additional criteria, which only allowed prosecution of alleged war crimes committed outside Spain by foreign nationals if the latter happened to be on Spanish territory.

In May 2015 the courts gave, for the first time, their interpretation on the effects of this reform in another set of proceedings. They found that the new wording of the legislation meant that the jurisdiction of the Spanish courts could be asserted only if the alleged perpetrators were present in Spain; the nationality of the victim was not sufficient to establish a jurisdictional link, and this applied to pending cases.

On that basis, the investigating judge concluded the investigating stage and sent the case to the courts for trial or dismissal.

In November 2015 the criminal chamber of the *Audiencia Nacional* found that the courts did not have jurisdiction to continue with the investigation into the killing of the applicant's brother, and provisionally discontinued the proceedings (*sobreseimiento provisional*). The criminal chamber found in particular that the requirement under the amended law that the accused US servicemen be on Spanish territory was not met, notwithstanding the possibility that the proceedings could be resumed in the future should that change.

The Supreme Court confirmed those findings in 2016, and ultimately, in 2019, the applicant's *amparo* appeal to the Constitutional Court was dismissed.

In 2004 the Spanish authorities awarded the victim's widow 140,000 euros (EUR) in damages under a royal decree as compensation for the death of her husband, and in 2019 the courts awarded her EUR 180,000 compensation following administrative contentious judicial proceedings based on the authorities' failure to persuade the US authorities to cooperate with the criminal investigation.

Complaints, procedure and composition of the Court

Relying in particular on Article 6 § 1 (right of access to court) of the Convention in its civil aspect, the applicant alleged that the amended Spanish legislation had resulted in the US military officers responsible for his brother's death not facing trial, in breach of his right to defend his legitimate interests in court.

The application was lodged with the European Court of Human Rights on 23 December 2019.

The Government of the United Kingdom and Rights International Spain, a non-governmental organisation, were granted leave to intervene as third parties.

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

Mattias **Guyomar** (France), *President*,
 Carlo **Ranzoni** (Liechtenstein),
 Mārtiņš **Mits** (Latvia),
 María **Elósegui** (Spain),
 Kateřina **Šimáčková** (the Czech Republic),
 Mykola **Gnatovskyy** (Ukraine),
 Stéphane **Pisani** (Luxembourg),

and also Martina **Keller**, *Deputy Section Registrar*.

Decision of the Court

First, the Court noted the Government's justification for the new criteria restricting the Spanish courts' jurisdiction for offences committed extraterritorially, notably the risk of overburdening the courts and practical difficulties in obtaining evidence. Those reasons had been in the public interest and the Court therefore found them legitimate.

It went on to note that Spain had had jurisdiction to investigate the case between 2003 and 2015. In that period the Spanish authorities – more specifically the investigating judge – had made significant efforts to establish the facts necessary to charge and prosecute the alleged perpetrators of the killing, and to find out whether that crime had been investigated and could be prosecuted in the United States or in Iraq. The applicant *had* therefore been able to bring his complaints before the courts and the Spanish judicial authorities had conducted a very thorough criminal investigation, with many pieces of evidence having been gathered.

The case had only been discontinued after the courts had given their interpretation on the effects of the legislative reform on pending cases initiated under the previous regulation governing access to unrestricted universal jurisdiction. The Court saw no reason to depart from that interpretation of the law. Moreover, limiting litigation based on universal jurisdiction to only those cases where there was a sufficient link to Spain had been within Spain's discretion ("margin of appreciation") to decide on such matters.

In coming to those conclusions the Court also highlighted in particular that: it would in any event not have been possible to proceed to trial because the US authorities would not surrender the accused servicemen and Spanish law did not allow trials *in absentia*; reopening the proceedings had not been ruled out if the defendants came under Spanish jurisdiction by travelling to Spain; and, the applicant could have brought a separate civil action outside the criminal proceedings.

The Court therefore considered that the Spanish courts' finding that they had no jurisdiction to hear the civil action that had been a part of the criminal complaint brought by the applicant in 2003 to obtain compensation for the death of his brother had not been disproportionate. Accordingly, there had been no violation of the right of access to a court within the meaning of Article 6 of the Convention.

The judgment is available only in English.

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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.