



## Refusal of residence to Bolivian man for lack of means of subsistence did not violate rights

In today's Chamber judgment<sup>1</sup> in the case of [Siles Cabrera v. Spain](#) (application no. 5212/23) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned Mr Siles Cabrera's application for a residence permit in 2018 on the basis of "social roots" (*arraigo social*). That application was refused because the Biscay Province authorities found that he had not submitted proof that he had had his own means of subsistence. He had come to Spain with his wife in 2005, and they had had a son there in 2012.

The Court found in particular that the Spanish authorities, acting within their discretion ("margin of appreciation") had struck a fair balance between the interests of Mr Siles Cabrera and those of the State in controlling immigration in the general interest of the economic well-being of the country.

### Principal facts

The applicant, Julio Cesar Siles Cabrera, is a Bolivian national who was born in 1968 and lives in Erandio (Basque Country, Spain).

Mr Siles Cabrera arrived in Spain in 2005 and has since lived there with his wife. Their son was born in 2012. His wife and son are also Bolivian nationals. Among other health conditions, Mr Siles Cabrera's son has autistic spectrum disorder, for which he has been receiving specialised support since his early years.

In March 2018 Mr Siles Cabrera made a first application for a residence permit, in this case for exceptional circumstances based on "social roots" (*arraigo social*), also known as social integration. The initial report on his social integration was positive, with his housing situation, family links in Spain, his learning Basque, and his son's medical situation being noted. The authority issuing the report recommended exempting the applicant from the requirement to submit an employment contract in his application for a residence permit, based on his son's serious disability and his need for constant care.

However in July of that year the province of Biscay refused to grant the applicant the residence permit for exceptional circumstances based on social roots. It pointed, in particular, to his failure to submit proof that he had his own means of subsistence but relied on social benefits (the basic guaranteed income and the supplementary housing benefit) he received to cover his family's needs. The decision indicated that he had to leave the country within 15 days. Mr Siles Cabrera appealed to the courts.

In March 2019 the Bilbao Administrative Court of First Instance no. 5 dismissed the appeal, finding, in particular, that Mr Siles Cabrera had not shown that he had means of subsistence. Even though an exception from submitting a contract could be made in applications for *arraigo social*, an applicant

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](http://www.coe.int/t/dghl/monitoring/execution).

still had to prove that he or she had his or her own means to meet his or her needs in Spain, without burdening the public treasury. On appeal, in May 2020 the High Court of Justice of the Basque Country upheld the first-instance judgment, holding that Mr Siles Cabrera had failed to meet the requirements for the residence permit for which he had applied. Later cassation and *amparo* appeals by Mr Siles Cabrera were unsuccessful.

In April 2019, the Spanish authorities granted Mr Siles Cabrera's son a temporary residence permit for exceptional circumstances on humanitarian grounds, and in 2023, to Mr Siles Cabrera's wife, for training purposes. According to the latest information available to the Court, the family all continue to live in Erandio.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Mr Siles Cabrera complained of the refusal to grant him a temporary residence permit for exceptional circumstances based on social integration.

The application was lodged with the European Court of Human Rights on 20 January 2023.

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

Kateřina Šimáčková (the Czech Republic), *President*,  
María Elósegui (Spain),  
Gilberto Felici (San Marino),  
Andreas Zünd (Switzerland),  
Diana Sârcu (the Republic of Moldova),  
Mykola Gnatovskyy (Ukraine),  
Vahe Grigoryan (Armenia),

and also Martina Keller, *Deputy Section Registrar*.

## Decision of the Court

The Court noted that Mr Siles Cabrera's situation for much of his 13 years in Spain had been irregular, and therefore his situation in Spain could not be equated with a lawful stay where the authorities have granted a foreign national permission to settle in the country. There had been a removal order in the 2018 refusal of a residence permit, but no removal procedures appeared to have been carried out, and he had remained in Spain. There had been no interruption of Mr Siles Cabrera's "family life", as he had argued. His son had continued to receive specialised medical care, education, and other benefits in Spain and, contrary to his arguments, Mr Siles Cabrera had been able to continue as his legal representative. Accordingly, the Court had to decide whether, by refusing to grant the applicant's request, as it was formulated, the respondent State had failed to comply with an obligation to act to protect rights under Article 8 of the Convention.

As regards Mr Siles Cabrera's argument that the residence decisions had lacked a legal basis: they had been taken under section 31 of Institutional Law no. 4/2000 and Articles 47 and 124 of Royal Decree no. 557/2011.

The intention behind the requirement to prove sufficient resources without recourse to social benefits was the interest of controlling immigration for the economic well-being of the country. As Mr Siles Cabrera had chosen to apply for a temporary residence permit for exceptional circumstances through social integration, it had been incumbent on him to demonstrate sufficient means to support himself and not being a burden on the public purse, as a measure of that social integration. He had not done so. The appellate court had noted that it could have accepted the application if drawing benefits had

been temporary, but that had not been the case here. The Court held that the stance of the Spanish courts had not been unreasonable.

As regards Mr Siles Cabrera's argument that the Spanish authorities had failed to show sufficient flexibility and to take into account his family circumstances, the Court noted that the national courts had taken into account his personal situation in their assessment. They rejected his argument that he had been unable to work, noting that his wife had been available to share the childcare tasks with the applicant. It also noted that other avenues were available to Mr Siles Cabrera to regularise his status, which he had failed to examine. Lastly, the Court noted that the authorities had, nevertheless, continued to pay him social benefits to maintain his family.

The Court held that the Spanish authorities had struck a fair balance between the interests of Mr Siles Cabrera and those of the State in controlling immigration in the general interest of the economic well-being of the country. They had acted within their discretion ("margin of appreciation") in refusing the application for a specific type of temporary residence permit.

There had accordingly been no violation of Article 8 of the Convention.

*The judgment is available only in English.*

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