



No distortion of European Court's judgment by Spanish Constitutional Court when reviewing lack of impartiality in case concerning Otegi Mondragón

In its decision in the case of [Otegi Mondragón and Others v. Spain](#) (application no. 14186/24) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the review proceedings following the European Court's 2018 judgment [Otegi Mondragón and Others v. Spain](#), in which the Court found a violation of Article 6 § 1 of the Convention on the grounds that the applicants, five Spaniards, had not been tried by an impartial tribunal when convicted by the *Audiencia Nacional* (National High Court) in 2011 for being members of the terrorist organisation ETA.

Principal facts

The applicants are five Spanish nationals who were born between 1956 and 1981. Prior to 2009, they had all held political posts in a Basque separatist movement (*izquierda abertzale*). They were arrested on 15 October 2009 on the grounds that they were trying to form a political party under the effective control of the terrorist organisation ETA. They were later accused of belonging to a terrorist organisation, and on 16 September 2011 they were convicted by the *Audiencia Nacional* (National High Court) and sentenced to terms of imprisonment ranging from eight to ten years, as well as being disqualified from holding public office or employment and from standing in elections.

In May 2012 the Supreme Court partially upheld their subsequent appeals and their sentences were reduced to six or six-and-a-half years' imprisonment. The applicants then lodged separate *amparo* appeals, which were dismissed by the Constitutional Court.

The applicants lodged an application with the European Court on 14 January 2015. In the Court's subsequent 2018 judgment [Otegi Mondragón and Others v. Spain](#), the Court found a violation of Article 6 § 1 of the Convention on the grounds that the applicants had not been tried by an impartial tribunal. By the time the Court had published its judgment, the applicants had fully served their sentences, except for one of the applicants, who remained disqualified from holding public office until 28 February 2021.

Today's decision concerned an application lodged by the applicants in 2024 concerning the review proceedings in Spain following the Court's judgment.

In December 2020, instead of declaring the judgment of 16 September 2011 of the *Audiencia Nacional* null and void, thus cancelling the applicants' criminal records as they had requested, the Supreme Court set aside the first-instance judgment of 2011 and ordered the reopening of the appeal proceedings, remitting the case for retrial by a newly composed court. Following an *amparo* appeal lodged by the applicants, the Supreme Court's 2020 judgment was declared null and void by the Constitutional Court in January 2024 and the effect of the Supreme Court's May 2012 judgment maintained.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 30 April 2024.

Relying on Article 6 § 1 (right to a fair trial) read in the light of Article 46 (binding force and execution of judgments), the applicants complained that, in spite of the European Court's finding that they had been convicted in violation of their right to an impartial tribunal, their guilt and convictions had been maintained.

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

Andreas Zünd (Switzerland), *President*,
María Elósegui (Spain),
Mykola Gnatovskyy (Ukraine),

and also Martina Keller, *Deputy Registrar*.

Decision of the Court

The Court noted that, in the review proceedings, a retrial or the reopening of the proceedings before a different court had been initially ordered by the Supreme Court and that it was the applicants' complaint against that decision, in the context of their *amparo* appeal, that had led to the Constitutional Court's ruling, which had quashed that order, taking into account the main complaints raised by the applicants: namely that a retrial in their case would be contrary to the principle of legal certainty, the right to fair proceedings and the *ne bis in idem* principle (no one should be prosecuted twice on the basis of the same facts). In the circumstances, the Constitutional Court had considered that a retrial was not appropriate, as the applicants had not requested one and they had already served their sentences. It had therefore decided that the Supreme Court's 2012 judgment should remain valid.

However, that had not been what the applicants had intended when they had lodged their appeal, which had been for the initial *Audiencia Nacional* judgment of 2011 to be quashed without a retrial. The Constitutional Court had noted that the applicants had not requested, in their application for review, the quashing of the initial judgment of 2011, but solely the Supreme Court's judgment of May 2012. Moreover, they had not sought compensation in their application for review, a process which, in its view, would have constituted an alternative to a retrial as a means of executing the Court's judgment and obtaining adequate redress. The Constitutional Court had considered that a decision nullifying the decisions taken in the initial proceedings, which would have amounted in practice to an acquittal, exceeded the scope of the *amparo* proceedings. It was not possible to merely quash the initial conviction; such a decision would be equivalent to an acquittal, which was not a possible outcome of the procedural violation alleged in the review proceedings.

The Court considered that this interpretation of the effects of the review proceedings did not appear to be arbitrary. The analysis of the Constitutional Court had focused on the effects to be given to the European Court's 2018 judgment at the national level. In that judgment, a retrial or the reopening of the proceedings had been described as an appropriate solution, but not a necessary or exclusive one. The Convention did not guarantee the right to a remedy by which final judicial decisions could be reviewed or quashed. The use of the expression "in principle" had narrowed the scope of the recommendation, suggesting that in some situations a retrial or the reopening of proceedings might not be an appropriate solution.

In view of the scope ("margin of appreciation") available to the national authorities in the interpretation of the Court's judgments, and in the light of the principles governing the enforcement of judgments, the Court considered it unnecessary to express a position on the validity of the Constitutional Court's interpretation. It was sufficient for the Court to be satisfied that the Constitutional Court's judgment had not been arbitrary, that is to say, that it had not distorted or misrepresented the judgment delivered by the Court. In so far as the Court had not given any binding indications on how to execute its judgment, and, in particular, had not indicated that any specific

The Court considered that the Constitutional Court’s judgment had been based on grounds within its remit and had not distorted the findings of the Court’s judgment. Therefore, it concluded that the applicants’ complaint was ill-founded and had to be rejected.

The Court also underlined that its conclusions in this case did not prejudice the supervision by the Committee of Ministers of the enforcement of the Court's 2018 judgment, which was still pending.

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