



## Spanish courts upheld applicant's dismissal after her successful equal pay claim, failing to protect her from discrimination

The case of [Ortega Ortega v. Spain](#) (application no. 36325/22) concerned the applicant's dismissal from her job, following a claim made by her of sex discrimination.

In today's **Chamber** judgment<sup>1</sup> in the case, the European Court of Human Rights held, unanimously, that there had been a **violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to private life)** of the European Convention on Human Rights.

In 2017 a sex discrimination claim brought by Ms Ortega Ortega against her employer was upheld by an employment tribunal. In the meantime, she was dismissed from her job on the grounds of a breach of confidentiality, having disclosed personal data in the context of the discrimination claim. She brought a second set of proceedings, alleging that her dismissal had been retaliatory. In 2019 the decision to dismiss her was upheld, the employment tribunal holding that she had committed very serious misconduct by using and communicating other person's protected personal data, for a purpose not related to work. Subsequent appeals by Ms Ortega Ortega against that decision were declared inadmissible.

The Court held, in particular, that the reasons given by the national courts in upholding the applicant's dismissal had not been sufficient. The dismissal had had the effect of negating the protection against discrimination afforded in the separate discrimination proceedings and the national courts had not engaged with that consequence. Furthermore, they had failed to give sufficient weight to relevant elements which could have been indicative of a retaliatory motive.

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

### Principal facts

The applicant, Maria de la Peña Ortega Ortega, is a Spanish national who was born in 1969 and lives in Alhaurín de la Torre (Spain).

Between 1994 and 2017 Ms Ortega Ortega worked as head of the finance department for a company that provided administrative services to a bank. As part of her functions, she oversaw staff payrolls. On 6 April 2017 Ms Ortega Ortega brought a conciliation claim (*papeleta de conciliación*) against her employer, arguing that she had been discriminated against on grounds of sex, as she was receiving lower remuneration than the rest of her colleagues who were in the same position, all of whom were men. She asked for equal remuneration and compensation. In the absence of a settlement, on 8 June 2017 she lodged a judicial claim for the protection of her fundamental rights, reiterating her arguments. On 10 August 2017 the Malaga Employment Tribunal no. 2 upheld her claim.

In parallel, on 2 May 2017 Ms Ortega Ortega was dismissed from her job. In the letter informing her of her dismissal, her employer stated that she had breached her duty of confidentiality and company

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).

policy regarding the protection of personal data. Specifically, she had disclosed personal data in connection with her formal complaint and she had shared it by email with third parties.

On 18 May 2017 Ms Ortega Ortega lodged a conciliation claim in relation to her dismissal. In the absence of an agreement, she initiated court proceedings on 14 June 2017, arguing that her dismissal had been in retaliation for her having lodged the discrimination claim. On 8 July 2019 the Malaga Employment Tribunal dismissed her claim and upheld the decision to dismiss her, finding no causal link had been established between the formal complaint made on 6 April 2017 and her dismissal and holding that she had committed very serious misconduct. An appeal by Ms Ortega Ortega against that judgment was dismissed by the Andalusia High Court. On 24 March 2021 the Supreme Court declared inadmissible an appeal by Ms Ortega Ortega on points of law and on 17 January 2022 the Constitutional Court declared inadmissible an *amparo* appeal.

## Complaints, procedure and composition of the Court

Relying on Articles 6 (right to fair hearing) and 14 (prohibition of discrimination), Ms Ortega Ortega complained that, by upholding her dismissal, the domestic courts had failed to protect her against retaliation for her successful complaint of sex discrimination.

The application was lodged with the European Court of Human Rights on 12 July 2022.

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 Victor Soloveytchik, *Section Registrar*.

## Decision of the Court

The Court took the view that the issues raised ought to be addressed from the perspective of Article 14 of the Convention, taken in conjunction with Article 8.

The Court considered that the State's obligations under those Articles required them to ensure real and effective protection against any form of reprisal by employers in connection with complaints brought to ensure respect of the right not to be discriminated against on grounds of sex. The domestic law provided for equal treatment of men and women in matters of employment and remuneration, as well as for protection against reprisals in that connection and the Court did not discern any deficiencies in respect of the relevant regulatory framework. The Court had, therefore, to determine whether the application of the domestic law by the employment tribunals which had examined Ms Ortega Ortega's case had provided sufficient protection of her rights.

The national courts had been faced with several conflicting interests, that is, on the one hand, Ms Ortega Ortega's right not to be discriminated against on grounds of sex in the employment context and her right to bring the necessary actions in defence of that right, without being exposed to reprisals, and on the other hand, the right to the protection of her colleagues' personal data and the company's duty to protect that data. The national courts had been required to strike a balance between those interests and to assess whether the dismissal – a severe disciplinary measure – had been justified in the specific circumstances of the case.

