



Spain should adopt measures to protect persons held incommunicado in police custody from possible violence at the hand of the authorities

The European Court of Human Rights delivered today its **Chamber judgments**¹ in the cases of [Etxebarria Caballero v. Spain](#) (application no. 74016/12) and [Ataun Rojo v. Spain](#) (no. 3344/13).

These cases concerned the investigation by the Spanish authorities into ill-treatment allegedly sustained by the applicants while they were held incommunicado in police custody. They were arrested by the police and placed in secret police custody in the context of judicial investigations concerning, in particular, their alleged membership of the terrorist organisation ETA.

In these two cases, the Court held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights on account of the lack of an effective investigation into the applicants' allegations of ill-treatment;

no violation of Article 3 concerning the ill-treatment alleged by the applicant Etxebarria Caballero.

The Court emphasised that the effective investigations that had been required in the light of the applicants' position of vulnerability had not been conducted. It again stressed (see the judgment in [Otamendi Egiguren v. Spain](#), 16.10.2012) the importance of adopting measures to improve the quality of forensic medical examinations of persons being held incommunicado. It also endorsed the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning both the safeguards to be put in place in such cases and the very principle of detaining a person incommunicado in Spain.

In addition, the lack of sufficient evidence in those two cases, largely imputable to the lack of an in-depth and effective investigation on the part of the Spanish authorities, prevented the Court from concluding that there had been a violation of Article 3 in respect of the alleged ill-treatment.

Principal facts

The applicant in the first case, Beatriz Etxebarria Caballero, is a Spanish national who was born in 1978. She is detained in the Soto del Real Prison (Madrid). The applicant in the second case, Oihan Unai Ataun Rojo, is a Spanish national who was born in 1986 and lives in Pamplona (Spain).

They were arrested on 1 March 2011 and 10 November 2008 respectively by the police and placed in incommunicado police custody for five days (Ms Etxebarria Caballero) and four days (Mr Ataun Rojo) in the course of judicial investigations into the offences of presumed membership of the terrorist organisation ETA and of SEGI, a branch of ETA, respectively. Ms Etxebarria Caballero alleged that, during her arrest, she was pulled out of bed by her hair and handcuffed with a rope, without being able to get dressed, and subjected to two episodes of asphyxiation while being transferred by car. Mr Ataun Rojo claimed that, while being transferred and held in incommunicado detention, he was subjected to physical and psychological threats and violence. The applicant stated, in particular, that

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.

he had been struck on the head and in the face, obliged to remain in a crouched position, to do push-ups and subjected to episodes of asphyxiation, with a plastic bag being placed over his head. Ms Etxebarria Caballero claimed, in particular, that while she was questioned she had been undressed and had freezing water poured onto her; that she had been threatened, slapped, and subjected to three episodes of asphyxiation; and that she had been sexually assaulted. While in police custody, the applicants were seen by doctors on several occasions – they did not always wish to be examined – and were also questioned on several occasions.

On 5 March 2011 and 14 November 2008 respectively, Ms Etxebarria Caballero and Mr Ataun Rojo were brought, still in incommunicado detention, before a central investigating judge at the *Audiencia Nacional*. On that occasion, they stated that they had been subjected to ill-treatment while in police custody.

On 15 March 2011 and 6 April 2009 respectively, Ms Etxebarria Caballero and Mr Ataun Rojo complained to Bilbao investigating judge no. 1 and the Pamplona duty judge respectively. They requested, among other things, that the security camera recordings from the premises in which they had been detained be submitted to the courts and that the police officers who had been involved in their police custody be identified and questioned. They also asked to undergo in-depth physical and psychological examinations.

Provisional discontinuance orders were issued by Bilbao investigative judge no. 1 (Ms Etxebarria Caballero) and Pamplona investigating judge no. 4 (Mr Ataun Rojo). They considered that, in view of the reports prepared by the forensic doctors during their police custody and copies of the statements made by the applicants, it had not been established that the offence of torture imputed to the police officers had been committed. Those orders were upheld by the Biscay and Navarre *Audiencias Provinciales*, and the applicants' *amparo* appeals were declared inadmissible.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicants complained that there had been no effective investigation by the Spanish authorities into their complaint about the ill-treatment that they had allegedly sustained while being held in secret police custody. Ms Etxebarria Caballero also complained of the alleged ill-treatment.

The applications were lodged with the European Court of Human Rights on 9 November 2012 (Ms Etxebarria Caballero) and 10 January 2013 (Mr Ataun Rojo) respectively.

The *Open Society Justice Initiative* was granted leave to submit written observations as a third party (Article 36 § 2 of the Convention) in the case of Ms Etxebarria Caballero.

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

Josep Casadevall (Andorra), *President*,
Alvina Gyulumyan (Armenia),
Ján Šikuta (Slovakia),
Dragoljub Popović (Serbia),
Luis López Guerra (Spain),
Johannes Silvis (the Netherlands),
Valeriu Grițco (the Republic of Moldova),

and also Marialena Tsirli, *Deputy Section Registrar*.

Decision of the Court

Article 3 (investigation)

The applicants had been placed in incommunicado police custody for four and five days respectively, during which time they were unable to inform a person of their choice about their detention and of its location, or to be assisted by a lawyer of their own choosing. They had alleged, in a clear and detailed manner, that they had been subjected to ill-treatment during those periods, firstly before the central investigating judge at the *Audiencia Nacional*, and secondly before Bilbao investigative judge no. 1 (Ms Etxebarria Caballero) and Pamplona investigative judge no. 4 (Mr Ataun Rojo). The Court therefore held that the applicants had had arguable complaints under Article 3 of the Convention and that, in consequence, the authorities ought to have carried out in-depth and effective investigations capable of leading to the identification and punishment of those responsible.

However, in ruling in these two cases, the investigative judges had merely examined medical reports and copies of the statements made by Ms Etxebarria Caballero and Mr Ataun Rojo, without granting their requests for submission to the court of security camera recordings from the premises in which they had been detained, or for identification and questioning of the officers involved in their police custody. In the Court's view, such questioning might have helped to shed light on the events, whether in support of one version of events or the other. Ms Etxebarria Caballero and Mr Ataun Rojo had also unsuccessfully asked to undergo physical and psychological examinations.

The Court emphasised that the effective investigations that had been required in the light of the position of vulnerability of the applicants, who were being held in incommunicado detention, had not been conducted. It again stressed the importance of adopting the measures recommended by the Committee for the Prevention of Torture to improve the quality of forensic medical examinations of persons being held in incommunicado detention, finding that their particular vulnerability (isolation, total lack of communication with the outside world) called for appropriate judicial supervision measures to be taken, as provided for by the Code of Criminal Procedure, and for those provisions to be applied strictly, in order to prevent abuse and ensure detainees' physical safety. The Court subscribed to the [CPT's recommendations](#)² concerning both the safeguards to be put in place in such cases and the very principle of the option of detaining a person incommunicado in Spain.

In conclusion, having regard to the failure to carry out an in-depth and effective investigation into the applicants' arguable allegations of ill-treatment, the Court held that there had been a violation of Article 3.

Article 3 (treatment)

The Court was aware of the difficulties that a detainee might face in submitting evidence of ill-treatment sustained in the course of his or her detention incommunicado, especially where the allegations concerned acts of ill-treatment which left no visible traces. However, in the absence of sufficient evidence, the Court was unable to find that there had been a violation of Article 3 in respect of the ill-treatment allegedly sustained in this case, as it could not conclude "beyond reasonable doubt" that ill-treatment had indeed occurred. It wished to point out that this inability resulted, to a large extent, from the Spanish authorities' failure to carry out an in-depth and effective investigation.

Just satisfaction (Article 41)

The Court held that Spain was to pay Ms Etxebarria Caballero 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,000 in respect of costs and expenses, and was to pay Mr Ataun Rojo EUR 20,000 in respect of non-pecuniary damage and EUR 4,000 in respect of costs and expenses.

² Reproduced by the Council of Europe Commissioner for Human Rights in his [report of 9 October 2013](#)

The judgments are available only in French.

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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.