



An appeal hearing which led to the applicants' conviction after their first-instance acquittal fulfilled the requirements of the right to a fair trial

In today's Chamber judgment¹ in the case of [Vilches Coronado and Others v. Spain](#) (application no. 55517/14) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned the applicants' conviction for fraud against the State Treasury after an appeal hearing, the applicants having been acquitted at first instance.

The Court observed that the Valencia *Audiencia Provincial* had held a public hearing and allowed the applicants to intervene if they so wished. No lack of due diligence could therefore be imputed to that court as far as concerned respect for the applicants' right to a fair trial. The applicants themselves had waived their right to speak during the hearing before the *Audiencia Provincial*.

Principal facts

The applicants are Spanish nationals who were born between 1936 and 1967 and live in Valencia.

On 31 October 2012 the criminal court acquitted the applicants of the charge of fraud against the State Treasury. The prosecution and the State Attorney appealed against that judgment on the grounds that a serious error had been committed in assessing the evidence.

On 31 January 2013 the Valencia *Audiencia Provincial* held a public hearing. On 6 February 2013 the *Audiencia* declared the earlier judgment null and void and referred the case back to the criminal court. By a judgment of 27 February 2013 the criminal court once again acquitted the applicants. After examining the evidence, the court concluded that the defendants could not be charged with having engaged in misrepresentation in order to evade their tax obligations, as contended by the prosecuting parties. The prosecution and the State Attorney appealed.

The *Audiencia* held a public hearing on 17 May 2013. At the conclusion of the hearing the judge asked the applicants present whether they had any additional pleas to put forward in their defence or whether they preferred to refer to the memorials deposited by their lawyer. The applicants remained silent and were asked no further questions.

By a judgment of 29 May 2013 the *Audiencia* convicted Mr Vilches Coronado on three charges of fraud against the State Treasury and the other three applicants as accessories to the same tax offences. It sentenced them to three years' imprisonment each.

Reinterpreting the statements of the experts who had intervened at first instance, the defendants' submissions and the documentary evidence, the *Audiencia* considered established the fraud committed against the State Treasury as laid down in Article 305 of the Penal Code. The applicants requested the annulment of the proceedings and then, following the dismissal of their request, lodged an *amparo* appeal before the Constitutional Court, which declared that appeal inadmissible on 6 March 2014.

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.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), the applicants alleged that the *Audiencia Provincial* had altered the facts as established at first instance. In the applicants' view, the hearing before the appellate court had failed to satisfy the requirements of a fair trial.

The application was lodged with the European Court of Human Rights on 23 July 2014.

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

Helena Jäderblom (Sweden), *President*,
Luis López Guerra (Spain),
Helen Keller (Switzerland),
Dmitry Dedov (Russia),
Alena Poláčková (Slovakia),
Georgios A. Serghides (Cyprus),
Jolien Schukking (the Netherlands),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court noted that a hearing had been held before the Valencia *Audiencia Provincial*, attended by the applicants. The latter had remained silent during the proceedings.

The Court took the view that the *Audiencia* had departed from the first-instance judgment after adjudicating on *de facto* and *de jure* evidence that had enabled it to determine the defendants' guilt. In reaching that finding the *Audiencia* had had regard, first of all, to one objective element, namely the result of the documentary evidence contained in both the first-instance and the appeal case files, and secondly, to a subjective element, namely the applicants' wish to commit fraud against the State Treasury by concealing specific incomes.

As regards the Spanish law in force at the time, the Court reiterated that it had deemed sufficiently proven the fact that Spanish constitutional case-law permitted the re-administration of such evidence as witness statements that had already been administered before the first-instance court, in cases where the facts as established were in dispute (see *Hernández Royo v. Spain*, no. 16033/12).

The Court also noted that the applicants, who had been assisted by a lawyer, had taken cognisance of the content of the appeal lodged by the prosecution and the State Attorney, and that, although they had been aware of the powers of the *Audiencia* to set aside the acquittal judgment, they had failed to request an examination of the witnesses during the hearing before the appellate court. The *Audiencia* had considered that in order to be able to reassess the facts established by the criminal court it was necessary to hear the applicants to enable them to express their views on the prosecuting parties' allegations. They had therefore held a public hearing and given the applicants an opportunity to intervene if they so wished. Accordingly, the *Audiencia* could not be criticised for lacking due diligence in respect of the applicants' right to have their case fairly adjudicated. It had been the applicants themselves who had decided to reject the option offered by the *Audiencia*.

The Court saw no valid reason to depart from the findings of the domestic courts. The applicants had had an opportunity to attend the hearing and present their views on the reassessment of the facts, but had decided not to exercise that right.

There had therefore been no violation of Article 6 § 1.

The judgment is 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.