



## Grand Chamber hearing in a case concerning the immediate return of a Malian and an Ivorian migrant who had attempted to enter Spain illegally

The European Court of Human Rights is holding a **Grand Chamber**<sup>1</sup> hearing today **Wednesday 26 September 2018 at 9 15 a.m.** in the case of **N.D. and N.T. v. Spain** (application nos. 8675/15 and 8697/15).

The case concerns the immediate return to Morocco of sub-Saharan migrants who attempted on 13 August 2014 to enter Spanish territory illegally by scaling the fences which surround the Melilla enclave on the North African coast.

*The hearing will be broadcast from 2.30 p.m. on the Court's Internet site ([www.echr.coe.int](http://www.echr.coe.int)). After the hearing the Court will begin its deliberations, which will be held in private. Its ruling in the case will, however, be made at a later stage.*

The applicants, N.D. and N.T., are, respectively, Malian and Ivorian nationals who were born in 1986 and 1985. N.D. arrived in Morocco in March 2013 and stayed for about nine months in the makeshift camp on Gurugu Mountain, near the border crossing into Melilla, a Spanish enclave situated on the North African coast. N.T. arrived in Morocco at the end of 2012 and also stayed in the camp.

On 13 August 2014 N.D. and N.T. left the camp and attempted to enter Spain with a group of sub-Saharan migrants via the Melilla border. The border is made up of three enclosures, namely two six-metre-high outer fences and another three-metre-high inner fence. N.D., N.T. and other migrants scaled the first fence. They claimed that the Moroccan authorities threw stones at them. N.D. succeeded in climbing to the top of the third fence. N.T. said that he managed to cross the first two fences. N.T. climbed down at about 2 p.m., assisted by the Spanish police, and N.D. at around 3 p.m.

They were immediately arrested by members of the *Guardia Civil*, handcuffed and returned to Morocco. At no point were their identities checked. They did not have an opportunity to explain their personal circumstances or to receive assistance from lawyers, interpreters or medical personnel. They were subsequently transferred to the Nador police station, and then to Fez, more than 300 km from Melilla, in the company of 75 to 80 other migrants who had attempted to enter Melilla on the same date. Videos of the events of 13 August were made by witnesses and journalists, and those videos were submitted to the Court by the applicants. Non-governmental organisations subsequently lodged a complaint and called for the opening of an investigation.

Later, on 9 December 2014 and 23 October 2014 respectively, N.D. and N.T. succeeded in entering Spanish territory by the Melilla border fences. Orders for deportation were issued against both of them. N.D. was returned to Mali on 31 March 2015. An order for N.T.'s deportation was issued on 7 November 2014 and his current situation is unknown.

<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

## Procedure

The application was lodged with the European Court of Human Rights on 12 February 2015.

Relying on Article 4 of Protocol No. 4 (prohibition of collective expulsions of aliens) to the European Convention on Human Rights, the applicants claim that they were subjected to a collective expulsion without an individual assessment of their situation, with no basis in law and without the provision of any legal advice. Further relying on Article 13 (right to an effective remedy) of the Convention taken together with Article 4 of Protocol No. 4, they complain that it was impossible to have their identity established, to put forward their individual situations, to challenge before the Spanish authorities their return to Morocco and to have the risk of ill-treatment that they ran in that State taken into consideration.

In its Chamber [judgment](#) of 3 October 2017, the European Court of Human Rights held, unanimously, that there had been a violation of Article 4 of Protocol No. 4. The Chamber noted in particular that N.D. and N.T. had been expelled and sent back to Morocco against their wishes and that the removal measures had been taken in the absence of any prior administrative or judicial decision. At no point were N.D. and N.T. subjected to any identification procedure by the Spanish authorities. The Chamber concluded that, in those circumstances, the measures had indeed been collective in nature. The Chamber also held, unanimously, that there had been a violation of Article 13 taken together with Article 4 of Protocol No. 4. In this regard, it observed in particular that the applicants' version of the attempt to scale the fences towards Melilla had been corroborated by numerous statements, gathered by various witnesses and journalists as well as by the UN High Commissioner for Refugees and the Council of Europe Human Rights Commissioner. Furthermore, the Chamber noted the existence of a clear link between the collective expulsion to which N.D. and N.T. had been subjected at the Melilla border and the fact that they had been effectively prevented from having access to a remedy that would have enabled them to submit their complaint to a competent authority and to obtain a thorough and rigorous assessment of their requests before their removal.

On 29 January 2018 the case was referred to the Grand Chamber at the Spanish Government's request<sup>2</sup>.

The following organisations and countries were granted leave to intervene in the written proceedings as third parties: the United Nations High Commissioner for Refugees (HCR), the United Nations Office of the High Commissioner for Human Rights (OHCHR), the Spanish Commission for Assistance to Refugees (CEAR), the AIRE Centre, Amnesty International (AI), the European Council on Refugees and Exiles (ECRE), the Dutch Council for refugees and the International Commission of Jurists (ICJ) acting jointly. The Commissioner for Human Rights of the Council of Europe exercised his right to take part in the proceedings and submitted written observations (Article 36 § 3 of the Convention and Rule 44 § 2 of the Rules of Court). The Governments of Belgium, France, and Italy also produced observations as third parties before the Grand Chamber.

The Commissioner for Human Rights of the Council of Europe and the United Nations High Commissioner for Refugees (HCR) were granted leave to make submissions in the oral proceedings before the Grand Chamber.

## Composition of the Court

The case will be heard by a Grand Chamber, composed as follows:

2. Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Guido Raimondi (Italy), *President*,  
Angelika Nußberger (Germany),  
Linos-Alexandre Sicilianos (Greece),  
Ganna Yudkivska (Ukraine),  
Robert Spano (Iceland),  
Vincent A. De Gaetano (Malta),  
Işıl Karakaş (Turkey)  
André Potocki (France),  
Aleš Pejchal (the Czech Republic),  
Mārtiņš Mits (Latvia),  
Armen Harutyunyan (Armenia),  
Gabriele Kucsko-Stadlmayer (Austria),  
Pauliine Koskelo (Finland),  
Marko Bošnjak (Slovenia),  
Tim Eicke (the United Kingdom),  
Lado Chanturia (Georgia),  
María Elósegui (Spain), *judges*,  
Faris Vehabović (Bosnia and Herzegovina),  
Lətif Hüseynov (Azerbaijan),  
Yonko Grozev (Bulgaria), *substitute judges*,

and also Johan Callewaert, *Deputy Grand Chamber Registrar*.

## Representatives of the parties

### Government

Rafael Andrés Leon Caveró, *Agent*,  
Francisco de Asís Sanz Gandasegui and Alfonso Brezmes Martínez De Villarreal, *Co-Agents*,  
Manuel Montobbio, *Ambassador Extraordinary and Plenipotentiary*,  
Francisco Coria Rico, Jesús Rueda Jimenez, Juan Valterra De Simón, and Luis Tarín Martín, *Advisers*,

### Applicants

Carsten Gericke and Gonzalo Boye, *Counsel*,  
Wolfgang Kaleck, Hanaa Hakiki, Rocío Moreno and Isabel Elbal, *Advisers*,

### Third parties

Dunja Mijatović, *Commissioner for Human Rights*,  
Françoise Kempf and Anne Weber, *Advisers*,

### UNHCR

Grainne O'hara, Marta García, and Randhir Wanigasekara, *Advisers*.

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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.