

## Police files kept on Catalan judges based on political views: violation

In today's **Chamber judgment**<sup>1</sup> in the case of [M.D. and Others v. Spain](#) (application no. 36584/17) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.**

The case concerned the compiling of files by the police in Catalonia on judges who had expressed certain views on that region's independence from Spain. Material from the files, including photographs, had been subsequently leaked to the press.

The Court found in particular that the mere existence of the police reports, which had not been compiled in accordance with any law, had contravened the Convention. As for the investigation into the leak, the Court found it to have been inadequate owing to the failure to interview a person crucial to the investigation, the Senior Chief of Police of Barcelona.

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

### Principal facts

The applicants are 20 Spanish nationals. They are serving judges and magistrates in Catalonia (Spain).

In February 2014 they, along with 13 other judges, authored a manifesto which set out their opinion that the Catalan people should have a "right to decide" (that is to say on Catalan independence) under the Constitution and international law.

In March of that year, the newspaper *La Razón* published an article on their manifesto entitled "The conspiracy of the thirty-three separatist judges". The article included personal details and photographs – taken from the police database – of the applicants.

Following a complaint by the applicants, criminal proceedings were initiated, with the applicants also seeking damages. The complaint was dismissed, with the Investigating Judge no. 15 of Madrid holding that although "... the facts under investigation constitute[d] a criminal offence, ... there [were not] sufficient grounds for attributing them to a particular person". They appealed. In response to the appeal, the same investigating judge again could not attribute criminal responsibility, and dismissed it. They appealed again, with the *Audiencia Provincial* dismissing that appeal in April 2016.

In 2014 the applicants also complained to the Data Protection Agency about the article, naming both the Interior Ministry and *La Razón*. That was unsuccessful, but on appeal the *Audiencia Nacional* ordered that a full investigation be carried out, which is apparently still pending.

Also in 2014 the Manos Limpias civil service trade union unsuccessfully lodged a complaint and subsequent appeal against the judges who had signed the manifesto with the General Council of the Judiciary.

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).

## Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect for private and family life), 10 (freedom of expression) and 6 § 1 (right to a fair trial), the applicants complained of the police compiling a file on them for no justification, using police photos, which then leaked to the press; of the disciplinary action against them for having expressed their views; and that the investigation into their allegations had been inadequate.

The application was lodged with the European Court of Human Rights on 26 April 2017.

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

Georges Ravarani (Luxembourg), *President*,  
Georgios A. Serghides (Cyprus),  
María Elósegui (Spain),  
Darian Pavli (Albania),  
Peeter Roosma (Estonia),  
Andreas Zünd (Switzerland),  
Frédéric Krenç (Belgium),

and also Milan Blaško, *Section Registrar*.

## Decision of the Court

### Article 8

The Court reiterated that Article 8's primary purpose was to prevent interference by the police in the privacy of an individual's private or family life, home or correspondence. However, the Article also entailed an obligation to actively protect the individual from arbitrary interference with their privacy by the authorities.

Regarding the **police reports**, it noted that there was no domestic legal provision authorising the compiling of such reports without some connection to a crime. The reports contained personal data, photographs and certain professional information (partially extracted from the police ID database), and, in some cases, political views. The Court concluded that the mere existence of such police reports had been in violation of Article 8.

Concerning the **leak and ensuing investigation**, the Court stated that it was uncontested that the photos and some other information had been sourced in the police ID database. The domestic authorities had found it established that the Spanish State had been responsible for the leak.

Although statements had been taken from some witnesses, in order to have had an effective investigation of the leak, it would have been necessary to have taken statements from the Senior Chief of Police of Barcelona, to whom the reports had been addressed and who had been responsible for the databases. This had not been done. Owing to its failure to carry out this investigative step, the State had failed to comply with its obligations under Article 8 of the Convention.

Given these findings, there had been a violation of Article 8 of the Convention.

### Other articles

The Court held that no sanction or chilling effect could be discerned from the fact that disciplinary proceedings had taken place and had been closed without any sanction having been imposed. It thus concluded that the complaint under Article 10 was inadmissible as manifestly ill-founded as their freedom of expression had been respected.

On examination of the facts, the Court considered that it was not necessary to examine the complaints under Article 6 § 1.

#### Just satisfaction (Article 41)

The Court held that Spain was to pay the applicant 4,200 euros (EUR) in respect of non-pecuniary damage and EUR 3,993 in respect of costs and expenses.

*The judgment is available only in English.*

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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.