



## Forthcoming Grand Chamber judgment in a case against Spain concerning the dismissal of trade unionists

The European Court of Human Rights will be delivering a Grand Chamber judgment in the case of **Palomo Sanchez and Others v. Spain** (application nos. 28955/06, 28957/06, 28959/06 and 28964/06) at a public hearing on **Monday 12 September 2011 at 11 a.m.** – local time.

The case concerns the dismissal of a group of trade unionists after the union's newsletter had published a cartoon and articles considered to be insulting to two other employees and a manager.

The applicants, Juan Manuel Palomo Sánchez, Francisco Antonio Fernández Olmo, Agustín Álvarez Lecegui and Francisco José María Blanco Balbas, are Spanish nationals who live in Barcelona. They worked as deliverymen for the company P. After having brought several sets of proceedings before the labour courts against their employer, in 2001 they set up a trade union and joined the union's executive committee.

The March 2002 issue of the union's monthly newsletter reported on a judgment of a Barcelona employment tribunal, which had partly upheld the applicants' claims, ordering the company P. to pay them certain sums in respect of salaries owed to them. The cover page of the newsletter displayed a caricature showing two employees of the company giving sexual favours to the director of human resources. Two articles, worded in vulgar language, criticised the fact that those two individuals had testified in favour of the company during the proceedings brought by the applicants. The newsletter was distributed among the workers and displayed on the notice board of the trade union on the company's premises.

On 3 June 2002, the applicants were dismissed for serious misconduct, namely for impugning the reputations of the employees and the human resources director criticised in the newsletter. The applicants challenged that decision before the courts. In a November 2002 judgment, the Employment Tribunal no. 17 of Barcelona dismissed their complaints, finding that the dismissals were justified in accordance with the relevant provisions of the Labour Regulations. It held that the cartoon and the two articles were offensive and impugned the dignity of the people concerned, and thus exceeded the limits of freedom of expression.

In May 2003, the High Court of Justice of Catalonia upheld the judgment in so far as it concerned the four applicants. It referred, in particular, to the limits imposed by the principle of good faith between parties to an employment contract and to the necessary balance that judicial decisions had to strike between a worker's contractual obligation and his freedom of expression.

An appeal on points of law by the applicants was dismissed by the Supreme Court on 11 March 2004. Their *amparo* appeal was declared inadmissible by the Constitutional Court on 11 January 2006, in particular on the grounds that the constitutional protection of freedom of expression did not extend to offensive or humiliating statements which were not necessary for others to form an opinion about the facts of which the applicants wished to complain.

## Complaints and procedure

The applicants allege that their dismissal, based on the content of the newsletter, had infringed their rights under Article 10 (freedom of expression), and that the real reason for their dismissal had been their trade-union activities, in violation of their right to freedom of assembly and association under Article 11.

The case originated in six applications<sup>1</sup>, which were lodged with the European Court of Human Rights on 13 July 2006. In its [Chamber judgment of 8 December 2009](#), the Court held, by six votes to one, that the authorities had not exceeded their discretion in penalising the applicants and that there had been no violation of Article 10. It was also of the opinion that no separate question arose under Article 11. On 10 May 2010, the case was referred to the Grand Chamber at the applicants' request. A Grand Chamber hearing took place on 8 December 2010 in Strasbourg ([webcast available](#)).

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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.

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<sup>1</sup> The applications of two of the original applicants were found inadmissible by the Court in its Chamber judgment of 8 December 2009.