



## The Spanish authorities should have suspended the procedure for removal of international protection seekers until their allegations about the risks they faced in their country of origin had been thoroughly examined

In today's Chamber judgment in the case of [A.C. and Others v. Spain](#) (application no. 6528/11), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 13 (right to an effective remedy), taken together with Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.**

The case concerned the possible removal of international protection seekers from Spain to Morocco, where they alleged they would face a risk of inhuman and degrading treatment.

The Court considered that the international protection proceedings instituted by the applicants had not provided them with a sufficient opportunity to explain the risks they would face in the event of their return to their country of origin. Since those proceedings did not have automatic suspensive effect, the application of Rule 39 of the Rules of Court (interim measures) had been the only means of suspending the procedure for their removal. Without the Court's intervention, the applicants would have been returned to their country of origin without their applications for international protection having been examined as thoroughly and rapidly as possible.

Having regard to the particular circumstances of the case, the Court held that Spain was to ensure that the applicants remained within its territory while their cases were being examined, pending a final decision by the domestic authorities on their applications for international protection.

### Principal facts

The applicants are thirty international protection seekers of Sahrawi origin.

Having fled the Gdeim Izik camp in the territory of Western Sahara after it had been forcibly dismantled by the Moroccan police, the applicants arrived on makeshift boats on the coast of the Canary Islands between January 2011 and August 2012. Several days later they lodged applications for international protection, which were rejected after being considered and reconsidered by the Spanish Minister of the Interior. The Minister also ordered their deportation.

On 21 January 2011 the first thirteen applicants applied for judicial review of the Minister of the Interior's decisions and also sought a stay of execution of the orders for their deportation. On 27 January the *Audiencia Nacional* ordered the administrative authorities to provisionally suspend the procedure for the removal of the applicants in question pending the examination of their allegations about the risks they would face in the event of being returned to their country of origin. The following day, the *Audiencia Nacional* rejected the applications for a stay of execution of the

<sup>1</sup> 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)

deportation orders. Between January 2011 and September 2012, in decisions that were likewise adopted very shortly after the authorities had been ordered to provisionally suspend the removal procedures, the *Audiencia Nacional* rejected the applications for a stay of execution of the deportation orders in respect of the other seventeen applicants.

Between 28 January 2011 and 1 October 2012 the applicants made thirty requests to the European Court of Human Rights for interim measures under Rule 39 of the Rules of Court. They submitted that in the past, while being arrested or during the dismantling of their camp, they had been subjected to ill-treatment by the Moroccan authorities on account of their Sahrawi origin. Some of them also stated that they would feel threatened in the event of their return, alleging not only that they themselves had been physically assaulted but also that some of their family members had been sexually assaulted or tortured by police officers by way of reprisals. The Court decided to indicate to the Spanish Government that the applicants should not be removed for the duration of the proceedings before it. After their applications for judicial review were dismissed, the applicants appealed on points of law to the Supreme Court. The Court has had no information to date from the parties as to the outcome of those appeals.

## Complaints, procedure and composition of the Court

Relying on Article 13 (right to an effective remedy) in conjunction with Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment), the applicants complained that they had had an insufficient opportunity in the national courts to submit their arguments concerning the risks they would face in the event of their removal to Morocco.

The application was lodged with the European Court of Human Rights on 28 January 2011.

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 Santiago **Quesada**, *Section Registrar*.

## Decision of the Court

### [Article 13 \(right to an effective remedy\) in conjunction with Articles 2 \(right to life\) and 3 \(prohibition of inhuman or degrading treatment\)](#)

The Court reiterated that the concept of an effective remedy required the possibility of suspending the implementation of a removal order where the person facing deportation was liable to be exposed to a risk of ill-treatment, torture and, *a fortiori*, a violation of the right to life.

In the present case, the Court was not required to determine whether there might be a violation of Articles 2 and 3 in the event of the applicants' removal. It was first and foremost for the Spanish authorities themselves to examine the applicants' requests and assess the risks they would face in their country of origin. The Court's concern was whether, given that the applicants' appeals on the merits were still pending before the Spanish courts, effective safeguards were in place to protect them against arbitrary removal.

The Court observed that the applicants had made use of the remedies available in the Spanish system in respect of their complaints under Articles 2 and 3 of the Convention: they had lodged applications for international protection, which had been rejected after being considered and reconsidered by the Minister of the Interior. Since the international protection proceedings did not in themselves have suspensive effect, the applicants had subsequently sought a stay of execution of the orders for their deportation.

On the face of it, and without prejudice to the Spanish courts' assessment on the merits, the applicants' fears as to the ill-treatment they were likely to face if they returned to their country of origin did not appear irrational. However, the day after ordering the suspension of the procedure for the first thirteen applicants' removal, the *Audiencia Nacional* had rejected their requests for a stay of execution. The requests by the other seventeen applicants had likewise been rejected very shortly after the administrative authorities had been ordered to provisionally suspend the removal procedure. The *Audiencia Nacional* had noted in particular that the arguments submitted in support of the applicants' requests had not led it to conclude that there was any special emergency that could justify suspending all measures for their removal from Spanish territory.

However, because of the expedited nature of the proceedings, the applicants had not had the opportunity to provide any further explanations on these points. This was all the more prejudicial in that, since their applications for international protection did not in themselves have suspensive effect, the proceedings before the *Audiencia Nacional* had been their only possible means of securing a stay of execution of their removal. Although the Court acknowledged the need to deal rapidly with applications of this kind, it considered that observance of this requirement should not undermine the effectiveness of the fundamental procedural safeguards for protecting the applicants against arbitrary removal to their country of origin.

Furthermore, since the applicants' applications for judicial review did not have suspensive effect either, the application of Rule 39 of the Rules of Court had been the only means of suspending the procedure for their removal. Without the Court's intervention, the applicants would therefore have been returned to their country of origin without their applications for international protection having been examined as thoroughly and rapidly as possible.

Accordingly, the Court found that there had been a violation of Article 13 in conjunction with Articles 2 and 3.

### Binding force and execution of judgments (Article 46)

Having regard to the particular circumstances of the case, the Court held that Spain was to ensure that the applicants remained within its territory while their cases were being examined, pending a final decision by the domestic authorities on their applications for international protection.

*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.