



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Application no. 14186/24
Arnaldo OTEGI MONDRAGON and Others
against Spain

The European Court of Human Rights (Fifth Section), sitting on 25 September 2025 as a Committee composed of:

Andreas Zünd, *President*,

María Elósegui,

Mykola Gnatovskyy, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 14186/24) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 30 April 2024 by the applicants listed in the appended table (“the applicants”), who were represented by Mr I. Iruin Sanz, a lawyer practising in Donostia-San Sebastián;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the execution of a previous judgment of the European Court of Human Rights (“the Court”) (*Otegi Mondragón and Others v. Spain*, nos. 4184/15 and 4 others, 6 November 2018), in which the Court had found a violation of Article 6 § 1 of the Convention on the grounds that the applicants had not been tried by an impartial tribunal. The facts of the case may be summarised as follows.

2. The applicants were involved in Basque politics and, prior to 2009, they had all held political posts in a Basque separatist movement (*izquierda abertzale*). They were all arrested on 15 October 2009 on the grounds that they were trying to form a political party under the effective control of the terrorist organisation ETA. They were later accused of belonging to a terrorist organisation, and on 16 September 2011 they were convicted by the

Audiencia Nacional and sentenced to terms of imprisonment ranging from eight to ten years, as well as being disqualified from holding public office or employment and from standing in elections.

3. They all lodged appeals on points of law with the Supreme Court. On 7 May 2012 the Supreme Court partially upheld their appeals and their sentences were reduced to six years and six months' imprisonment in respect of the first and fifth applicants in the present case, and six years in respect of the other applicants.

4. The applicants then lodged separate *amparo* appeals, which were dismissed by the Constitutional Court.

5. The applicants lodged an application with the Court on 14 January 2015. The Court, in a judgment of 6 November 2018 (see paragraph 1 above), found that there had been a violation of Article 6 § 1 of the Convention in that the applicants had not been tried by an impartial tribunal. The Court also held that the finding of a violation constituted in itself sufficient just satisfaction. In addition, it noted that the most appropriate form of redress would, in principle, be a retrial or the reopening of the case at the request of the applicants, as provided for under domestic law (see *Otegi Mondragón and Others*, cited above, §§ 74-75). It further noted in that connection that section 954(3) of the Spanish Criminal Procedure Act, as amended by Law no. 41/2015 of 5 October 2015, appeared to provide for the possibility of review of a final decision in cases where the Court had found a violation of the Convention or one of the Protocols thereto.

6. By the time the Court had published its judgment, the applicants had fully served their sentences, except for the first applicant, who remained disqualified from holding public office until 28 February 2021.

7. On the basis of the Court's judgment, the applicants lodged an application with the Supreme Court for a review of its judgment of 7 May 2012, which had partially upheld their appeals but had not quashed their convictions (see paragraphs 2 and 3 above). In particular, they asked the Supreme Court to "accept the application for review (*'tenga por interpuesto'*) of the judgment of the Supreme Court of 7 May 2012 ... which partially upheld the appeals on points of law lodged against the judgment of the *Audiencia Nacional* of 16 September 2011 and, upholding the application ..., to declare the above-mentioned judgments null and void, and all other [legal effects] (*'lo demás que en derecho proceda'*)". The applicants did not request, or in any way refer to, the possibility of a retrial.

8. On 27 July 2020 the Supreme Court upheld the application for review, stating:

"Following the European Court of Human Rights' finding in its judgment of 6 November 2018 (which became final on 6 February 2019) that there has been a violation of Article 6 § 1 of the Convention, that judgment constitutes sufficient legal grounds, under section 954 of the Criminal Procedure Act, for (i) accepting the submission of the application for review of the Supreme Court's judgment of 7 May

2012; and (ii) upholding the application for review, in so far as all the requirements of section 954(3) of the Criminal Procedure Act are met.”

The operative part of the judgment read as follows:

“This Division has decided:

1. To uphold the application for review... of the judgment ... of 7 May 2012, which partially upheld the appeals on points of law lodged against the judgment... of 16 September 2011 of the... *Audiencia Nacional*, and to declare the above-mentioned judgment null and void.

...

3. To communicate this decision to the courts that have intervened for all relevant purposes (*a los efectos procedentes*).”

9. On 25 September 2020 the President of the Criminal Division of the Supreme Court ordered the reopening of the proceedings concerning the appeal on points of law which the applicants had initially lodged against their conviction (see paragraph 3 above) and asked the parties to submit their arguments. That decision had the effect of taking the proceedings back to the situation before 7 May 2012. The applicants filed submissions, arguing that they had not asked for a retrial and that a decision ordering a new trial would be contrary to the Court’s judgment of 6 November 2018. They asked the Supreme Court to declare the judgment of 16 September 2011 of the *Audiencia Nacional* null and void and to communicate that decision to the *Audiencia Nacional*, so that it could revoke any penalties or measures deriving from that judgment and order the cancellation of their criminal records. On 11 November 2020 the public prosecutor’s office requested that a retrial by a newly composed court be held.

10. The Plenary of the Supreme Court delivered a judgment on 15 December 2020, deciding on the reopened appeal on points of law that the applicants had lodged against their initial convictions. The Supreme Court explained that previous cases examined in the framework of review proceedings had concerned cases of conviction on appeal, after an initial acquittal by the first-instance court. The judgment given in the review proceedings declaring the previous appeal judgment null and void had resulted in the validity of the acquittal declared by the first-instance court. This had been either expressly stated or implicit in the review judgment and no fresh decision was needed. Conversely, in the present case, the applicants had been convicted at first instance and, accordingly, the quashing of the appeal judgment of 7 May 2012 could not mean that the first-instance judgment had become final. The specific effects of the nullity of the Supreme Court’s judgment of 7 May 2012 therefore needed to be established.

11. The Supreme Court observed, first of all, that it was necessary to rule on the appeal on points of law lodged by the applicants because (i) their case had not been decided by a legally valid judgment; (ii) it was necessary to determine the effects of the Court’s judgment on the judgment of the

Audiencia Nacional; and (iii) the applicants had expressly requested that the judgment of the *Audiencia Nacional* be quashed, which would only be possible by ruling on the appeal on points of law.

12. Following the Court's finding that the conviction had been handed down by a tribunal in respect of which the applicants could have had objectively justified doubts as to its impartiality, a ruling on the appeal on points of law was necessary in order to declare the first-instance judgment null and void.

Otherwise, if the first-instance conviction were considered to have been quashed either by the judgment of the Court and/or by the judgment of the Supreme Court in the review proceedings, that would mean that there would be no legally valid judicial decision in the applicants' case. This would have two unintended consequences: (i) there would be no judicial decision on the criminal conduct or the events in question, the applicants' alleged participation in those events, or whether their conduct had been criminal in nature; and (ii) the applicants would have served prison sentences as a result of alleged criminal conduct which had not been established by a judicial decision. The Supreme Court therefore found that it was essential to give a specific ruling on the validity of the judgment of the *Audiencia Nacional*.

13. The Supreme Court also held that the ruling on the appeal on points of law would have to reflect the Court's judgment finding a breach of the right to an impartial tribunal, by upholding the appeals lodged by two of the applicants and extending the effects to all of them. Declaring the judgment of the *Audiencia Nacional* null and void was appropriate, given that a conviction by a tribunal whose impartiality was subject to objectively justified doubts could not be regarded as legally valid.

14. Regarding the consequences of the declaration of nullity, the parties put forward different solutions: whereas the applicants argued that they should be acquitted, the public and private prosecutors contended that the proceedings should be reopened and the case remitted for a retrial.

The Supreme Court noted that the doubts as to the impartiality of the first-instance court had precluded a legally valid ruling on the merits (the facts, the criminal nature of such facts and the applicant's participation). The applicants had already been convicted and the penalties imposed on them had been fully discharged. They had therefore been deprived of their liberty without any established justification. On the other hand, the prosecutors had a right to a reasoned decision with regard to their accusations.

15. The Supreme Court affirmed that, in its previous case-law, every time it had found that an appellant had been convicted in violation of his or her right to an impartial tribunal, the remedy had been to declare the trial null and void and quash the conviction, and to remit the case for a retrial by a newly composed court. In none of the cases concerned had the result been the acquittal of the accused, unless there were other violations of fundamental rights. Furthermore, the Supreme Court observed that the applicants had

requested the quashing of their convictions and a retrial when they had lodged their initial appeals on points of law against the judgment of the *Audiencia Nacional* of 16 September 2011. It noted that this constituted the standard procedural approach, being the only means of ensuring a ruling on the merits.

The Supreme Court also affirmed that there would be no violation of the *ne bis in idem* principle if a retrial were held, in so far as the first trial had been declared null and void on the grounds that there had been a violation of the fundamental rights of the accused. It cited, in that connection, the Court's case-law on Article 4 § 2 of Protocol No. 7 to the Convention, in particular *Mihalache v. Romania* ([GC], no. 54012/10, § 133, 8 July 2019).

16. Upholding the appeal on points of law, the Supreme Court quashed the judgment of the *Audiencia Nacional* and remitted the case for a retrial by the first-instance court in a different composition. It concluded:

“There are formal and substantive reasons why the nullity of the first-instance judgment – deriving from upholding the applicants' complaint – results in a retrial.

1. From a formal point of view, the nullity of the judgment [of the Supreme Court of 7 May 2012] requires a new decision ruling on the appeal, in accordance with the European Court of Human Rights' case law. More specifically, this entails upholding the complaint concerning the violation of the right to an impartial tribunal and, consequently, declaring the first-instance judgment null and void.

The nullity of that judgment means that the charges, which, in principle, are still valid, have not been validly determined.

This also relates to the substantive aspect of the matter. The accused have been deprived of their liberty with a view to the enforcement of a sentence imposed by a judgment subsequently declared null and void. They are entitled to a legal answer concerning their right to be presumed innocent in respect of the acts of which they were accused and their criminal nature.

The prosecutors, as part of the right to effective judicial protection, also have a right to a reasoned decision with regard to their claims, which were validly submitted.

2. The [applicants] argue that, according to the European Court of Human Rights' case-law, the proceedings can only be reopened at the request of the accused. But their position cannot be accepted. Finding a violation of the right to an impartial tribunal cannot result in giving an accused person a power to determine the conduct of the proceedings (*disponibilidad sobre el proceso*) that is not recognised under domestic law, in view of the [rights] affected by the offence of which he or she was accused.

For these reasons, [the Supreme Court upholds] the first complaint raised in the appeal on points of law by [the first and third applicants], and declares that there has been a violation of their right to an impartial tribunal. This means that the trial conducted [by the first-instance court] and the impugned judgment are null and void; [the Supreme Court] orders the resumption of the proceedings from the point before the trial, and the holding of a fresh trial of the accused ... by a tribunal composed of different judges from those who gave the judgment that has been quashed.”

17. The applicants lodged an *amparo* appeal against the Supreme Court judgment of 15 December 2020, arguing that the decision to set aside the first-instance judgment of 16 September 2011 and to remit the case for a

retrial was contrary to the principle of legal certainty, the right to fair proceedings and the *ne bis in idem* principle. Such a decision could only have been taken in the context of the Supreme Court judgment of 27 July 2020 granting the reopening of the proceedings. That judgment, however, had merely set aside the judgment of 7 May 2012, but had not remitted the case for a retrial. In the applicants' view, in the light of the severe sentences they had already served and the damage they had already suffered, requiring them to face a retrial was an "ultra-formalistic" approach. For the applicants, the Court's declaration that they had been the victims of an unfair trial and the quashing of their convictions constituted sufficient compensation, "without prejudice to the State's financial liability that may be engaged in respect of the time they had been unjustly deprived of their liberty". The applicants asked the Constitutional Court to declare null and void the part of the Supreme Court's judgment referring the case back to the *Audiencia Nacional* for a retrial. The public prosecutor's office endorsed the applicants' *amparo* appeal.

18. On 17 January 2024 the Constitutional Court upheld the applicants' *amparo* appeal and quashed the decision of the Supreme Court of 15 December 2020 on the grounds that a retrial would have breached the applicants' right to effective judicial protection.

19. The judgment contained a thorough analysis of the Constitutional Court's doctrine on the *ne bis in idem* principle, in particular in a situation where the proceedings had been tainted by a violation of essential procedural rights. The Constitutional Court explained that, although in such cases, the possibility of taking the proceedings back to an earlier stage and holding a retrial could be compatible with the *ne bis in idem* principle, a retrial was not automatic. A specific balancing of the rights at stake would be required, in compliance with the proportionality principle.

20. However, the Constitutional Court noted that its previous case-law referred to situations where a retrial had been ordered to protect the fundamental rights of the prosecutors. In the present case, it was called upon to rule on whether a retrial ordered to redress the rights of the convicted persons could, in view of the specific circumstances of the case, entail an excessive burden contrary to the *ne bis in idem* principle.

According to the Constitutional Court, it was necessary to take into account the following elements.

(a) The declaration of nullity and the retrial constituted an exception to the *ne bis in idem* principle. Furthermore, this was appropriate means of redressing a violation of the right to an impartial tribunal, as indicated by the Court in *Öcalan v. Turkey* ([GC], no. 46221/99, § 210, ECHR 2005-IV) and *Sejdovic v. Italy* ([GC], no. 56581/00, § 126, ECHR 2006-II), as well as in the judgment concerning the applicants (see *Otegi Mondragón and Others*, cited above, § 74).

(b) A trial by a tribunal that did not meet the requirements of impartiality as set out in Article 6 § 1 of the Convention could not be considered a fair trial. Thus, a decision ordering a retrial could not, in general, be considered to be a second set of proceedings for the purposes of the *ne bis in idem* principle.

(c) From the perspective of the convicted person, a retrial was not an end in itself, but was aimed at avoiding the conviction and the imposition of a penalty. Two circumstances therefore needed to be considered, in accordance with the Court's above-mentioned case-law: (i) whether the reopening of the proceedings had been requested by the victim of the human rights violation, who might be able to choose another form of redress; and (ii) whether the injured party continued to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which were not adequately remedied by the award of just satisfaction and could not be rectified except by re-examination or reopening, as indicated in Recommendation No. R (2000) 2 of the Committee of Ministers of the Council of Europe, on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights.

Therefore, in some circumstances, a violation of the right to an impartial tribunal could not result in a retrial. In cases where a retrial had not been requested by the convicted person or where it would not have any useful effect, it would become a burden for the person affected and would not be covered by the exception to the *ne bis in idem* principle.

21. In the case at hand, the Constitutional Court observed the following:

“i. The Supreme Court considered ... that simply declaring the conviction at first instance null and void, without a retrial, would amount to an acquittal, which could not be justified on the basis of a strictly procedural breach to be redressed ... Such reasoning is fully in accordance with the requirements of Article 24 of the Constitution.

ii. It cannot be said that the Supreme Court's ruling was completely unconnected to the applicants' claims before it. It is true that they never expressly asked for a retrial by a different court. However, it cannot be ignored that they requested the execution of the Court's judgment in a highly equivocal manner.

Their application for review had the sole aim of quashing the [Supreme Court's] judgment on their appeals on points of law, which had not by itself given rise to the breach of their right to an impartial tribunal. That application implied, in principle, the reopening of the criminal proceedings from the stage of the appeal on points of law, in so far as it could not be understood as declaring final the first-instance judgment, which had convicted them and imposed, in reality, more severe sentences than those imposed by the Supreme Court.

Following the Supreme Court's ruling of 25 September asking the parties to submit arguments regarding the appeal on points of law, the [applicants] neither objected to the resumption of the appeal proceedings nor raised any complaints about the reopening of the original proceedings. On the contrary, they accepted it (*se aquietaron*). In that regard, the decision of the Supreme Court was, to a large extent, a logical consequence of the remedy pursued by the applicants: it ruled on the appeal on points of law by declaring null and void its first decision – by which it had dismissed the claim of a

violation of the right to an impartial tribunal – and concluded that such a breach could be remedied only in the manner normally required by the procedural rules in force, namely by reopening the proceedings in order to hold a retrial.

iii. However, by ordering the reopening of the proceedings, the Supreme Court did not take into account the particular circumstances of the present case ... the [applicants] were expressly opposed to a retrial; moreover, ... they had already fully served the penalties imposed on them. In that context, the retrial failed to achieve its main useful effect, that is, avoiding the execution of the penalty ...

iv. In those circumstances, a retrial that had not been clearly and expressly requested by the individuals concerned imposed an excessive burden unrelated to the purpose of remedying the violation of fundamental rights. They would not only be exposed to the inherent burden of a second trial, but also to the risk of a more severe sentence, without the counterbalance of avoiding (totally or in part) the ... effects of the initial conviction. The *ne bis in idem* principle would be jeopardised by the dual application of the State's *ius puniendi*, in a manner which would be disproportionate and unjustified.

v. ... [T]he arguments of the Supreme Court in assessing the necessity of a retrial were insufficient. The public interest in [the applicants'] conviction had been satisfied by the full execution of the penalties imposed. This had also satisfied the interest of the prosecutors in contributing to the application of the *ius puniendi*, given that there is no fundamental right to secure a person's conviction ... The purported need to safeguard the [applicants'] right to the presumption of innocence ... – as though the purpose of the criminal proceedings, and in particular the trial, were to prove innocence in response to an initial presumption of guilt – is even less persuasive.

The decision to order a retrial after the penalties imposed had been discharged was manifestly disproportionate to the need to remedy a procedural violation suffered by the accused. In this context, a retrial must be considered to amount to a second trial, in breach of Article 24 of the Constitution (in conjunction with Article 6 § 1 of the Convention).

The judgment of the Criminal Division of the Supreme Court of 15 December 2020 must therefore be declared null and void.”

22. However, the Constitutional Court held that the nullity could not be limited to the instructions concerning the retrial and, regarding the nullity of the judgment of the *Audiencia Nacional*, observed the following:

“a. In seeking a review of their conviction following the judgment of the European Court of Human Rights of 6 November 2018, the [applicants] never asked the Supreme Court to remedy the violation of their right to an impartial tribunal by declaring the first-instance judgment null and void without reopening the proceedings. Furthermore, they did not ask the Supreme Court to award just satisfaction (which was an alternative to the retrial as envisaged in the judgment of the European Court of Human Rights). Instead, they merely requested that the judgment on the appeal on points of law, which was upheld by the Supreme Court in its judgment of 27 July 2020, be declared null and void.

b. Once the proceedings concerning the appeal on points of law were reopened, it is true that the judgment of 15 December 2020 quashed the impugned judgment of the *Audiencia Nacional* convicting [the applicants]. It is clear, however, that such a consequence was ... intrinsically linked to the ordering of a retrial. The Criminal Division of the Supreme Court ... declared the first-instance judgment null and void with the sole purpose of ensuring a retrial, viewing this ... as the only means of

remedying the violation of the [applicants' rights]. The [Supreme Court] expressly rejected the notion that remedying the violation of the right to an impartial tribunal could be achieved solely by declaring the first-instance judgment null and void, without reopening the proceedings. Such an outcome – effectively amounting to an acquittal – was unrelated to the procedural breach alleged in the appeal on points of law. The declaration of nullity and the reopening of proceedings by the Supreme Court therefore constituted a single order (*pronunciamiento*) ...

c. Lastly, it cannot be overlooked that the scope of the *amparo* appeal is solely limited to the violation of the right to effective judicial protection (Article 24 § 1 of the Constitution) that would result from a retrial. The protection to be granted must therefore entail the prohibition of a second trial, without it being appropriate, in this process, to give a decision equivalent in substance to an acquittal (as a declaration of nullity without the reopening of the proceedings would be) in relation to the initial trial. This is particularly so when such protection was not requested before the Supreme Court in the application for review as a means of remedying the [violation of the] right to an impartial tribunal, in order to execute the judgment of the European Court of Human Rights of 6 November 2018.”

23. The Constitutional Court established the effects of upholding the *amparo* appeal as follows: (i) the Supreme Court’s judgment of 15 December 2020 was declared null and void; (ii) no further reopening of proceedings or retrial would take place, as it would not have any effect, since the applicants had refused a retrial and had not requested any other form of satisfaction; and (iii) the *res judicata* effect of the Supreme Court’s judgment of 7 May 2012 would be maintained, “with the addition of the finding of a violation of the applicants’ right to an impartial tribunal established by the European Court of Human Rights”.

24. The supervision of the execution of the Court’s judgment of 6 November 2018 by the Committee of Ministers of the Council of Europe was ongoing at the time of the adoption of the present decision¹.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

25. The relevant provisions of the Criminal Procedure Act (in force after 12 December 2015) state as follows:

Section 954

“3. An application for review of a final decision may be made when the European Court of Human Rights has declared that that decision is in breach of the rights recognised in the European Convention on Human Rights and Fundamental Freedoms and the Protocols thereto, provided that the violation, on account of its nature and seriousness, entails persistent effects which cannot cease otherwise than through such a review.

¹ Information concerning the supervision of the execution of the Court’s judgment can be found at: [https://hudoc.exec.coe.int/#{%22fulltext%22:\[%22otegi%20and%20others%22\],%22execdocummentypecollection%22:\[%22CEC%22\],%22execidentifier%22:\[%22004-51531%22\]}](https://hudoc.exec.coe.int/#{%22fulltext%22:[%22otegi%20and%20others%22],%22execdocummentypecollection%22:[%22CEC%22],%22execidentifier%22:[%22004-51531%22]})

In such cases, the review can only be requested by the person who, having standing to make such an application, was the applicant to the European Court of Human Rights. The application must be made within one year after the judgment of the Court has become final.

...”

COMPLAINTS

26. The applicants complained of a violation of their right to a fair trial on account of the Constitutional Court’s judgment of 17 January 2024, which in their view had been arbitrary or manifestly unreasonable, in breach of Article 6 § 1 of the Convention read in the light of Article 46. The applicants argued that the present case raised a new issue which had not been resolved in the Court’s judgment of 6 November 2018 and therefore amounted to a new violation of the Convention.

In particular, they complained that the Constitutional Court’s judgment of 17 January 2024 had established that the Supreme Court’s judgment of 7 May 2012 should maintain its effects and validity in respect of their convictions and the sentences they had already served. The Constitutional Court had, in the applicants’ view, turned the *ne bis in idem* principle into a burden, instead of a guarantee, for them. Furthermore, it had extended its effects beyond the judgment that they had challenged, that is, the Supreme Court’s judgment of 15 December 2020.

They submitted that such findings were contrary to the Court’s judgment of 6 November 2018 and negated its execution. The applicants argued that they had been left in a situation where their guilt and convictions had been maintained, despite the finding that they had been convicted in violation of their right to an impartial tribunal. They had therefore not been restored, as far as possible, to the situation which they had enjoyed prior to the violation of the Convention. Moreover, they pointed to the extraordinary circumstances of the case, namely that they had already served long prison sentences.

Lastly, they complained that they had been prevented from seeking compensation at the domestic level for the time during which they had been unduly deprived of their liberty and for the damage arising from the other penalties imposed on them that had been fully discharged.

THE COURT’S ASSESSMENT

27. In examining the admissibility of the present application, the Court must first ascertain whether it has jurisdiction to consider the applicants’ complaint without encroaching on the prerogatives of the respondent State and the Committee of Ministers under Article 46 of the Convention, and if so, whether the safeguards of Article 6 of the Convention were applicable to the proceedings in question.

28. The Court refers to the principles set out with regard to the issue of its jurisdiction in relation to the prerogatives of the respondent State and of the Committee of Ministers under Article 46 of the Convention in *Moreira Ferreira v. Portugal (no. 2)* ([GC], no. 19867/12, § 47-59, 11 July 2017).

29. The Court must therefore ascertain whether the applicants' complaint under Article 6 § 1 of the Convention concerns only the execution of that judgment, or whether it contains relevant new information constituting a new complaint possibly entailing a fresh violation of Article 6.

30. The Court notes that although the present proceedings incontrovertibly concerned the execution of the Court's 2018 judgment, they were new in relation to the domestic proceedings forming the subject of that judgment, and were subsequent to them. As for the applicants' complaint, the Court notes that it relates to the allegedly arbitrary reasoning of the Constitutional Court. That being so, the question whether the present proceedings were compatible with the fair-trial standards deriving from Article 6 of the Convention can be examined separately from the aspects relating to the execution of the judgment delivered by the Court in 2018 (see, *mutatis mutandis*, *Moreira Ferreira*, cited above, § 54).

31. The Court thus notes that in the proceedings in the present case the domestic courts dealt with a new issue, that is to say, the validity of the applicants' conviction in the light of the finding of a violation of the right to a fair trial. The Court considers that the alleged lack of fairness of those proceedings constitutes new information in relation to the Court's previous judgment (*ibid.*, § 56).

32. The Court further notes that a supervision procedure in respect of the execution of the judgment is still pending before the Committee of Ministers (see paragraph 24 above), although that does not prevent the Court from considering a new application in so far as it includes new aspects which were not determined in the initial judgment.

33. The Court therefore finds that Article 46 of the Convention does not preclude its examination of the new complaint under Article 6 of the Convention.

34. The Court has previously observed that section 954 of the Criminal Procedure Act provides applicants with a remedy entailing the possibility of review of a final judgment after the finding of a violation by the Court, as long as the effects of that violation could not be remedied in any way other than by such a judicial review. In the context of that examination, the Supreme Court's task is to consider the outcome of the terminated domestic proceedings in relation to the findings of the Court and, where appropriate, order the re-examination of the case with a view to securing a fresh determination of the criminal charge against the injured party. The Court has therefore concluded that such review proceedings were likely to be decisive for the determination of a criminal charge (see *Serrano Contreras v. Spain*

(no. 2), no. 2236/19, § 27, 26 October 2021, and *Atristain Gorosabel v. Spain* (dec.), no. 35215/23, § 20, 4 July 2024).

35. However, the particularity of the present case is that the re-examination ordered by the Supreme Court was subsequently quashed by the Constitutional Court. The applicants' complaints are only based on the Constitutional Court's decision. While this element could raise doubts about the applicability of Article 6, the Court considers that in the present case this aspect is not decisive, as the complaints are in any event inadmissible for the following reasons.

36. The Court observes that the Constitutional Court's judgment addressed the main complaints raised by the applicants in their *amparo* appeal: namely that a retrial in their case would be contrary to the principle of legal certainty, the right to fair proceedings and the *ne bis in idem* principle (see paragraph 17 above). The Constitutional Court thus considered that the scope of the *amparo* appeal was limited to the alleged violation of fundamental rights that would result from a retrial. Accordingly, it upheld their appeal in that regard, stating that, in the applicants' case, a retrial would amount to a disproportionate burden, as they had not requested it and they had already served their sentences. However, the effects of its decision were not those intended by the applicants, that is, the quashing of the judgment of the *Audiencia Nacional*, without a retrial.

37. The Constitutional Court considered in that connection that a decision concerning the nullity of the decisions taken in the initial proceedings, which would result in practice in an acquittal, exceeded the scope of the *amparo* proceedings (see paragraph 22 above).

It noted that the applicants had not requested, in their application for review, the quashing of the *Audiencia Nacional*'s judgment, but solely the Supreme Court's previous judgment of May 2012. Moreover, they had not sought compensation in the Supreme Court, a process which, in the Constitutional Court's view, would have constituted an alternative to a retrial as a means of executing the Court's judgment and obtaining adequate redress (see paragraph 22 above).

On the other hand, while the Supreme Court had indeed quashed the judgment of the *Audiencia Nacional*, that decision was inherently linked to the ordering of a retrial. The reopening of proceedings was the most appropriate way of redressing the violation, and the quashing of the *Audiencia Nacional*'s judgment served the purpose of allowing such a retrial. Conversely, in the absence of a retrial – which the applicants opposed – it was not possible to merely quash the initial conviction. Such a decision would be equivalent to an acquittal, an outcome which could not result from the procedural violation alleged in the review proceedings (see paragraph 22 above).

38. The Court considers that this interpretation of the effects of the review proceedings does not appear to be arbitrary. It reiterates in this connection

that the Convention does not guarantee the right to the reopening of proceedings or to any other types of remedy by which final judicial decisions may be quashed or reviewed (see *Moreira Ferreira*, cited above, § 91).

39. On the other hand, the Court notes that the analysis of the Constitutional Court focused on the effects to be given to the Court's 2018 judgment at the domestic level. In that judgment, a retrial or the reopening of the proceedings was described as an appropriate solution, but not a necessary or exclusive one. The use of the expression "in principle" narrows the scope of the recommendation, suggesting that in some situations a retrial or the reopening of proceedings might not be an appropriate solution (*ibid.*, §§ 92-98). The Court notes that a retrial or the reopening of the proceedings before a different court was initially ordered and that it was the applicants' complaint against that decision, in the context of their *amparo* appeal, that led to the Constitutional Court's ruling. In the circumstances of the case, and taking into account the applicants' opposition to a retrial (see paragraph 21 above), the Constitutional Court considered that a retrial was not appropriate, and that the Supreme Court's judgment of 2012 should remain valid. The Constitutional Court further noted that the applicants had not sought compensation in the Supreme Court.

40. In view of the margin of appreciation available to the domestic authorities in the interpretation of the Court's judgments, and in the light of the principles governing the execution of judgments, the Court considers it unnecessary to express a position on the validity of the Constitutional Court's interpretation. Indeed, it is sufficient for the Court to satisfy itself that the Constitutional Court's judgment was not arbitrary, that is to say, that it did not distort or misrepresent the judgment delivered by the Court (*ibid.*, §§ 95-96). In the present case, inasmuch as the Court had not given any binding indications on how to execute its judgment, and, in particular, had not indicated that any specific domestic decisions had to be quashed, it cannot be considered that the Constitutional Court's interpretation was the result of a manifest factual or legal error leading to a "denial of justice" (*ibid.*, § 97). On the contrary, the Constitutional Court's conclusions were based on the specific requests made by the applicants before the Supreme Court and the Constitutional Court and the particular scope and features of the two proceedings involved (review and *amparo*).

41. In sum, having regard to the principle of subsidiarity and to the wording of the Court's 2018 judgment, the Court considers that the Constitutional Court's judgment provides a sufficient indication of the grounds on which it was based, which fell within the domestic authorities' margin of appreciation and did not distort the findings of the Court's judgment (*ibid.*, § 98).

42. In the light of the foregoing, the Court concludes that the complaint is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

43. The Court emphasises that the above considerations are not intended to detract from the importance of ensuring that domestic procedures are in place whereby a case may be re-examined in the light of a finding that Article 6 of the Convention has been violated. On the contrary, such procedures may be regarded as an important aspect of the execution of its judgments and their availability demonstrates a Contracting State's commitment to the Convention and to the Court's case-law (see, *ibid.*, § 99).

44. Lastly, with regard to the applicants' argument that they had not been restored, as far as possible, to the situation which they had enjoyed prior to the violation of the Convention, the Court reiterates that the question of compliance by the High Contracting Parties with its judgments falls outside its jurisdiction if it is not raised in the context of the "infringement procedure" provided for in Article 46 §§ 4 and 5 of the Convention (*ibid.*, § 102). Accordingly, in so far as the applicants have complained of a failure to remedy the violation of Article 6 § 1 found by the Court in its 2018 judgment, the Court does not have jurisdiction *ratione materiae* to deal with this complaint (*ibid.*, § 103). The Court stresses in this connection that its conclusions in the present case do not prejudice the supervision by the Committee of Ministers of the execution of the Court's 2018 judgment, which was still pending at the time of adoption of the present decision (see paragraphs 24 and 32 above).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 23 October 2025.

Martina Keller
Deputy Registrar

Andreas Zünd
President

APPENDIX

List of applicants:

No.	Applicant's name	Year of birth	Nationality
1.	A. OTEGI MONDRAGÓN	1958	Spanish
2.	S. JACINTO GARCÍA	1977	Spanish
3.	A. RODRÍGUEZ TORRES	1979	Spanish
4.	M. ZABALETA TELLERÍA	1981	Spanish
5.	R. DÍEZ USABIAGA	1956	Spanish