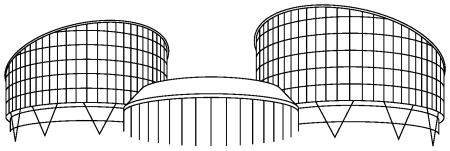

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MENÉNDEZ GARCÍA AND ÁLVAREZ GONZÁLEZ v. SPAIN

(Applications nos. 73818/11 and 19420/12)

JUDGMENT

STRASBOURG

15 March 2016

This judgment is final but it may be subject to editorial revision.

In the case of Menéndez García and Álvarez González v. Spain,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

George Nicolaou, *President*,
Branko Lubarda,
Pere Pastor Vilanova, *judges*,
and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 23 February 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 73818/11 and 19420/12) 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") by Mr Gerardo Menéndez García, and Mr Sigifredo Álvarez González, both Spanish nationals, ("the applicants"), on 18 November 2011 and 22 March 2012 respectively.

2. The first applicant was represented by Mr J.C. Menéndez Argüelles, a lawyer practising in Langreo. The second applicant was self-represented. The Spanish Government ("the Government") were represented by their Agent, Mr R.A León Cavero, a State Attorney.

3. On 12 September 2013 the complaints concerning the length of proceedings were communicated to the Government and the remainder of the applications was declared inadmissible by the President of the Section, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. Mr Gerardo Menéndez García ("the first applicant") was born in 1964 and lives in Gargantada (Langreo). Mr Sigifredo Álvarez González ("the second applicant") was born in 1956 and lives in Sant Jordi de Cercs (Barcelona).

5. On 2000 the applicants acted as intermediary (purchase agent) in the sale of three cars, sold to a company. As a result of this sale, on 20 November 2000 criminal investigations were instituted by the Gijón no. 1 investigating judge against the applicants and other eight suspects for fraud and forgery of documents.

6. On 16 April 2001 and 18 April 2001, respectively, the applicants were detained, charged with document forgery and informed about the rights they were entitled as detainees. They were subsequently interrogated by the *Guardia Civil* in the presence of their lawyer.

7. On 8 November 2004 the Judge issued a decision (*auto*) ordering the initiation of oral proceedings (*apertura de juicio oral*) and set the complete file to the Asturias *Audiencia Provincial*.

8. On 6 May 2009 the hearings before the Asturias *Audiencia Provincial* took place.

9. On 5 June 2009 the Asturias *Audiencia Provincial* sentenced the first applicant to a three years and six months' imprisonment, and the second applicant to a five years' imprisonment for fraud and document forgery. The Asturias *Audiencia Provincial* refused the applicants' request to reduce the sentence in view of the undue delay of proceedings, as prescribed in Article 21 of the Criminal Code. The Asturias *Audiencia Provincial* acknowledged that the proceedings had been "unusually" long, but this was due to the complexity of the case, namely the difficulties in gathering evidences within different jurisdictions, the great number of parties involved, the difficulty faced when trying to notify some of the defendants, as well as the applicants' conduct, whose lawyers had lacked celerity in presenting their submissions.

10. The applicants lodged a cassation appeal before the Supreme Court. On 27 May 2010 the Supreme Court partially ruled in favour of the applicants and sentenced them both to three years and eight months' imprisonment for fraud. However, the Supreme Court rejected the claims of undue delay of proceedings. The Supreme Court considered that even though the proceedings might have appeared excessively long, the Asturias *Audiencia Provincial* had provided a sounded and detailed justification for the duration of the proceedings.

11. Both applicants lodged an *amparo* appeal with the Constitutional Court complaining, *inter alia*, about the undue length of the proceedings.

12. By two decisions of 20 May 2011 and 12 September 2011, respectively (served on 25 May 2011 and 23 September 2011), the Constitutional Court declared both appeals inadmissible on the grounds that they lacked the constitutional relevance provided for in Article 50 § 1 b) of the Organic Law on the Constitutional Court.

THE LAW

I. JOINDER OF THE APPLICATIONS

13. Given that these two applications concern the same domestic proceedings and raise essentially identical issues under the Convention, the Court decides to consider them in a single judgment (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

14. The applicants complained that the length of the investigatory and first instance proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

15. The period to be taken into consideration in determining whether the proceedings satisfied the "reasonable length" requirement laid down by Article 6 § 1 began on 16 and 18 April 2001, respectively, when the applicants were given an official notification of an allegation that they had committed a criminal offence (see *Deweer v. Belgium*, 27 February 1980, § 46, Series A no. 35, *Neumeister v. Austria* (Article 50), 7 May 1974, § 18 Series A no. 17) and ended on 5 June 2009, when the Asturias *Audiencia Provincial* issued its judgment. Consequently, the proceedings lasted over eight years and one month at one level of jurisdiction.

A. Admissibility

16. The Court notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

17. The Government sustained that some periods of inactivity were due to the complexity of the case and the applicants' conduct. They maintain that the substantial number of applicants, the great amount of documents submitted and the evidences to be examined had made the proceedings complex. The Government claims that the legal representatives had not been diligent when requesting evidences and presenting submissions, also that

the first applicant had failed to notify a change of domicile, all of the above having contributed to delay the proceedings.

18. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

19. The Court observes that the criminal proceedings concerned the alleged commission of fraud and document forgery as a result of a car purchase involving three plaintiffs and ten defendants. Therefore, it accepts that the case was of some complexity. It cannot be considered however that the proceedings presented any exceptional problems or difficulty. As regards the applicants' conduct, the Court considers that the fact that the lawyers had failed to present submissions in a "timely manner" did not cause any particular delay in the proceedings which could justify their overall length.

20. The Court further notes that there was no justification for the investigatory stage lasting four years, i.e. from 20 November 2000 to 8 November 2004. In addition, the Court finds that the period between 8 November 2004, when the oral proceedings were declared open and 5 June 2009, when the judgment by the Asturias *Audiencia Provincial* was finally issued appears particularly long.

21. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present cases (see *Pélissier and Sassi*, cited above).

22. After examining all the evidence submitted to it, the Court considers that the Government have advanced no fact or argument justifying a different conclusion in the present cases.

23. Having regard to its case-law on the subject, the Court considers that in the present case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

25. The applicants did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a breach of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 15 March 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	George Nicolaou
Deputy Registrar	President