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

FIFTH SECTION

DECISION

Application no. 27925/21
Pablo RIVADULLA DURÓ
against Spain

The European Court of Human Rights (Fifth Section), sitting on 12 October 2023 as a Committee composed of:

Mārtiņš Mits*, President*,
María Elósegui,
Kateřina Šimáčková*, judges*,
and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 27925/21) 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 25 May 2021 by a Spanish national, Mr Pablo Rivadulla Duró ("the applicant"), who was born in 1988, lives in Madrid and was represented by Mr D.C. Herchhoren Alcolea, a lawyer practising in Madrid;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns an alleged breach of the applicant's freedom of expression under Article 10 and of the right to an effective remedy under Article 13 of the Convention. The applicant also complained under Articles 9 and 18, both read in conjunction with Article 10 of the Convention.

A. Statements by the applicant

2. The applicant is a rapper, also known as "Pablo Hasel". He published several tweets on the social media application Twitter and a song about the King Emeritus Juan Carlos I of Spain. A first set of tweets showed the applicant's support for convicted members of the terrorist group GRAPO ("Antifascist Resistance Groups October First"). They read as follows:

On 29.12.15: “Faced with State terrorism, organised neighbours.”

On 11.03.16, next to a photograph of Ignacio Varela: “Yes, they represent us.”

On 14.03.16, next to a photograph of Victoria Gómez: “Demonstrations are necessary, but not enough, let’s support those who have gone further.”

On 31.03.16: “Mónica and Francisco, 12 years in prison for material damage to a basilica, Guardia Civil impunity for dozens of murdered immigrants.”

On 1.04.16, next to a photograph of Isabel Aparicio: “Two years after being exterminated by the torturing State, let us remember her words.”

On 1.04.16, next to a photograph of Isabel Aparicio with text: “And that is how they ended up exterminating her.”

On 1.04.16, next to a photograph of Isabel Aparicio with text: “She was sentenced to 12 years in prison for being in the propaganda apparatus of the PCE(r) [Communist Party of Spain (reconstituted)] 12 years without armed struggle.”

On 1.04.16, next to a photograph of Isabel Aparicio with text: “2 years since Isabel Aparicio was exterminated as a communist, with the State denying her medical care in prison.”

On 1.04.16, next to a photograph of Isabel Aparicio with anagram of the PCE(r): “There will be no forgetting or forgiveness. What they did not manage to do is to assassinate your important legacy of struggle, you live much longer than they did.”

On 5.04.16: “New letter from the political prisoner Victoria Gómez.”

On 7.04.16: “Juan Martin Luna militant of the PCE(r) murdered by the police for defending our rights.”

3. A second set of tweets focused on the King Emeritus and the monarchy and read as follows:

On 2.12.15: “The Borbón mafioso [reference to the King Emeritus, Borbón being the name of the Spanish Royal Family] partying with the Saudi monarchy, everything is kept among those who finance ISIS [Islamic State of Iraq and Syria].”

On 25.12.15: “The Borbón thief [reference to the King Emeritus] must not take advantage of the impunity he enjoys to make fun of us.”

On 25.12.15: “Keep up the fight until one day the person who has been evicted is Felipe de Borbón [the current King] with all his family of parasites, enemies of the people.”

On 25.12.15: “The shitty mafioso the King [Emeritus] giving lessons from a palace, a millionaire at the expense of the misery of others. Brand Spain.”

On 25.12.15: “The most disgusting thing about the monarchy is that people who are millionaires because of the misery of others pretend to care about the people.”

On 25.12.15: “The PCE supported the monarchy imposed by Franco in the ‘transition’ while the PCE(r) spent the whole time denouncing this manoeuvre.”

On 27.12.15: “Thousands of old people going cold and without a safe home while monarchs give lessons from palaces.”

On 27.12.15: “If the people want the monarchy as much as the mercenary pundits say, let the Royal Family be released unescorted through our streets.”

On 30.12.15: “They call graffiti artists a criminal gang and not the monarchy. What an insane State.”

On 18.01.16, next to a cartoon where the King Emeritus appears next to a Saudi person carrying out a decapitation: “The mafia monarchy that gives lessons to countries where nobody is evicted.”

On 21.01.16: “The friends of the Spanish kingdom bombing hospitals while Juan Carlos goes whoring with them.”

On 21.01.16: “One of the CUP [Candidatura d’Unitat Popular, a pro-Catalan independence party] speaking out against the monarchy while the IU [United Left party] is laughing with them in the Zarzuela [Palace – residence of the monarch].”

On 24.01.16: “The shit P. Iglesias [then leader of the Podemos party] giggling in the Zarzuela without reproaching the Borbóns for the atrocities for which they are responsible.”

On 25.01.16: “While they call Cuba a terrible tyranny where with fewer resources they don’t evict people, they hide the Borbón mafia business in Saudi Arabia.”

On 25.01.16: “No matter how many millions they invest in manipulation, no matter how untouchable they are, the monarchy will go down in history as the parasites they are.”

On 26.01.16, next to a picture of the King Emeritus with Saudi leaders: “The Spanish State giving arms to the criminal friends of the monarchy so they can bomb Yemen. Let it be known.”

On 29.01.16, next to a photograph of a child with advanced malnutrition on weighing scales: “Because of Saudi Arabia the children of Yemen suffer like this. The business of the democratic friends of the mafiosi Borbón family.”

On 21.02.16: “Ada Colau [then mayor of Barcelona] will not call the King [Emeritus] a criminal for selling arms to Saudi Arabia or living in luxury at the expense of misery, she criminalises the strikes.”

On 24.12.16: “One more year with the mafia-like and medieval monarchy insulting intelligence and divinity with public money. It seems deceitful.”

On 26 August 2016 the applicant posted a video (see paragraph 5 below) with the title “Pablo Hasel ... Juan Carlos el Bobón” (*Bobón* meaning “idiot” but sounding close to “Borbón”) in which the King Emeritus was accused of squandering public money, of murdering his brother, of spending money on “binges and whores”, of being a drunkard, a “mafia boss” and a “stinking chieftain (*cacique*)”, of being “useful to his [drug] dealer and the owner of the whorehouse”, and of colluding with (Antonio) Tejero (leader of the failed coup in 1981).

4. The third set of tweets concerned the police and security forces. They read as follows:

On 23.03.14: “50 policemen injured? These fucking mercenaries bite their tongues while beating people and saying that they are wounded.”

On 24.03.14: “Proud of those who responded to the aggressions of the police.”

On 25.03.14: “Now the riot police are crying when they have always beaten and tortured thousands and thousands of people, they have evicted them with batons etc.”

On 27.03.14: “The police kill 15 immigrants and they are saints. The people defend themselves against their brutality and we are ‘violent terrorists, riffraff, etc.’.”

On 30.03.14: “They try to hide the fact that many people came out to demand the end of the fascist monarchy and even beat up journalists.”

On 30.03.14: “Nazi-onal police torturing even in front of the cameras.”

On 04.04.14: “You kill a policeman? They will look for you even under the stones. Police kill? Not even properly investigated.”

On 4.04.14: “2 years since Iñigo Cabacas was murdered by the police without any convictions.”

On 23.04.14: “Civil Guard torturing or shooting immigrants? Democracy[.] Jokes about fascists? Glorification of terrorism.”

On 20.01.16: “They want to exterminate him like his comrade Isabel Aparicio. Let it be known.”

On 7.02.16: “Police officers who with Franco imprisoned people and now imprison people as judges of the *Audiencia Nazi-onal*.”

On 14.02.16: “Joseba Arregui killed by the police by torturing him.”

On 15.02.16: “The police scum say: ‘We look after your safety’, while paid by you they come to evict you.”

On 17.02.16: “In the city free of evictions as [Manuela] Carmena [then mayor of Madrid] called it, the police attacking and arresting those who fight against evictions right now.”

On 22.02.16: “Police officers who kill your son go unpunished and on top of that they ask for money.”

On 22.02.16: “If I were the father of Iñigo Cabacas, the police would find out that they are asking for money for murdering him.”

On 22.02.16: “The policeman who ordered the shooting that caused the murder of Iñigo Cabacas asks for 777,000 euros from the family for investigating him, it’s a ...”

On 7.03.16: “The police sow racism and reap rage. Who is surprised?”

On 9.03.16: “Even the nicest policeman will arrest people for fighting and not those who exploit and plunder. They are not friends.”

On 16.03.16: “The police treat the immigrants with racism and when they receive a beating in response, they play the victims. The usual story.”

On 17.03.16: “Students responding to police brutality in the Basque Country.”

On 17.03.16: “Fighting for decent education means that the police arrest you or bash your head in, once again it is happening in Gasteiz.”

On 17.03.16: “When the police use their weapons against the oppressors and not against the oppressed, they start telling us that they are allies.”

On 17.03.16, together with a photograph of two Basque police officers carrying a bloodied young man into custody: “Today the police, enemies of democracy, have cracked heads open and arrested young people who were fighting for a decent education.”

On 24.03.16, with a video of the Civil Guard firing rubber bullets: “Then they expect us to cry when something happens to these monsters called police.”

On 24.03.16, with a photograph of a dead man on a beach: “No Civil Guard had to pay for the 16 immigrants killed with rubber bullets. Now you call this democracy.”

On 5.04.16: “The police killers of Iñigo Cabacas not only remain unpunished, but on top of that they were asking the family for money. Reality surpasses fiction.”

On 07.08.16: “The police murder with total impunity: Iñigo Cabacas, immigrants, etc. But Pablo Iglesias says they protect us.”

5. The applicant also published the following rap song:

“How many millions and millions have been plundered and squandered for so many years by so many members of the Royal Family.

Then the psychopaths who govern us say that there is no money for basic necessities.

But their years are numbered – the people’s republic is coming.

This is the story of Juan Carlos the Idiot that they want to hide.

It is a crime to tell who he is and what he does, he showed clear signs when he killed his brother Alfonsito [laughs].

Who believes it was an accident ... not even Marhuenda [a right-wing journalist] imagining Rajoy [then Prime Minister] naked when he tells lies.

Torrente [a fictional corrupt police officer] is a saint next to Juanca [the King Emeritus], they have already reported that he mistreated [Queen] Sofía.

What legitimacy does Franco’s heir have who is throwing away our money on binges and whores.

He laughs at his impunity in a chalet in Switzerland. Imagine him drunk saying ‘how good my daughter is’.

With his lover’s cock he remembers elephant hunts while hunger increases and there is no justice to hunt him down.

The poor go to jail and not the Infanta Cristina, but half the country wishes him the guillotine.

He doesn’t even know how to speak, ‘why don’t you shut up’. Such a scoundrel won’t make me shut my mouth.

Juan Carlos the Idiot, mafia boss plundering the Spanish kingdom.

On television they spew that he is useful, yes of course, to his dealer and the owner of the whorehouse.

Juan Carlos the Idiot, the revolution will take his palace.

No, there will be no Royal Guard to prevent the republicans from judging [King] Felipe.

...

Procreating with members of the same family takes its toll, and censorship is already trying to protect his shamelessness.

Whatever he does, the Civil Guard praises him and fixes it with ‘I made a mistake, and it won’t happen again.’

Pundits at his service protect him, saying that a republic would be more expensive.

You wonder how he can manipulate so much ... yes ... because of everything they have in the bank.

They say on public television 'how cute the princess looks'... the people want a republic, they are not interested in that debate.

They silence their dirty business in Saudi Arabia and for talking about it they want to convict me.

They sell them weapons that go to ISIS, the fight against jihadism is more bogus than the way out of the crisis.

I am not a subject, I do not submit, stinking chieftain, your obsolete throne does not deserve respect, it will soon go down.

Juan Carlos the Idiot, mafia boss plundering the Spanish kingdom.

On television they spew that he is useful, yes of course, to his dealer and the owner of the whorehouse. Juan Carlos the Idiot, the revolution will take his palace.

No, there will be no Royal Guard to prevent the republicans from judging [King] Felipe.

Long live the people's republic of the working class.

Once again telling the truth and let the censors be damned.

2016 and still like anarchy, looks like the Middle Ages while we are exploited and the Idiot [the King Emeritus], surrounded by luxury, scratches his balls.

False democrat, hand in hand with the fascist oligarchy, to be the boss the self-coup of 23F [failed coup of 23 February 1981] came in handy.

Using the convinced stooge Tejero ... to apply make-up with four superficial reforms and earn even more money.

Juan Carlos the Idiot will get off like the fascist Fraga [former right-wing politician], but his heirs will have their noses to the grindstone for so much crime they haven't paid for ... every parasite will be judged.

History does not forgive even the scum with a crown and every oppressed person will be the judge for one fucking time.

The future will be republican and Juan Carlos, drunken tyrant, will be remembered as the mafia scum he is.

Juan Carlos the Idiot, the revolution will take your palace."

B. Decisions of the domestic courts

6. On 2 March 2018 the *Audiencia Nacional* convicted the applicant of public praise or justification of terrorism under Article 578 of the Criminal Code (see paragraph 16 below) and sentenced him to two years' imprisonment and a fine of 13,500 euros (EUR).

7. The *Audiencia Nacional* held as follows:

"The content – widely disseminated given the audience that the accused has, and that he himself acknowledged in his statement to the court, with the high profile attached to

his occupation, which he defines as a rapper and poet – is a call to the audience to support those who go 'further' than demonstrations (tweet of 14.03.16), without any explanation during the trial as to what his words 'going further' mean, which in simple logic amounts to abandoning peaceful protest, and turning it into one of violence in whatever form it may take.

The violent action that he proposes as a framework for action, as when he states in the above-mentioned tweet that 'demonstrations are necessary, but not enough', which incites the adoption of positions beyond mere peaceful protest, going on to violent protest, or as in the tweet dated 1.04.16, which states '12 years without armed struggle' on the part of Isabel Aparicio, elevating her action in the armed struggle to the category of a role model through her example.

And by this we mean violent action against the authorities, the State security forces and even political parties, as its targets range from HM the King to leaders such as Pablo Iglesias and IU parliamentarians, and mayors such as Carmena and Colau.

The aim of these tweets is not only the above-mentioned call, but also *laudatio*, praise for persons acknowledged as being members of violent groups of a terrorist nature, without parliamentary legitimacy, who have been sentenced by the courts for their criminal activities, holding them up as benchmarks of conduct.

This is not therefore a mere commentary in which an opinion is expressed, but a message that clearly contains an invitation to behave in the same way as 'their role models', an incitement to try to emulate their actions, through short violent and terrorist activity that represents a commendable and positive form of struggle according to their criteria, in short an exaltation of violence that they intend to conceal in the form of an opinion, even going so far as to entail danger to the constitutional order and social peace and to the people."

8. The applicant was also convicted, under Article 491 of the Criminal Code (see paragraph 16 below), as a perpetrator of the offence of insult and slander against the Crown and misuse of the King's image and was given a fine of EUR 10,800.

9. The *Audiencia Nacional* considered as follows:

"These tweets and the video portray action on the part of the accused which entails accusing the King Emeritus, and even the current King, of the commission of multiple offences, including murder and embezzlement, as well as conduct not in accordance with the authority they represent.

It is not a question of expressing a political claim for another form of State, such as that of a republic – it is evident from the reading of the tweets and the song that the intention is to insult and slander, as the tweets and the song are only dedicated to insulting and belittling the monarchy and its members, with the obvious intention that anyone who accesses his tweets will adopt a position contrary to [the monarchy], even in a violent manner."

10. Lastly, the applicant was also convicted of the offence of insult and slander against State institutions, and was given a fine of EUR 13,500 pursuant to Article 504 § 2 of the Criminal Code (see paragraph 16 below).

11. The *Audiencia Nacional* considered as follows:

"In this section it is important to point out the large number of offences that are repeatedly imputed to members of the State security forces and corps, who are accused

> of murder, injuries and torture, which are incorporated into offensive content and intense hatred and continued accusations against them, despite court rulings having been obtained that exonerate the police and civil guards in question of responsibility for the acts indicated, as a consequence of which he rails against the judicial authorities, with no further proof on his part other than his own words and statements, without any other basis or evidence whatsoever.
>
> ...
>
> From all this, as previously discussed, we can see the existence of repeated tweets in which, far from expressing an opinion or criticising a particular action of the police, the judiciary or the prison administration, hate speech is imposed by the defendant, with the aim of provoking a violent response from those who read or examine his messages against the above-mentioned State institutions, since by reiterating the accusation of murder, he makes them appear as murderers, prompting their social rejection."

12. The applicant appealed against his conviction. On 14 September 2018 the *Audiencia Nacional* reduced the applicant's sentence for the offence of public praise or justification of terrorism to nine months' imprisonment and a fine of EUR 5,040. The court dismissed the appeal in so far as it concerned the other offences.

13. On 7 May 2020 the Supreme Court dismissed an appeal on points of law lodged by the applicant. It noted that the exercise of freedom of expression and opinion was subject to other constitutional rights and requirements.

14. On 23 November 2020 the Constitutional Court declared an *amparo* appeal by the applicant inadmissible for lack of justification of constitutional significance.

15. Following a final judgment of the *Audiencia Nacional* of 31 March 2014, the applicant had already been sentenced to two years' imprisonment for a previous offence of glorification of terrorism. The execution of that sentence was suspended on condition that the applicant did not commit a further offence. The conviction forming the subject of his application to the Court led to the lifting of the suspension of the previous sentence and, as a result, the applicant was imprisoned.

C. Relevant legal framework

16. The relevant provisions of the Criminal Code (Institutional Law no. 10/1992 of 23 November 1995) read as follows:

Article 80

> "Judges or courts may, by a reasoned decision, suspend the execution of custodial sentences not exceeding two years when it is reasonable to expect that the execution of the sentence is not necessary to prevent the offender from committing further offences in the future."

Article 491

"1. Slander and libel against any of the persons mentioned in the previous Article, and outside the cases provided for therein, shall be punishable by a fine [under the day-fine system] of between four and twenty months.

2. A fine of between six and twenty-four months shall be imposed on anyone who uses the image of the King or the Queen or of any of their antecedents or descendants, or of the Queen Consort or the Queen's consort, or of the Regent or of any member of the Regency, or of the Prince or Princess of Asturias, in any way that may damage the prestige of the Crown."

Article 504 § 2

"Anyone who seriously insults or threatens the armed forces, troops or security corps and forces shall be liable to a fine [under the day-fine system] of between twelve and eighteen months.

The perpetrator of the insults provided for in the previous paragraph shall be exempt from punishment if the circumstances described in Article 210 of this Code are met."

Article 578

"1. Public praise or justification of [terrorist] criminal offences or of those who have participated in the perpetration thereof ... shall be punished with a penalty of between one and three years' imprisonment and a fine ... The judge may also order ... any or some of the [additional] prohibitions ...

2. The penalties provided for in the previous paragraph shall be imposed within the upper half [of the sentencing range] if the acts have been carried out through the dissemination of services or content accessible to the public through the media or the Internet ..."

D. Complaints

17. The applicant complained under Article 10 of the Convention that his freedom of expression had been violated, because the interference with his exercise of that right had not been necessary. The applicant also relied on Article 9 by linking his freedom of expression to his ideological freedom, arguing that his statements were a manifestation of his ideology. Lastly, he complained that Article 18 had been violated, as he considered that the purpose of his punishment had been to silence his message.

18. The applicant also relied on Article 13 of the Convention, arguing that his right to an effective remedy had not been respected because the Constitutional Court, on the basis of excessively formal admissibility criteria, had refused to give a judgment on the merits of his case.

THE COURT'S ASSESSMENT

19. The Court observes that the Constitutional Court declared the *amparo* appeal by the applicant inadmissible for lack of justification of its

constitutional significance. The Court has found that the requirement to justify the special constitutional significance of such an appeal is in accordance with the Convention (see *Arribas Antón v. Spain*, no. 16563/11, §§ 45-48, 20 January 2015). It has also considered that subjecting the admissibility of an *amparo* appeal to the existence of objective circumstances and their justification by the applicant, these being criteria provided for by law and interpreted in constitutional case-law, is not in itself disproportionate (ibid.).

20. Subsequently, noting that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights, the Court has reiterated that those who wish to invoke its supervisory jurisdiction as concerns complaints against a State are obliged to use first the remedies provided by the national legal system (see *Álvarez Juan v. Spain* (dec.), no. 33799/16, § 34, 29 September 2020, and *Morales Rodríguez and Vázquez Moreno v. Spain* (dec.), nos. 3696/16 and 4503/16, § 27, 24 November 2020).

21. The Court has held that where an applicant is responsible for an irremediable flaw, such as failure to provide any, or sufficient, justification of the particular constitutional significance of an appeal, the applicant has not properly exhausted domestic remedies. It has found that when an *amparo* appeal is rejected on the grounds that the applicant had not justified its special constitutional significance, or had failed to justify it adequately, this implied a lack of diligence for which the applicant alone was responsible, with the result that his or her application to the Court would be declared inadmissible for failure to exhaust domestic remedies (see *Álvarez Juan*, § 51, and *Morales Rodríguez and Vázquez Moreno*, §§ 40 and 41, both cited above).

22. The Court has nonetheless also emphasised that in cases in which an *amparo* appeal was declared inadmissible owing to insufficient justification of its special constitutional significance, the risk that that assessment might have involved excessive formalism could not be ruled out. Therefore, the Court considers that, while it is not its task to take the place of the Constitutional Court of a member State in assessing the admissibility criteria for an appeal, it is for the Court to verify that the assessment made by the Constitutional Court in this respect is not so formalistic as to restrict a litigant's access to an effective remedy. The Court must therefore assess the specific circumstances of each case (see *Morales Rodríguez and Vázquez Moreno*, cited above, § 44).

23. However, in the present case the Court is not called upon to resolve this question, as it considers that the complaint is in any event inadmissible for the reasons set out below.

A. Complaints under Articles 9 and 10 of the Convention

24. In view of the substance of the applicant's complaints, the Court, being the master of the characterisation to be given in law to the facts of the case, considers that they fall to be examined under Article 10 of the Convention.

25. The Court reiterates in this connection that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self - fulfilment. It is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb (see, for example, *Otegi Mondragon v. Spain*, no. 2034/07, § 48, ECHR 2011; *Erkizia Almandoz v. Spain*, no. 5869/17, § 37, 22 June 2021; and *Z.B. v. France*, no. 46883/15, § 52, 2 September 2021).

26. The convictions in issue clearly constituted an interference with the applicant's right to freedom of expression as guaranteed by Article 10 § 1 of the Convention. The Court is further satisfied that the interference was prescribed by law (see paragraph 16 above) and pursued a legitimate aim, namely national security and public safety, within the meaning of Article 10 § 2 of the Convention. The main question in the present case is therefore whether the interference was "necessary in a democratic society" (see, for example, *Otegi Mondragon*, cited above, § 49, and *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 196-97, ECHR 2015).

27. In exercising its supervisory jurisdiction, the Court's task is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. The Court has to look at the interference complained of in the light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" and whether it was "proportionate to the legitimate aim pursued". In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts (see, among many other authorities, *Yavuz and Yaylalı v. Turkey*, no. 12606/11, § 44, 17 December 2013; *Erkizia Almandoz*, cited above, §§ 37-40; and *Z.B. v. France*, cited above, §§ 53-54). The Contracting States have, under Article 10, a certain margin of appreciation in judging the necessity and extent of an interference with the freedom of expression protected by that provision (see *Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, § 59, ECHR 2012, and *Z.B. v. France*, cited above, § 58).

1. Conviction for public praise or justification of terrorism

28. In a case serving as a clear precedent for the present case, namely *Jorge López v. Spain* ((dec.) [Committee], no. 54140/21, 20 September 2022), the Court declared the application inadmissible as manifestly ill-founded. In that case, the applicant's conviction was based on the findings that his songs and videos justified and glorified terrorism, in particular, the GRAPO terrorist group, individuals convicted of being its members, and crimes committed by it. The songs were also found to incite hatred and enmity on various grounds. The domestic courts found that the songs had openly called for violent acts, communicated to the audience the idea that recourse to violence and terrorism was justified, approved of terrorist methods and acts, and praised attacks that had claimed many lives. The Court also observed that those songs were easily and freely available online and had been performed at concerts, and thus had the potential to reach a large number of people, including those of a young age (see *Jorge López*, cited above, § 17).

29. The Court also considered that the songs could be seen as a direct or indirect call or justification for violence, hatred or intolerance. The lyrics directly suggested injuring or killing politicians, judges, the security forces, the rich, the royal family and those perceived as ideological opponents. The Court agreed that those statements went far beyond what could be perceived as "protest songs", as they were described by the applicant, and the acceptable limits of criticism (see *Jorge López*, cited above, § 19).

30. The Court further found that the domestic courts' assessment of the facts had been reasonable. It concluded that the Appeals Division, in convicting the applicant, had taken care to assess his guilt on the basis of the criteria defined by the Court's case-law, having regard to the requirements of Article 10 § 2 of the Convention, and after weighing up the various interests involved. Regarding the nature and severity of the sanctions, in the light of the circumstances and the reasoning of the domestic courts, the Court concluded that the applicant's criminal conviction could not be considered disproportionate to the legitimate aim pursued.

31. The Court's findings in *Jorge López* (cited above) are fully applicable to the case now under analysis.

32. Regarding statements that may constitute a call to violence, the Court has regard to the following factors: (i) whether the statements were made against a tense political or social background; (ii) whether the statements, fairly construed and seen in their immediate or wider context, could be seen as a direct or indirect call for violence or as a justification of violence, hatred or intolerance; and (iii) the manner in which the statements were made, and their capacity – direct or indirect – to lead to harmful consequences (see *Jorge López*, § 16; *Perinçek*, §§ 204-07; and *Erkizia Almandoz*, §§ 40-41, all cited above).

33. In the present case, the applicant's conviction was based on the finding that his messages on Twitter justified and glorified terrorism, individuals convicted of being members of terrorist organisations, and offences committed by them. The messages were also found to incite hatred and enmity on various grounds. The domestic courts held that the applicant's messages were not covered by freedom of expression. In the Court's view this was not, as the applicant claimed, a criminal punishment for mere disagreement with the political or social ideology of others, but rather, given the way in which the disagreement was expressed and disseminated, it was a punishment for incitement, provocation and the risk that third parties, inflamed by the statements in question, might perpetrate actual violence against specific institutions and groups just as the individuals convicted of being members of terrorist organisations cited as an example had done. The Court also observes that the applicant's messages were easily and freely available online and thus had the potential to reach a large number of people, including those of a young age.

34. The Court takes note of the domestic decisions (see paragraph 7 above) and observes that in those decisions the courts found that the aim of the applicant's tweets was *laudatio*, a form of praise for persons acknowledged as being members of violent terrorist groups, without any parliamentary legitimacy, who had been sentenced by the courts for their criminal activities, which had occurred not long ago. The terrorist attacks committed by them were therefore still fresh in the country's collective mind, which justified an enhanced degree of regulation of statements relating to them (see *Jorge López,* § 18; *Perinçek*, § 250; and *Z.B. v. France*, § 59, all cited above).

35. Answering the question whether the messages could be seen as a direct or indirect call or justification for violence, hatred or intolerance, the domestic courts pointed to explicit references to violent or terrorist methods (see paragraph 7 above). To sum up, the tweets communicated the general idea that recourse to violence and terrorism was justified. The Court agrees that those statements went far beyond what could be perceived as protest messages, as the applicant described them, and beyond the acceptable limits of criticism (see *Jorge López*, cited above, § 19).

36. Concerning the manner in which the statements were made, and their capacity to lead to harmful consequences, the domestic judgments highlighted the fact that the messages had been especially targeted at young people, and that they had been conveyed to a wide audience through Twitter.

37. The Court reiterates that it is in the first place for the national authorities, especially the courts, to interpret and apply domestic law and that its task is only to review under Article 10 the decisions delivered by the competent domestic courts pursuant to their power of appreciation. In so doing, it must satisfy itself that the national authorities based their decisions on an acceptable assessment of the relevant facts (see *M'Bala M'Bala*

v. France (dec.), no. 25239/13, § 30, ECHR 2015 (extracts), with further references)". In the present case, the domestic courts' assessment also took into account the experience of the Spanish population with regard to previous acts of terrorism carried out by ETA and GRAPO (see, *mutatis mutandis*, *Williamson v. Germany* (dec.), no. 64496/17, § 27, 8 January 2019).

38. The Court concludes that the national courts, in convicting the applicant, took care to assess his guilt on the basis of the criteria defined by the Court's case-law, having regard to the requirements of Article 10 § 2 of the Convention, and after weighing up the various interests involved. The Court sees no serious reason to substitute its own assessment for that of the national authorities, emphasising the importance, in a case such as this one, of the reasoning of the national courts (see *Williamson*, cited above, § 23).

39. The grounds on which the applicant's conviction was based, namely combating public praise or justification of terrorism, appear to be both "relevant" and "sufficient" to justify the interference at issue, and in that sense met a pressing social need (see *Z.B. v. France*, cited above, §§ 65-66, and, *mutatis mutandis*, *ROJ TV A/S v. Denmark* (dec.), no. 24683/14, § 47, 17 April 2018, and *Pastörs v. Germany*, no. 55225/14, § 48, 3 October 2019).

40. Lastly, an assessment of the nature and severity of the sanctions should be carried out to ascertain whether the interference was proportionate. In the context of Article 10 of the Convention, a criminal conviction constitutes one of the most serious forms of interference with the right to freedom of expression (see *Z.B. v. France*, cited above, § 67, and *Reichman v. France*, no. 50147/11, § 73, 12 July 2016).

41. In the present case, the sentence of two years' imprisonment imposed on the applicant was reduced to nine months on appeal. The Court further notes that the applicant had already received a suspended prison sentence for a previous offence of glorification of terrorism (see paragraph 15 above). The Court considers that without that sentence, the applicant's conviction in the present case would not have resulted in his being imprisoned. His imprisonment was the consequence of his successive convictions. The Court concludes that the applicant's criminal conviction and sentence in the present case cannot be considered disproportionate to the legitimate aim pursued.

42. In the light of the foregoing, the Court considers that the complaint under Article 10 of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4 of the Convention.

2. Conviction for slander against the Head of State and the State institutions

43. Referring to the applicant's convictions for slander against the Head of State and the State institutions (see paragraphs 9 and 11 above), the Court notes that both convictions constituted an interference with the applicant's

right to freedom of expression as guaranteed by Article 10 § 1 of the Convention. The Court is further satisfied that the interference was prescribed by law (see paragraph 16 above) and pursued a legitimate aim, namely the national security and public safety, within the meaning of Article 10 § 2 of the Convention. The question is therefore whether the interference was "necessary in a democratic society" (see, for example, *Otegi Mondragon*, § 49, and *Perinçek*, §§ 196-97, both cited above).

44. The Court notes that it may happen that the exercise of the right to freedom of expression interferes with other rights safeguarded by the Convention and the Protocols thereto. In such cases, the Court examines whether the national authorities struck a proper balance between protection of the right to freedom of expression and other rights or values guaranteed by the Convention (see *Perinçek*, cited above, § 274). If the balancing exercise has been carried out by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its own view for theirs (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 139, ECHR 2015, and *MGN Limited v. the United Kingdom*, no. 39401/04, § 150, 18 January 2011).

45. Referring to the applicant's conviction for slander against the Head of State, the Court notes that the present case, while containing apparent similarities with *Otegi Mondragon* (cited above), must be clearly distinguished from that case because of its substantial differences. In *Otegi Mondragon* the Court found that there had been a breach of Article 10 of the Convention on account of the sentence of one year's imprisonment imposed on the applicant for having described the former King as "in charge of the torturers".

46. The Court took into account, firstly, the capacity in which the applicant had made the statements, as a political representative elected by the people (see *Otegi Mondragon*, cited above, § 51); it also considered the context in which the controversial statements had been made – at a press conference – and noted that they were oral statements and that the applicant had been unable to reformulate, refine or retract them before they had been made public (ibid., § 54). Furthermore, the Court considered that the statements did not call into question the King's private life. Lastly, it gave particular weight to the severity of the penalty imposed, namely one year's imprisonment (ibid., §§ 58 and 59).

47. In the present case the circumstances are different, thus leading to a different conclusion. The applicant is not a political representative elected by the people but a singer (see paragraph 2 above). His messages were conveyed in writing and his song was written and recorded before the video of it was published, which presupposes that they were the result of a thought process such that the assertions they contain cannot be justified by the immediacy of the context. Indeed, many of the tweets constitute serious accusations and allegations of serious offences without any evidence beyond the applicant's

own opinion (see paragraphs 2, 3 and 4 above). Furthermore, the punishment imposed for these statements about the King Emeritus was only of a financial nature (see paragraph 8 above).

48. In relation to the applicant's conviction for the offence of insulting State institutions, the Court notes that the applicant repeatedly and without any evidence accused members of the police force, whom he called Nazis, of crimes such as torture and the murder of immigrants (see paragraph 2 above).

49. The Court has previously found that it was within the legitimate exercise of the freedom of expression to describe, at a press conference, the police's action against an applicant as torture, given the colloquial nature used by the applicant to criticise that action (see *Toranzo Gomez v. Spain*, no. 26922/14, §§ 58-63, 20 November 2018). In that judgment, the Court found that the applicant had been subjected to the use of physical force by specified police officers and noted that the penalty imposed on him could lead to imprisonment if the fine was not paid.

50. In contrast, in the present case the applicant accused members of the police in general of crimes of torture or murder and described them as Nazis, without providing any evidence for his assertions. Moreover, he made those accusations repeatedly and via a social media application which allowed him to reflect on their content and on which his large number of sympathisers were able to access his messages free of charge. In the light of the content of the applicant's messages, the Court considers that the *Audiencia Nacional*, when convicting the applicant as a repeat offender, took care to assess his guilt on the basis of the criteria defined by the Court's case-law, having regard to the requirements of Article 10 § 2 of the Convention, and after weighing up the various interests involved (see paragraphs 9 and 11 above). The Court sees no serious reason to substitute its assessment for that of the national authorities, recalling the importance, in a case such as this, of the reasoning of the national courts.

51. The Court therefore concludes that the applicant's criminal conviction (see paragraphs 8 and 10 above) cannot be considered disproportionate to the legitimate aim pursued.

52. In the light of the foregoing, the Court considers that the complaints under Article 10 of the Convention are manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4 of the Convention.

B. Complaints under Articles 13 and 18 of the Convention

53. The applicant alleged a breach of Article 13 of the Convention in that the Constitutional Court had declared his *amparo* appeal inadmissible for lack of justification of its constitutional significance, without considering it on the merits.

54. As the Court has previously stated, the conditions of admissibility of an *amparo* appeal may be stricter than for an ordinary appeal (see *Arribas Antón*, cited above, § 42, and *Zubac v. Croatia* [GC], no. 40160/12, § 82, 5 April 2018). Furthermore, for national superior courts it is sufficient, when declining to accept a complaint for adjudication, simply to refer to the legal provisions governing the relevant procedure if the questions raised by the complaint are not of fundamental importance or if the complaint has no prospects of success (see *Annen v. Germany*, no. 3690/10, § 77, 26 November 2015).

55. Lastly, the applicant alleged a breach of Article 18 of the Convention, arguing that he had been sentenced in order to silence him.

56. The Court has stated that where no arguable issue, or no interference with the applicant's rights, under the relevant substantive provision has been established, Article 18 cannot be relied upon (see *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, no. 16812/17, §§ 316-17, 18 July 2019).

57. In the light of the foregoing, the Court considers that the complaints under Articles 13 and 18 of the Convention are manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 9 November 2023.

Martina Keller Deputy Registrar	Mārtiņš Mits President