



XVI^e Congrès de la Conférence des Cours constitutionnelles européennes
XVIth Congress of the Conference of European Constitutional Courts
XVI. Kongress der Konferenz der Europäischen Verfassungsgerichte
XVI Конгресс Конференции европейских конституционных судов

**Rapport national / National report / Landesbericht /
национальный доклад**

ROYAUME D'ESPAGNE / KINGDOM OF SPAIN /
KÖNIGREICH SPANIEN / КОРОЛЕВСТВО ИСПАНИЯ

The Constitutional Tribunal of Spain
Tribunal Constitucional de España

Anglais / English / Englisch / английский

XVIth Congress of the Conference of European Constitutional Courts in 2014

**Cooperation of Constitutional Courts in Europe:
Current situation and perspectives**

Spain

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Spanish Constitutional Court

General Secretariat

Studies, Library and Documentation Service

September, 2013

Table of abbreviations:

BOE Official Gazette of Spain

CE Spanish Constitution 1978 (amended 1992, 2011)

CJ Court of Justice of the European Union

ECHR European Convention for the protection of human rights and fundamental freedoms

ECtHR European Court of Human Rights

FJ Judgment legal grounds

g. Judgment legal ground

LOTIC Organic Act of the Spanish Constitutional Court, 1979

O. Concurring or dissenting opinion (In case there are several, numbered I, II, etc.)

STC Spanish Constitutional Court Judgment

I. Constitutional courts between constitutional law and European law

1. Is the Constitutional Court obliged by law to consider European law in the performance of its tasks?

Yes. According to Article 10.2 of the 1978 Spanish Constitution (hereinafter, CE):

All rules related to fundamental human rights and freedoms recognised by the Constitution will be interpreted according to the Universal Declaration of Human Rights and all international treaties and agreements on the matter, ratified by Spain.

Spain's membership of the Council of Europe ¹ and European Union ² has clearly generated a European bias in the application of this constitutional precept. The European Convention of Human Rights and its Protocols ³ constitute the greatest interpretative influence in the application of the Spanish Constitution. Likewise, case-law was affected by European Union law in fundamental human rights matters long before the Treaty of Lisbon (2007) granted the Charter of Human Rights ⁴ legally binding force.

The Kingdom of Spain has ratified many international conventions on human rights, particularly related to the UN. The International Covenants of 1967, both on civil and political rights and economic and social rights, are now part of Spanish law⁵. The same applies to many others, to include Conventions on the prevention and punishment of genocide, women's rights and the rights of the child⁶.

¹ The Kingdom of Spain accession to the Statute of the Council of Europe, London, 5 May 1949, was carried out by Instrument of 22 November, 1977 (State Official Journal [BOE] 51, 1/03/1979).

² The accession of Spain to the European Union was agreed in the Treaty signed on 12 June 1985, in Lisbon and Madrid, concerning the accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and to the European Atomic Energy Community (BOE 1, 1/01/1986; Official Journal of the European Communities L-302, 15/11/1985).

³ Convention for the protection of human rights and fundamental freedoms, signed in Rome on 4 November, 1950. It was ratified by Spain in Instrument of 26 September, 1979 (BOE 243, 10/10/1979).

⁴ Charter of fundamental rights of the European Union (2000, 2007, consolidated text published in OJEU C-326, 26/10/2012).

⁵ The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, adopted in New York on 16 December 1966, were ratified by Spain through Instruments of 13 April, 1977 (BOE 103, 30/04/1977).

⁶ Convention for the prevention and punishment of the crime of genocide, United Nations, 9 December 1948: the accession of Spain was documented in Instrument of 13 September, 1968 (BOE 34, 8/02/1969); Convention on the elimination of all forms of discrimination against women, signed in New

Please note that, according to the Spanish Constitution (CE), all international treaties validly concluded by Spain become part of its internal law, once officially published (Art. 96.1 CE, Constitutional Court Judgments (STC) 140/1995, of 28 September, ground of law (FJ) 3; 197/2006, of 3 July, FJ 3). In turn, the Constitution provides that, through “an organic act, treaties may be concluded that entrust an international organization or institution with powers derived from the Constitution” (Art. 93 CE). This precept constitutes the grounds for the Kingdom of Spain participation in the European Union and European law (Declarations of the Constitutional Court 1/1992, of 1 July, and 1/2004, of 13 December).

Art. 10.2 CE is evidence of the decision adopted by the Spanish constituent power to recognise that Spain has a scope of values and interests equivalent to those protected by the international instruments referred to, “as well as our will as a Nation to join an international legal order promoting the protection and defence of human rights as the fundamental grounds of the State organisation” (STC 91/2000, of 30 March, FJ 7). As stated in Judgment 21/1981, of 15 June (FJ 10), “fundamental rights are a reflection of a universal system of values and principles underlying the Universal Declaration and various international human rights conventions ratified by Spain which, applied as a basic constitutional decision, affect our entire legal system”.

However, Art. 10.2 CE does not grant constitutional status to rights other than those declared in the text of the Constitution itself; also, it does not alter their legal protection regime (Arts. 53, 54 and 55 CE, in general), which is more intense in the case of certain fundamental rights (those listed in Art. 53.2 CE) and less so in other rights which are framed as governing principles of social and economic policy (Art. 53.3 CE).

Art. 10.2 CE “merely establishes a connection between our own system of fundamental rights and freedoms, on the one hand, and relevant international conventions and treaties to which Spain is party, on the other. It does not grant constitutional status to any internationally proclaimed rights and freedoms, insofar as not also enshrined in the Spanish Constitution, but imposes an obligation to interpret the latter’s provisions according to the content of such treaties or conventions, in such a way that in practice this content becomes to some extent the constitutionally declared content of the rights and freedoms listed in chapter two, title I, of the Spanish Constitution” (STC 36/1991, of 14 February, FJ 5). The international texts and agreements referred to in Article 10.2 CE offer “valuable hermeneutic criteria on the meaning and scope of the rights and freedoms acknowledged by the Constitution” (STC 292/2000, of 30 November, FJ 3; 248/2005, of 10 October, FJ 2; Declaration

York on 18 December, 1979 (among others): Spain ratified it by Instrument of 16 December, 1983 (BOE 69, 21/03/1984); Convention on the rights of the child, adopted by the UN General Assembly on 20 November, 1989: ratified by Spain in Instrument of 30 November, 1990 (BOE 313, 31/12/1990).

1/2004, of 13 December, FJ 6). In addition, the Constitutional Court has declared that “the hermeneutic rule of Art. 10.2 CE implies a rule for the evolutionary interpretation” of the Constitution (STC 198/2012, of 6 November, FJ 9) based on the observation that human rights treaties referred to in that provision are gradually and constantly incorporated into Spanish law, once they are ratified by Spain after being agreed by international society, the European Union or the Council of Europe.

Although international human rights agreements “constitute a source of interpretation that helps identify the content of any rights for which protection is sought from the Constitutional Court, the interpretation referred to in Article 10.2 of the Spanish Constitution does not turn them into an independent canon of validity of rules and acts of the public powers from a human rights perspective, i.e. it does not transform them into an independent canon of constitutionality”. “Otherwise, it would not be necessary to have a constitutional proclamation of said rights, and the constituent power could have merely referred to international human rights declarations or, in general, to any treaties concluded by the Spanish state on fundamental rights and public freedoms” (amongst others, STC 64/1991, of 22 March, FJ 4; STC 372/1993, of 13 December, FJ 7; STC 41/2002, of 25 February, FJ 2; STC 236/2007, of 7 November, FJ 5; STC 38/2011, of 28 March, FJ 2; STC 136/2011, of 13 September, FJ 12).

The Spanish Constitutional Court has repeatedly laid down that it is irrelevant “to examine whether or not international texts binding Spain are followed or not followed *per se*, but to supervise respect or any infringement of constitutional provisions that recognise fundamental human rights and public freedoms to be protected under an appeal for constitutional protection [*recurso de amparo*]” (Arts. 53.2 CE and 49.1 Organic Act of the Constitutional Court: LOTC), without prejudice to the fact that, as ordered by Art. 10.2 CE, such precepts should be construed according to the Universal Declaration of Human Rights and applicable international treaties and agreements ratified by Spain (for all, STC 85/2003, of 8 May, FJ 6; and STC 99/2004, of 27 May, FJ 3), of which the most relevant is the European Convention on Human Rights” (STC 138/2012, of 20 June, FJ 3).

2. Are there any examples of references to international sources of law?

a) The European Convention on Human Rights

The Treaty of Rome is constantly quoted in Spanish constitutional case-law. Since its initial Judgment 21/1981, of 15 June, more than three hundred decisions quote and take into account various human rights referred to in the 1950 Convention or in Protocols ratified by Spain.

Judgment 21/1981, which examined the constitutionality of military discipline, took into account the distinction established by the European Court of Human Rights in the

Engel Judgment (8 June 1976) between arrests entailing a restriction of freedom (ordinary and aggravated) and those entailing a deprivation of freedom (strict arrests), in order to subject the latter to the procedural guarantees contained in Art. 6 of the Convention and Art. 24 of the Spanish Constitution (FJ 9). The guarantees inherent to the right to a fair hearing (Art. 6 ECHR) have resulted in abundant case-law in Spain, e.g. when defining the legal content of the right to equal treatment (STC 22/1981, of 2 July, FJ 3; STC 160/2012, of 20 September, FJ 7); in relation to the right of any person convicted of a criminal offence to have his conviction or sentence reviewed by a higher tribunal (STC 42/1982, of 5 June, FJ 3; STC 76/1982, of 14 December, FJ 5; STC 64/2001, of 17 March, FJ 5); or the limits to be respected by the high court when reversing any acquittal at trial (STC 167/2002, of 18 September; STC 88/2013, of 11 April, FJ 8 and FJ 9: see below).

The most recent decisions include Judgment 198/2012, of 6 November, which examined homosexual marriage law; it took into account that the European Convention makes a difference between the right to marry and the respect for family life (Arts. 12 and 8 ECHR; FJ 5).

b) The European Union Charter of Fundamental Rights

The Charter was taken into account very early by the Constitutional Court: Judgment 292/2000, of 30 November, defined the guarantees which, according to Art. 18.4 CE, protect citizen personal data in light of Art. 8 of the Charter, as well as Directive 95/46/EC of the European Parliament and of the Council, dated 24 October 1995 (FJ 8). It so happens that the wording of the Charter had already been determined by the Herzog Commission (on 2 October 2000) and had been accepted by the European Council convened in Biarritz on 13-14 October 2000. However, its formal proclamation by the Presidents of the European Parliament, Council and Commission did not take place until a few days later (specifically, on 7 December that same year), and it did not deploy any binding legal effects until several years later —1 December 2009— when the Treaty of Lisbon came into force, providing the current wording of Art. 6 of the European Union Treaty.

Perhaps this delay in defining the legal status of the Charter of fundamental rights in the European Union legal order explains why it has not been quoted often since then. However, its influence has remained constant over time. This is evidenced by Judgment 61/2013, of 14 March, which declared null and void social security legislation regulating the right of part-time workers to receive contributory pensions. The Spanish Constitutional Court considered that the way in which contribution periods were calculated (exclusively on the basis of hours worked) infringed the right to equal treatment, due to it being disproportionate, and the right to non-discrimination on grounds of sex, given that most part-time workers in Spain are women (Art. 14 CE). When reaching these conclusions, STC 61/2013 (FJ 5) considered the Charter of fundamental rights of the European Union and its application by the

Luxembourg Court, particularly in European Court of Justice Judgment *Elbal Moreno* (22 November 2012, C-385/11).

Judgment 133/2010, of 2 December (FJ 6), echoes a peculiarity inherent to the Charter's interpretation, in that it must give due regard to the explanations indicated in the relevant legal sources, explanations drawn up under the auspices of the of the Convention which drafted the Charter (see Art. 6.1.3 TEU and Art. 52.7 CFR).

c) Other instruments of international law in force at European level

Constitutional Court case-law has taken into account several Conventions of the Council of Europe. Some clearly refer to human rights, such as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, signed in Strasbourg on 28 January 1981 (and ratified by Spain in an Instrument dated 27 January 1984, published in the Official State Gazette on 15 November 1985). Judgment 254/1993, of 20 July, incorporated into Spanish law various guarantees on the use of computers, interpreting Art. 18.4 of the Spanish Constitution in light of said Convention.

There are other European texts with a more tenuous relation to human rights. As an example, European Convention No. 116, of 14 November 1983, on the Compensation of Victims of Violent Crimes, whose criteria were used to uphold the constitutionality of certain reforms undertaken to speed up civil proceedings upon loss and damage caused by motor vehicles (STC 84/1992, of 28 May, FJ 3; STC 5/1993, of 14 January, FJ 4; STC 226/1999, of 13 December, FJ 3). Or the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches, signed in Strasbourg on 19 August 1985 (ratified by Spain in an Instrument dated 22 June 1987, published in the Official State Gazette on 13 August 1987: STC 148/2000, of 1 June, FJ 2).

The Council of Europe Convention that has generated the largest body of case-law is, without a doubt, the one on extraditions (signed in Paris on 13 December 1957 and ratified by Spain on 21 April 1982, Official State Gazette of 8 June 1982: amongst others, STC 11/1985, of 30 January; STC 91/2000, of 30 March; or STC 148/2004, of 13 September). Likewise, the European Convention on Mutual Assistance in Criminal Matters of 1959 has been taken into account (ratified by Spain on 14 July 1982, Official State Gazette of 17 September 1982: STC 281/2006, of 9 October, FJ 5).

Another document which has influenced Spanish case-law is the European Convention on State Immunity and its Additional Protocol, signed in Basle on 16 May 1972; it so happened that Spain had not "yet" ratified it (STC 107/1992, of 1 July, FJ 4.b); STC 292/1994, of 27 October, FJ 3).

Although human rights are not covered by the European Charter of Local Self-Government, ratified by Spain on 20 January 1988, it has nevertheless influenced Spanish case-law (e.g. STC 103/2013, of 25 April).

d) Other instruments of international law in force worldwide

The 1948 Universal Declaration on Human Rights, the only document expressly mentioned in Art. 10.2 CE, enjoys a paradoxical modest position in Spanish case-law. Although it is referred to in more than a hundred judgments, its citation usually includes one of the 1967 Covenants that have granted legal value to the rights proclaimed therein, i.e. ever since Judgment 22/1981, of 22 July (FJ 3 and 9), where the Declaration was outflanked by the International Covenant on Economic, Social and Cultural Rights (also in STC 23/1983, of 25 March, FJ 2). However, the International Covenant on Civil and Political Rights has been the most prevalent in Spanish case law, following Judgment 41/1982, of 2 July (FJ 2: see, amongst others, STC 62/1982, of 15 October, FJ 2; STC 176/1988, of 4 October, FJ 2; STC 95/2003, of 22 May, FJ 5; STC 72/2005, of 4 April, FJ 7; STC 292/2005, of 10 November, FJ 3; STC 234/2007, of 5 November, FJ 3; STC 15/2011, of 28 February, FJ 5; STC 12/2013, of 28 January, FJ 2). On various issues, the rulings of the Spanish Constitutional Court have taken into account the mandates of both International Covenants, e.g. STC 45/1989, of 20 February (FJ 4); STC 236/2007, of 7 November (FJ 3, 5-8, 11-13); STC 133/2010, of 2 December (FJ 6 and 8); STC 51/2011, of 14 April (FJ 8); or STC 198/2012, of 6 November (FJ 6 and 9).

Among the many international human rights treaties guiding the Spanish Constitutional Court case-law, the following can be mentioned:

- UN Convention on the Prevention and Punishment of the Crime of Genocide, dated 9 December 1948, taken into account when examining the homonymous offence foreseen in the 1995 Spanish Criminal Code (STC 235/2007, of 7 November) or the scope of international jurisdiction exercised by the Spanish criminal courts (STC 237/2005, of 26 September).
- UN Convention on the Elimination of All Forms of Discrimination against Women, of 18 December 1979, which indicates how to define forbidden situations or inspires the establishment of suitable protection remedies in regard to employment (STC 128/1987, of 16 July, FJ 8; STC 173/1994, of 7 June, FJ 3; STC 175/2005, of 4 July, FJ 3; STC 214/2006, of 3 July, FJ 3; STC 12/2008, of 29 January, FJ 2);
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in Resolution 39/46, of 10 December 1984 (STC 120/1990, of 27 June, FJ 9; STC 12/2013, of 28 January, FJ 2);
- UN Convention on the Rights of the Child of 20 November 1989, which is significant in family matters (STC 67/1998, of 18 March, FJ 5; STC 141/2000, of 29 May, FJ 5; STC

93/2013, of 23 April, FJ 12; STC 127/2013, of 3 June, FJ 6); in the protection of minors (STC 260/1994, of 3 October, FJ 1; STC 124/2002, of 20 May, FJ 4 and 6; STC 221/2002, of 25 November, FJ 2 and 5); on juvenile justice (STC 36/1991, of 14 February, FJ 6; STC 211/1993, of 28 June, FJ 4; STC 233/1993, of 12 July, FJ 2 and 3; STC 243/2004, of 16 December, FJ 4); or insurance (STC 55/1994, of 24 February, FJ 2).

- UN Convention on the Rights of Persons with Disabilities signed in New York on 13 December 2006, which affected the Constitutional Court's interpretation of the rights to which any person should be entitled when subject to a judicial incapacitation procedure (STC 7/2011, of 14 February).

Spanish case-law is indisputably affected by the Conventions approved by the International Labour Organization, which "can be invoked" in furtherance to Art. 10.2 CE (STC 129/1989, of 17 July, FJ 4; STC 281/2005, of 7 November, FJ 3). See, for instance, in trade union matters (many decisions, starting with STC 78/1982, of 20 December: ILO Conventions Nos. 87, 98 and 135); minimum social security rules (Convention No. 102, starting with STC 184/1990, of 15 November, FJ 4); protection against dismissal (Convention No. 158, of 1982, on the termination of employment: STC 7/1993, of 18 January, FJ 3), to particularly include pregnancy or maternity (STC 41/2002, of 25 February, FJ 3); this international treaty is reinforced by the provisions established in other concurrent treaties (e.g. Convention No. 103, on maternity protection; Convention No. 111, on Discrimination (Employment and Occupation); and Convention No. 156, on Equal Remuneration (amongst male and female workers): STC 182/2005, of 4 July, FJ 4); regarding holidays with pay (STC 192/2003, of 27 October, regarding Convention No. 132, 1970 (revised)). Although, occasionally, the Court has refused to grant validity to obsolete measures (e.g. STC 229/1992, of 14 December, regarding Convention No. 45, of 1935, related to Underground Work (Women) in all types of mines).

3. Are there any specific provisions of constitutional law imposing a legal obligation on the constitutional court to consider decisions by European courts of justice?

Not directly. However, the Spanish Constitutional Court has always understood that the reference made in Art. 10.2 CE to international treaties on fundamental rights matters entails taking into account the interpretation "carried out by supervising bodies established by these same international treaties and agreements" (STC 116/2006, of 24 April, FJ 5; along the same lines, amongst many others, STC 50/1989, of 21 February; STC 64/1991, of 22 March; STC 116/2006, of 24 April, FJ 5; STC 198/2012, of 6 November, FJ 9; STC 61/2013, of 14 March, FJ 5).

Consequently, the Spanish case-law is attentive to the doctrine laid down by the European Court of Human Rights (ever since STC 12/1981, of 10 April, FJ 3) and the

European Court of Justice (following STC 28/1991, of 14 February, FJ 6; and STC 64/1991, of 22 March, FJ 4).

4. Is the jurisprudence of the constitutional court influenced in practice by the jurisprudence of European courts of justice?

It is to be underlined the extraordinary influence provided by the case-law laid down by the Strasbourg Court, which has expressly inspired more than 500 judgments rendered by the Spanish Constitutional Court. This influence is visible at various levels:

Some of the fundamental rights listed by the 1978 Spanish Constitution, from the very start, have been interpreted by the Spanish Constitutional Court following the guidelines laid down by the case-law of the European Court of Human Rights. The right to equality before the law (Art. 14 CE) which, since the original Judgment of the Plenary Court 22/1981, of 2 July, has been expressly construed in accordance with Strasbourg doctrine (as clearly acknowledged, amongst others, by STC 122/2008, of 20 October, FJ 6; or STC 160/2012, of 20 September, FJ 7). Another right that was constitutionally defined following European case-law is the right to a trial without undue delay (Art. 24.2 CE): its boundaries have been defined by the Spanish Constitutional Court according to declarations made by the European Court of Human Rights, as may be gleaned from initial Judgments 18/1983, of 14 March; 36/1984, of 14 March; and 5/1985, of 23 January; or referred to, amongst others, by Judgments 195/1997, of 11 November (FJ 3) and 94/2008, of 21 July (FJ 2 and 4).

The incorporation of the European Convention on Human Rights, interpreted by the Strasbourg Court, has been particularly important in the field of criminal justice. Some relevant examples are prison on remand and wiretapping. Judgment 128/1995, of 26 July, rendered the validity of detention on remand conditional upon it being specifically able to achieve “legitimate and constitutional purposes, consistent with the nature of the measure”: certain relevant risks stemming from the accused to the investigation and trial, execution of an eventual conviction or to society, more generally : “his fleeing the action of justice, obstructing the criminal investigation and, on a different though closely-related plan, criminal recidivism”. The decisive criteria for this case-law emanated from rulings laid down by the European Court of Human Rights: Judgment 128/1995 cited, amongst others, the following ECtHR Judgments: 27 June 1968, *Wemhoff* case; 27 June 1968, *Neumeister* case; 10 November 1969, *Matznetter* case; 10 November 1969, *Stögmüller* case; 26 June 1991, *Letellier* case; 27 August 1992, *Tomasi* case; and 26 January 1993, *W. v. Switzerland*. Finally, the Spanish Parliament amended procedural criminal law to adjust it to the requirements of the European Convention (Organic Act 13/2003, of 24 October).

European doctrine has also been crucial when interpreting the fundamental right to secret communications (Art. 18.3 CE). Following Judgment 85/1994, of 14 March, the

Spanish Constitutional Court's case-law requires that any judicial warrant for wiretapping not only be authorised by law, but also justified by the competent investigating judge. The Constitutional Court also pointed out that this requirement was in accordance with the doctrine laid down by the Strasbourg Court in furtherance of Article 8 of the European Convention on Human Rights (expressly referring to ECHR Judgments of 6 September 1978, *Klass* case; and of 2 August 1984, *Malone* case). Since then, progress in Strasbourg case-law has decisively influenced the Spanish Constitutional Court, as evidenced in Judgments 49/1999, of 5 April, and 184/2003, of 23 October. This latter decision, issued by the full Court, echoed the criticism that the Strasbourg Court had made on the then current Spanish legislation on wiretapping: "our pronouncement, incorporating the doctrine of the European Court of Human Rights and of the Spanish Courts, should highlight that Art. 579 [of Criminal Procedure Act: LECrim] is vague and imprecise in essential matters, and so does not meet the necessary requirements foreseen in Art. 18.3 CE to protect the right to secret communications, interpreted, as established by Art. 10.2 CE, according to Art. 8.1 and 2 ECHR". In this regard, no legal reform has yet taken place: as of today, Spain applies insufficient legislation, completed by criminal and constitutional case-law, awaiting the legislator's completion of the legal regime in order to remedy the situation. This situation has continued since Judgment 184/2003 and seems to have been accepted by the Strasbourg Court (see STC 70/2007, of 16 April).

On other occasions, Strasbourg influence is visible in regard to a certain situation or specific issue. A good example may be found in the case-law on constitutional guarantees of criminal appeals. The Judgment delivered by the full Constitutional Court 167/2002, of 18 September, expressly changed the criteria followed until then, disallowing the age-old practice followed by provincial courts of appeals to re-examine the evidence presented at the trial in order to correct any *de facto* errors that the first instance court might have incurred into. Judgment 167/2002 took into account the doctrine laid down by ECHR Judgment *Ekbatani v. Sweden*, of 26 May 1988, and its offspring. The introduction of those new criteria into Spanish law, which have not adopted by legislation reforming the criminal procedure act, has forced the Spanish Constitutional Court to undertake an arduous praetorian task in a large number of judgments: in this regard, Judgment 120/2009, of 18 March, did not allow the court of appeals to revise the findings of fact established in the trial court's judgment acquitting the accused based on personal evidence, even after the appellate judges had envisioned an audio visual recording of the hearing held before the trial court; Judgment 184/2009, of 7 September, granted protection to an accused who had been convicted in appeal because the individual is entitled to a hearing, in all cases where the court of appeals must decide whether the accused is guilty or non-guilty, whilst he claims that he has not committed the offence of which he is accused irrespective of whether the appellate court is bound to examine *de facto* or *de jure* issues. Judgment 184/2009 expressly follows ECHR Judgment of 10 March 2009, *Igual Coll v. Spain*. Judgment 22/2013, of 31 January (FJ 3), provides guidelines to "render compatible

constitutional case-law, delivered in furtherance of the European Court of Human Rights case-law, on the need for direct examination of incriminating evidence of a personal nature, in appeals against acquittal judgments, on the one hand”, and current laws governing the practice of evidence in appeal proceedings (Arts. 790.3 and 791.1 of the 1882 Criminal Procedure Act, as worded by Act 38/2002, of 24 October).

Another example is provided by the right to an impartial judge. The case-law has never doubted that the Spanish Constitution enshrines the right to be tried by an impartial judge; the problem is that the long list of rights included in Article 24 of the Spanish Constitution does not expressly include a guarantee to an impartial judge or court. Initially, this meant that it was insistently established that the right to an impartial judge was acknowledged in the European Convention on Human Rights (Art. 6.1) and in the International Covenant on Civil and Political Rights (Art. 14.1). Ever since Judgment 44/1985, of 22 March, the Spanish Constitutional Court has referred to European case-law on the matter (specifically referring to ECHR Judgment of 1 October 1982, *Piersack* case). Strasbourg doctrine on this point has been constantly influential and determining (see STC 113/1987, of 3 July, FJ 2; STC 145/1988, of 12 July, FJ 5; STC 126/2011, of 18 July, FJ 15). As a standard example, suffice it to refer to the affirmation made in STC 5/2004, of 16 January (FJ 5): “This Court, referring to the doctrine laid down by the European Court of Human Rights (ECHR Judgment s, amongst others, of 27 September 1999 —*Buscemi v. Italy*—, and of 28 October 1999 —*Wille v. Liechtenstein*), has recognised that any external declarations made by Judges and Magistrates may affect the fundamental right to an impartial judge”.

The influence of the European Court of Justice has been more limited up until today, though still far from irrelevant. Luxembourg case-law has been considerably influential in matters related to the right to equality before the law: not so much in general terms (where Strasbourg inspiration has been decisive, without prejudice to the Luxembourg Court, as evidenced in various judgments starting with STC 64/1991, of 22 March, on fishermen’s rights of access to fishing grounds in the North Atlantic Sea, which was consistent with Court of Justice Judgment *Apesco*, of 26 April 1988, case 207/86) but, clearly, in the field of non-discrimination.

First of all, equal rights between women and men. As an example, suffice it to point out that the constitutionality of measures to achieve effective or real equality between the sexes adopted by the Spanish legislator have been examined by the Spanish Constitutional Court in light of European legislation and case-law. In electoral matters, Organic Act 3/2007, of 22 March, determined that in any election to public office, only balanced female and male candidatures can be presented. Judgment 12/2008, of 29 January, declared constitutional this legislative mandate, in light of European Union rules, amongst others, and also referred to the fact that the reform introduced by the 2007 Treaty of Lisbon has reinforced the prescription for gender equality (FJ 2).

There are other examples that are just as relevant. The fact that the Spanish Constitution not only prohibits direct, but also indirect, discrimination on the grounds of sex is a direct result of European Union legislation and case-law. The foregoing was expressly upheld in Judgment 253/2004, of 22 December, which declared the unconstitutionality of a social security legal provision that was detrimental to part-time workers, mostly women: “The idea of indirect discrimination on the grounds of sex has been established in case-law of the European Court of Justice, precisely as a result of examining certain part-time employment situations in light of the prohibition of discrimination on the grounds of sex, further to Art. 119 of the European Economic Community Treaty (current Art. 141 of the European Community Treaty), and implementing Community Directives. The foregoing may be summarised in a formula reiterated by the European Court of Justice in many rulings (amongst many others, ECJ Judgments of 27 June 1990, *Kowalska* case; of 7 February 1991, *Nimz* case; of 4 June 1992, *Bötel* case; or of 9 February 1999, *Seymour-Smith and Laura Pérez* case) ... This ECJ case-law on indirect discrimination on the grounds of sex has been upheld by Constitutional Court judgments”, referring to STC 22/1994, of 27 January (FJ 4), and STC 240/1999, of 20 December (FJ 6), amongst others (STC 253/2004, FJ 7; along the same lines, STC 61/2013, of 14 March).

Furthermore, the conclusion that to dismiss a pregnant employee amounts to discrimination on the grounds of sex was expressly justified on the grounds of European Union law: Judgment 41/2002, of 25 February (FJ 3), expressly mentioned Directives 76/207/EEC and 92/85/EEC, as well as several decisions of the Luxembourg Court (ECJ Judgments *Hertz* and *Dekker*, both of 8 November 1990; *Habermann-Beltermann*, of 5 May 1994; and *Webb*, of 14 July 1994).

Another reason for discrimination has been declared contrary to the Spanish Constitution following the criterion laid down by European Union law: discrimination on the grounds of sexual orientation. The interpretation that forbidden discrimination, as per Art. 14 CE, prohibits measures that are detrimental due to a person sexual orientation was upheld in Judgment 41/2006, of 13 February, explicitly justified by Article 13 of the Founding Treaty of the European Community (currently Art. 10 of the Treaty on the functioning of the EU: TF), Art. 21.1 of the European Union Charter on Fundamental Rights (acknowledging that it had no legal effect at the time) and in several Directives, without quoting any specific judgment. Judgment 41/2013, of 14 February, did mention one (ECJ Judgment *Maruko*, of 1 April 2008, C-267/2006) in the reasoning that led to declare unconstitutional social security legislation, which conditioned entitlement to a special widow’s pension to the fact that the deceased and beneficiary had had children in common; this was to point out that the issue was not determined by European Union law.

5. Does the Constitutional Court in its judgments regularly refer to the jurisprudence of the European Court of Justice and/or European Court of Human Rights? Which are the most significant examples?

Yes. All the judgments mentioned in the text above refer to the case-law of both Courts of European.

A relevant example is provided in recent Judgment 37/2011, of 28 March, which from the fundamental human right to physical and moral integrity (Art. 15 CE) has inferred the right of patients to provide informed consent before being subject to any medical treatment or operation. In order to determine the constitutional guarantees imposed on any medical intervention affecting a patient's corporal integrity "we may resort, on the one hand, to treaties and agreements on the matter ratified by Spain, due to the interpretative value of rules on fundamental rights and public freedoms recognised by Art. 10.2 CE (for all, STC 6/2004, of 16 January, FJ 2); and, on the other, to the case-law laid down by the European Court of Human Rights, which should also be used to interpret the constitutional provisions protecting fundamental rights, also according to Art. 10.2 CE, as upheld, amongst many other judgments, in STC 303/1993, of 25 October, FJ 8; and STC 119/2001, of 24 May, FJ 5, to end with an examination of the regulations in charge of materializing these guarantees.

«In relation to these hermeneutic components, we should first of all refer to the European Union Charter of Fundamental Rights, approved in Nice on 7 December 2000, which was recognised —in its version of 12 December 2007 in Strasbourg— the same legal value as all Treaties in accordance to Art. 6.1 of the European Union Treaty (Treaty of Lisbon of 13 December 2007, in force since 1 December 2009). Art. 3 of the Charter recognises to everyone the right to physical and mental integrity, which means that in the fields of medicine and biology it is compulsory to respect "the free and informed consent of the person concerned, according to the procedures laid down by law" [section 2.a)]. Along these lines, the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (hereinafter, the Convention on Human Rights and Biomedicine), signed in Oviedo on 4 April 1997, ratified by Spain in an Instrument dated 23 July 1999 (Official State Gazette No. 251, of 20 October 1999) —which came into force on 1 January 2000— refers in Chapter II to "[c]onsent"; Art. 5 establishes the general rule, whereby an intervention in the health field may only be carried out "after the person concerned has given free and informed consent to it", to which effect he or she "shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks". However, if adequate consent cannot be obtained in emergency situations, "any medically necessary intervention may be carried out immediately for the benefit of the health of the individual concerned" (Art. 8).

“The European Convention of Human Rights (ECHR) does not include a specific rule on the protection of physical and moral integrity, but the European Court of Human Rights has included it in the notion of ‘private life’, the protection of which is enshrined in Art. 8.1 ECHR (ECtHR Judgments of 16 December 1997, *Raninen v. Finland*, § 63; and of 24 February 1998, *Botta v. Italy*, § 32); it has also included in this notion individual participation in selecting medical acts to be performed as well as their consent (ECtHR Judgments of 24 September 1992, *Herczegfalvy v. Austria*, § 86; and of 29 April 2002, *Pretty v. United Kingdom*, § 63). In this regard, the Strasbourg Court has highlighted the importance of patients’ consent, considering that the imposition of medical treatment without this consent, if the patient is an adult and is mentally competent, is an attack to the physical integrity of the interested party, which may question the rights protected by Art. 8.1 ECHR (ECtHR Judgment of 29 April 2002, *Pretty v. United Kingdom*, § 63); the foregoing also highlights the importance for any person exposed to a health risk to have access to information allowing them to evaluate said risk (ECtHR Judgments of 19 February 1998, *Guerra et al v. Italy*, § 60; and of 2 June 2009, *Codarcea v. Romania*, § 104). In the last judgment, the European Court of Human Rights has indicated that, further to its obligation to adopt suitable rules to guarantee patients’ physical integrity, all Member States should impose the necessary rules to ensure that doctors examine any foreseeable consequences of the medical operation intended on their patients’ physical integrity, adequately informing them of such consequences, so that the person in question has total knowledge with which to agree to the act; consequently, if a foreseeable risk is consummated without the patient being informed by the doctor, the State in question may eventually be held directly liable, pursuant to Art. 8 ECHR (§ 105)» (FJ 4).

6. Are there any examples of divergences in decisions taken by the constitutional court and the European courts of justice?

The case-law laid down by the Spanish Constitutional Court strictly follows that established by the European Court of Human Rights as a general rule, despite some minor differences as regards equality before the law, the presumption of innocence and family privacy.

As mentioned above, the Spanish Constitutional Court has constructed a right to equality before the law (Art. 14 CE) based on the case-law laid down by the Strasbourg Court (Art. 14 CEDH and, currently, Protocol No. 12, of 4 November 2000). However, it has not accepted its opinion on one point: as summarized by STC 181/2000, of 29 June (FJ 11), “this Court has repeatedly and constantly upheld that the right to equal treatment foreseen in Art. 14 of the Spanish Constitution does not enshrine a right to unequal treatment (STC 114/1995, of 6 July, FJ 4), and it neither protects a non-distinction between unequal situations, which is why “there is no subjective right to unequal regulatory treatment” (STC 16/1994, of 20 January, FJ 5); the scope of this

constitutional provision excludes the so-called “discrimination for non-differentiation” (STC 308/1994, of 21 November, FJ 5). In short, “the principle of equal treatment cannot justify a discrimination claim on the grounds of non-differentiation” (STC 164/1995, of 13 November, FJ 7)”. The foregoing led Judgment 181/2000 to outright reject the contention that a motor vehicle insurance law, which had established a scale-based personal injury assessment system, could potentially breach the right to equal treatment because it treated different situations equally.

The Spanish Constitution enshrines the right to be presumed innocent (Art. 24.2 CE), in the same way as the Rome Convention (Art. 6.2 ECHR). The Spanish case-law has hardly developed the external aspect of this fundamental right: “The right to be presumed innocent ... applies out of court and constitutes the right to be considered and treated as somebody who is not an actor or perpetrator of criminal facts, or similar ones; therefore, it implies the right not to be subject neither to the consequences nor to the legal effects linked to facts of such nature in legal relations of any kind” (STC 109/1986, of 24 September, FJ 1). Or, according to STC 137/1988, of 7 July (FJ 1): “a person accused of an infraction should not be considered guilty until this is so declared in a judgment convicting him or her”; premise of the judgment rule: “such conviction will only be admissible and legal if supported by evidence, administered with procedural guarantees and freely appraised by the criminal courts, that could properly lead to the conviction that the defendant is guilty”. In nearly all the decisions delivered by the Spanish Constitutional Court this second aspect is determinative: the evidence sustaining the conviction; not the first, the prohibition to treat as guilty someone who has not been declared guilty by a court following a fair trial. However, this last dimension is carefully protected by the Strasbourg Court case-law.

This apparent dissonance was manifested in the *Lizaso Azconebieta* case. This person was referred to in a press meeting arranged by the Spanish Home Office, affirming that he was a member of a disbanded commando belonging to the ETA terrorist organization. Although it was true that the interested party had been arrested in the course of that police operation, he was not involved with any criminal activity so that he was soon released. STC 244/2007, of 10 December, considered that a refusal to award him damages for having been publicly accused of committing serious offences as a member of a terrorist organization, did not breach his fundamental rights. As regards the presumption of innocence, the judgment declared that the appeal for protection involved “a non-procedural dimension of the presumption of innocence, acknowledged by this Court and by the European Court of Human Rights (amongst others, said Judgment of the European Court of Human Rights of 5 February 1995, *Alenet de Ribemont v. France*), consisting of the ‘the right to be considered and treated as somebody who is not an actor or perpetrator of criminal facts, or similar ones; therefore, it implies the right not to be subject neither to the consequences nor to the legal effects linked to facts of such nature in legal relations of any kind’ (STC

109/1986, of 24 September, FJ 1)”; however, in the next paragraph it was asserted that “in the case at hand, the presumption of innocence extra-procedural dimension is specifically protected as the right to one’s reputation by the Spanish fundamental rights system; this presumption is instrumental when adjudicating an alleged infringement of the right to one’s reputation, particularly in relation to the veracity of the information when the right to reputation clashes with the freedom of information (STC 139/2007, of 4 June, FJ 2) ... as we declared in STC 166/1995, of 20 November, FJ 3, ‘this extra-procedural dimension of the presumption of innocence is not *per se* a fundamental right different or distinctive from the right deriving from Arts. 10 and 18 of the Spanish Constitution; consequently, an infringement of those provisions, particularly Art. 18, could justify an appeal for constitutional protection. In other words, the presumption of innocence guaranteed by Art. 24.2 CE becomes a fundamental right susceptible of constitutional protection whenever a defendant in a criminal trial, who should be deemed innocent until proven guilty, is convicted without the evidence having been obtained and presented respecting all the necessary legal and constitutional guarantees necessary to overrule such a presumption. In all other cases related to one’s reputation and dignity, not involving a presumption but an innate quality inherent thereto, the rights to be either preserved or restored are those enshrined in Art. 18 CE” (STC 244/2007, FJ 2). Subsequently, the Judgment concluded that the affected person right to reputation had not been breached by the information provided by the Administration to the media.

However, the Strasbourg Court declared an infringement of Mr. Lizaso’s right; and considered his presumption of innocence to be decisive, not his right to one’s reputation (Arts. 6.2 and 8.1 ECHR). The Judgment of 28 June 2011 (application no. 28834/08) unequivocally affirms that although the presumption of innocence principle is an element essential for the fairness of the criminal trial, “it is not limited to a mere procedural guarantee in criminal matters. It has a broader scope, which requires that no representative of the State or of a public authority should declare a person as guilty of an offence until his culpability has been declared by a court” (§ 37). In addition, the decision reaffirms that “a breach of the presumption of innocence may not only arise from a judge or tribunal, but also from other State agents and public personalities” (§ 38, citing case-law). To the extent that the declarations of the Civil Governor about the interested party deemed his culpability as proven, without any doubt or suspicion; and, finally, were pronounced even before the arrested individual was brought before any court or any criminal file was opened, therefore they infringed upon his presumption of innocence.

Another issue of apparent friction arises with respect to the right to family privacy (Art. 18.1 CE) and the right to respect for family life (Art. 8.1 ECHR). Judgment 236/2007, of 7 November, declared that the right of resident foreigners in Spain to family reunification is a matter neither reserved to regulation by organic act (Art. 81.1 CE) nor to regulation by ordinary law devoted to “the rights and freedoms acknowledged in

Chapter II” (Art. 53.1 CE); consequently, the Foreigners Rights Act of 2000 had not infringed these constitutional provisions when delegating rulemaking authority to the Executive on those matters, given that the law does not implement any fundamental right to family privacy. Judgment 236/2007 pointed out that “the case-law laid down by the European Court of Human Rights, in contrast to Constitutional Court case-law, has deduced from [Art. 8.1 ECHR] a ‘right to family life’, encompassing the right of parents and children to enjoy their mutual company (ECtHR Judgment *Johansen*, of 27 June 1996, § 52)”; but “the Spanish Constitution does not recognise a ‘right to family life’ in the same terms as the case-law of the European Court of Human Rights has interpreted Art. 8.1 ECHR, let alone as a fundamental right to family reunification, given that none of those rights are included in the right to family privacy guaranteed by Art. 18.1 CE” (STC 236/2007, FJ 11).

Likewise, Judgment 60/2010, of 7 October, declared constitutional for a criminal law to impose a restraining order in cases of domestic violence, even against the will of the spouses or partners concerned. The Judgment, following in express terms the doctrine of STC 236/2007, denied that any such restraining order or sanction affected the right to family privacy (Art. 18.1 CE) “because what is protected by the right recognised in Art. 18.1 CE is ‘privacy itself, not private and personal individual activities’ (STC 89/1987, of 3 June, FJ 2); in spite of the fact that in some instances these two legal positions —the freedom to act in a certain way and the right to safeguard this vital scope of one’s action and its awareness from third parties— may occasionally overlap whenever the same interference from the State or third parties entails a breach of both (see the case decided in STC 151/1997, of 29 September)” (FJ 8.c). However, Judgment 60/2010 did not consider this apparent contradiction very important: “the gap between the foregoing doctrine and the case-law laid down by the European Court of Human Rights on Art. 8.1 ECHR, which ... has deduced from this provision a ‘right to family life’ should be toned down to a large extent. Actually, in STC 236/2007, of 7 November, we declared that ‘the Spanish Constitution does not acknowledge a ‘right to family life’ in the same terms as the case-law of the European Court of Human Rights has interpreted Art. 8.1 ECHR’ (FJ 11). However, as already mentioned, this does not mean that the vital space protected by the ‘right to family life’ derived from Art. 8.1 ECHR and Art. 7 of the European Union Charter of Fundamental Rights and, as regards the issue here, an independent configuration of relations based on affection, family and cohabitation should lack protection within the Spanish constitutional system”. This constitutional protection was found by the Spanish Constitutional Court in the right to freely choose a place of residence and to move around national territory (Art. 19.1 CE), held by the addressee of the restraining order; furthermore, “an imposition of this penalty may indirectly affect the free development of one’s personality (Art. 10.1 CE), both the perpetrator and the victim of the crime, by restricting their scope of autonomy to decide whether to continue, or not, the relationship of affection or cohabitation protected by this constitutional principle” (STC 60/2010, FJ 8.b and 9).

In regard to the European Union Court of Justice, there are two issues that could be reflected upon: (i) the right to equal treatment (Art. 14 CE), and (ii) procedural guarantees (art. 24.2 CE).

Spanish employment law has created a Wages Guarantee Fund to take over any remuneration credits held by workers who, due to their employer's insolvency, are left unpaid, within certain limits and amounts. The labour courts used to uphold that the Fund should only satisfy those debts acknowledged in a final judgment or an administrative decision, excluding any debt recognised by virtue of an agreement or conciliation, including those reached at in the course of proceedings before the labour administration or the judge. The Spanish Constitutional Court considered that this different treatment did not breach the right to equal treatment, given that there was no "differentiated treatment in identical situations to logically trigger a constitutional judgment of equality, given that the initial situation (workers agreeing to a conciliation) is subject to the same treatment in the court's interpretation. The difference has merely arisen with respect to the conciliation, as opposed to the court judgment or administrative resolution, but clearly these are different initial situations, treated differently —particularly with a view to preventing potential fraud—, and therefore do not breach Art. 14 CE" (STC 306/1993, of 25 October).

However, the European Court of Justice reached the opposite conclusion: "the general principle of equal treatment, as recognised in the Community legal order, requires that when, under national rules ... statutory compensation payable on termination of an employment contract and fixed in a judgment is payable by a guarantee institution in the event of an employer's insolvency, compensation of the same nature, fixed in an agreement between the employee and the employer which was entered into under the supervision and with the approval of a court, must be treated in the same way (ECJ Judgment *Cordero Alonso*, of 7 September 2006, case C-81/05, § 42 and holding 2). In this judgment, which reiterated prior pronouncements, the Luxembourg Court made a relevant observation: "Since the general principle of equality and non-discrimination is a principle of Community law, Member States are bound by the Court's interpretation of that principle. That applies even when the national rules at issue are, according to the constitutional case-law of the Member State concerned, consistent with an equivalent fundamental right recognised by the national legal system" (§ 41). This led it to rule that "the national court must disapply a national rule which, in breach of the principle of equality as recognised in the Community legal order, precludes the payment by the competent guarantee institution of compensation on termination of a contract fixed in an agreement between the employee and the employer which was entered into under the supervision of and with the approval of a court" (§ 47 and holding 3).

This conflicting case-law did not last long, by virtue of the Spanish legislator swift action. By the end of 2006, national labour law had been changed to conform to European Union law.

As regards guarantees of the defendant in criminal proceedings, the Constitutional Court used to declare that the Spanish Constitution provides to anybody subject to serious punishment, without having being present in the trial, a right to challenge his or her conviction in court; it is an absolute guarantee, to be applied irrespective of whether the competent forum is a Spanish or a foreign court. For this reason, Judgment 91/2000, of 30 March, granted relief to a person who had been accused and convicted by the Italian State for serious crimes as a mafia member, whose extradition had been granted by the Spanish National Court. Judgment 91/2000 declared that it is not contrary to the right of defence and to a fair procedure (Art. 24.2) for a Spanish court to grant an extradition requested by countries that accept serious punishment judgments rendered *in absentia*; but only insofar as the extradition order is conditional upon the convicted party being allowed to challenge the conviction before the courts that convicted him, in order to safeguard his rights of defence. This declaration was completed with the finding that the mere fact that the defendant was absent in a criminal trial does not necessarily entail a voluntary waiver of the right of self-defence.

The firm criteria laid down in Judgment 91/2000 was carried out in subsequent resolutions, with no further controversy (STC 134/2000, of 16 May; STC 162/2000 and STC 163/2000, of 12 June; and STC 183/2004, of 2 November, for example). A discussion did arise when this doctrine, born in the context of extradition proceedings, was applied to European arrest warrants. Judgment 177/2006, of 5 June, was aware that the Framework Decision on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA, of 12 June 2002) “has created a new system where the principle of reciprocity has lost the role it traditionally played in international cooperation to fight crime, given that the obligations consequently imposed on Member States cannot be subject to this requirement (ECJ Judgments of 30 September 2003, *Colegio de Oficiales de la Marina Mercante Española*, C-405/01, and of 30 June 2005, *Tod’s SpA, Tod’s France SARL & Heyraud SA*, C-28/04)” (FJ 5). However, it did not hesitate to grant relief implementing the doctrine laid down by STC 91/2000, of 30 March, because the European arrest warrant in question was aimed at the execution of a twenty-year prison sentence that had been imposed on the requested party by a French court, *in absentia*, and the Spanish criminal court had not conditioned the surrender of the appellant to the condition that such conviction could be reviewed in proceedings conducted in his presence (FJ 7).

Although enforcement of the ruling in Judgment 177/2006, of 5 June, encountered difficulties (see STC 37/2007, of 12 February), its criteria was steadfastly adhered to until the year 2009 (see STC 37/2007, just cited, and STC 120/2008, of 13 October). Meanwhile, in 2006, the European Union had its legislation amended in order to

reinforce surrenders amongst Member States, in the event of convictions delivered *in absentia* (Council Framework Decision 2009/299/JAI, of 26 February 2009, enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial). As a result, STC 199/2009, of 28 September, again granting relief to a person surrendered under a European arrest warrant in order to complete a prison sentence delivered *in absentia* (to Romania on this occasion), included two dissenting opinions. Both of them insisted, using different arguments, that a European arrest warrant is legally different from an extradition, it is governed by European Union law which implicitly, albeit unequivocally, is questioned when constitutional relief was granted and the requested party not surrendered; one State cannot force other European Union members to follow its own fundamental rights protection parameter. Apart from re-examining the merits of the case (if, in fact, a duly summoned defendant who freely decides not to be present at the public trial, handing over his defence to a lawyer of his choice, gives rise to a lack of defence), the dissenting votes considered the adequacy of filing a claim of unconstitutionality of the Spanish Act implementing the European Arrest Warrant Decision or, even, to refer to the Luxembourg Court a preliminary ruling on the Framework Decision.

Finally, in a similar case of surrender further to a European arrest warrant, in order to complete a prison sentence imposed in a judgment delivered *in absentia*, the Spanish Constitutional Court filed its first preliminary ruling request before the European Union Court of Justice. The Order of the full Court 86/2011, of 9 June, suspended the proceedings for an the appeal for constitutional protection and requested that the Luxembourg Court examine a series of preliminary issues, which have been addressed in the Court of Justice Judgment *Melloni* (26 February 2013, case C-399/11).

7. Once it is taken into account by the Constitutional Court, is European case-law cited by other Courts?

Yes, constantly. Examples are available from all jurisdictional orders:

In civil matters, when deciding on issues related to the protection of the right to one's reputation, privacy and image, against the freedoms of expression and information, citations are very often made to European Court of Human Rights decisions: some recent examples are Spanish Supreme Court Judgments (First Division, re Civil) 3338/2013, of 30 April (which reinforces the prevalence of freedom of expression with respect to the right to one's reputation in political disputes); 3119/2013, of 25 March (criticism of a judge in a book, where European case-law is decisive). And in family matters, such as Supreme Court Judgment 373/2013, of 31 January (custody of a minor who resided with his mother in the U.S.); or Supreme Court Judgment 2676/2011, of 12 May (visitation rights of the woman who was the lesbian partner of the minor's

mother). And, of course, in procedural matters, such as the admissibility requirements for an appeal in law (Supreme Court Judgment 344/2013, of 24 January) or the duty to constitute a deposit in order to appeal a in traffic accident lawsuits (Supreme Court Judgment 2955/2012, of 30 April).

In criminal matters, there are many decisions of the Spanish Supreme Court (Second Division, re Criminal), which assess the reviewing powers of a court deciding an appeal against an acquittal (e.g. Supreme Court Judgments 3858/2013, of 11 July; 1385/2011, of 22 December; 3504/2013, of 28 May); there are innumerable decisions that evaluate European case-law in regard to presumption of innocence (Supreme Court Judgments 3434/2013, of 19 June; 3003/2013, of 21 May), on wiretapping (Supreme Court Judgments 3509/2013, of 26 June; 3275/2013, of 19 June), etc.

In administrative matters, the Third Division of the Spanish Supreme Court regularly handles Strasbourg Court case-law (Supreme Court Judgments 3544/2013, of 1 July, on the admissibility of an appeal against electricity rates; 050/2013, of 6 June, on the failure to provide an adequate statement of grounds); but, above all, the decisions adopted by the European Court of Justice (Supreme Court Judgments 3456/2013, of 27 June, on visa applications for family reunification; 3920/2013, of 18 July, applying the principle of the protection of legitimate expectations when examining incentives in electricity matters; 3906/2013, of 18 July, on an asylum application). In Judgment 3074/2013, of 11 June, the case-law laid down by the Strasbourg Court on the right to private property is contrasted with that of the Luxembourg Court on the liability of member States for legislative acts in breach of European Union law.

In social matters, covering everything related to employment contracts and social security, the European Union Court of Justice case-law is very frequently applied (Spanish Supreme Court Fourth Division, re Social, Judgments 2146/2013, of 16 April, on the scope of the Wages Guarantee Fund scope of action; 2388/2013, of 9 April, on workers' rights in the event of transfers of undertakings; 1892/2013, of 19 March, on the enjoyment of annual leave in the event of subsequent temporary disability; 9179/2012, of 21 December, on forced early retirement based on the age established in a collective bargaining agreement). Strasbourg case-law is also ordinarily applied (Supreme Court Judgments 408/2013, of 24 January, on the exclusion to demand marital cohabitation to access free tickets, in relation to airline company workers; 8876/2011, of 6 October, on dismissal related to the personal use of a company computer; 5795/2011, of 13 July, on the content and scope of trade union freedom).

The military courts also quote the case-law of both European courts. The Fifth Division, re Military, of the Spanish Supreme Court, for example, has taken Strasbourg doctrine into account when deciding on the impartiality of judges (Supreme Court Judgments 3830/2013, of 1 July; 3104/2013, of 5 June); when interpreting "degrading treatment" as an element of the abuse of office crime (Supreme Court Judgment 3006/2013, of 28 May); the right of freedom of expression in military matters in regard to disciplinary

sanctions (Supreme Court Judgment 8703/2012, of 17 December); or the limits on the power to overrule an acquittal (Supreme Court Judgment 496/2013, of 23 January).

Most of these judgments quote European court resolutions along with decisions adopted by the Spanish Constitutional Court which, in turn, applied European case-law. However, there are no studies available on how these various case-law sources inter-relate.

In short, the case-law on rights that has been laid down by the European Court of Human Rights and the European Union Court of Justice is applied daily by the all the Spanish courts in all judicial branches.

8. Are there any examples of decisions by European courts of justice influenced by the jurisprudence of national constitutional courts?

The Spanish Constitutional Court case-law has acknowledged that the fundamental rights enshrined in the Constitution bind Spanish public powers anywhere, even when they act beyond the national territory. This idea was upheld in Judgment 21/1997, of 10 February, which examined the detention of the crew when a vessel had been boarded and searched by the Spanish police in Atlantic international waters, on the grounds of suspected traffic of cocaine. After confirming this suspicion, the sailors had been locked for sixteen days, until the vessel reached port and they were able to appear before a judge; this period of time manifestly exceeded the timeframes foreseen in Article 17 of the Spanish Constitution (the indispensable time required for investigations, up to a maximum of seventy-two hours). However, before analysing the merits of the case, the judgment pointed out that, although the Spanish authorities had acted “outside the boundaries of Spanish territory- given that high seas constitute maritime space outside territorial seas and Spanish internal waters”, their activity “remains subject to the Constitution and to all other laws (Art. 9.1 CE), including in particular the respect for rights and freedoms recognised and guaranteed by our Fundamental Law” (STC 21/1997, FJ 2).

The reason for this extraterritoriality principle was explained by Judgment 21/1997 in terms very much influenced by European case-law: “please note, on the one hand, that the Spanish public powers are just as bound by the Constitution when acting in international relations ... as they are in their *ad intra* activities”, as stated in Constitutional Court Declaration of 1 July 1992, ground of law 4; the foregoing is applicable to all authorities and civil servants who depend on such powers. On the other hand, as Art. 10.2 CE requires all constitutional precepts to be interpreted pursuant to international legal texts on human rights, also of relevance is the fact that the European Court of Human Rights, in relation to Art. 1 of the 1950 Rome Convention has stated that the scope of state jurisdiction, to ensure the protection guaranteed, is not limited to national territory. Consequently, a State might be held

responsible for any breach of the rights acknowledged in Title I of the Convention in regard to actions carried out by its authorities outside state territory (*Drozd & Janousek v. France & Spain*, Judgment of 26 June 1992, and *Loizidou v. Turkey*, Judgment of 23 March 1995); the foregoing clearly applies to the present case, as the activity was conducted by Spanish authorities in an area located beyond Spanish territory, as already mentioned”.

The dialogue among Courts did not finish at this point. The Strasbourg Court, when addressing the issue of vessels boarded in the high seas by European States, has expressly taken into account the opinion of the Spanish Court (European Court of Human Rights Order *Rigopoulos v. Spain*, of 12 January 1999, case 37388/97; European Court of Human Rights Judgments *Medvedyev v. France*, of 10 July 2008 and 29 March 2010, case 3394/03).

In the field of European Union, there is a judgment in whose reasoning a Spanish accent might be discerned. The *Unión de Pequeños Agricultores* Judgment, of 25 July 2002 (C-50/00 P), recognises the right of individuals to “effective judicial protection of the rights they derive from the Community legal order” (§ 39). This terminology, which was clearly familiar to the lawyers of the organization that filed the appeal before the Luxembourg Court and the Spanish lawyers defending the European Union Council and Commission, forms one of the widest rivers in the case-law flowing from Domenico Scarlatti’s Court in Madrid (amongst many others, STC 7/1981, of 30 March, FJ 2; STC 26/1983, of 13 April, FJ 2; STC 37/1995, of 7 February, FJ 5; STC 187/2012, of 29 October; STC 27/2013, of 11 February, FJ 5; STC 127/2013, of 3 June, FJ 3; STC 129/2013, of 4 June, FJ 4-7).

In the *Unión de Pequeños Agricultores* Judgment (2002), the European Union Court of Justice has declared that “the right to such protection is one of the general principles of law stemming from the constitutional traditions common to the Member States. That right has also been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (see, in particular, Case 222/84 Johnston [1986] ECR 1651, paragraph 18, and Case C-424/99 Commission v Austria [2001] ECR I-9285, paragraph 45)”. In these resolutions, and in several others, it was effectively stated that the judicial review of decisions taken by public authorities was an essential component of the rule of law. However, the term “effective judicial protection” was not used until that year 2002; since then, that expression can be read in many different judgments issued by the Luxembourg Court when referring to a fundamental right in European Union law (amongst others, ECJ Judgments *Commission v. Spain*, of 15 May 2003, C-214/00; *Köbler*, of 30 September 2003, C-224/01; *Housieaux*, of 21 April 2005, C-186/04; *Commission v. Cresson*, of 11 July 2006, C-432/04; *Promusicae*, of 29 January 2008, C-275/06; *Kadi v. Council and Commission, Al Barakaat International Foundation v. Council and Commission*, both of 3 September 2008, C-402/05 P and C-415/05 P; *Byankov*, of 4 October 2012, C-249/11; *Otis*, of 6

November 2011, C-199/11; *Melloni*, of 26 February 2013, C-399/11; ZZ, of 4 June 2013, C-300/11; *Commission v. Kadi*, of 18 July 2013, C-584/10 P).

II. Interactions between constitutional courts

1. Does the Spanish Constitutional Court, in its decisions, refer to the jurisprudence of other European or non-European constitutional courts?

Yes, although much less often than to the Council of Europe and European Union Courts.

A special position is held by both the Federal Constitutional Court of Germany and the Constitutional Court of Italy. Ever since the first judgment delivered by the full Spanish Court, settling how the new Spanish Constitution entry into force on December 1978 affected the legislative acts that had been approved before (STC 4/1981, of 2 February, on 1955 local regime laws), the Spanish Constitutional Court has taken into consideration the experience offered by *Karlsruhe* and *Palacio de la Consulta*.

The attention devoted to those two courts has not prevented the Spanish Constitutional Court from noticing other countries case-law. This has been made explicit in the case of the legal system of the United States of America, which was examined (along with German and Italian law) when deciding the issue of illicit evidence obtained in breach of a fundamental right (STC 114/1984, of 29 November, FJ 2 and 3). Reference was made to several opinions from the U.S. Federal Supreme Court, along with the German and Italian Courts, when examining the law that enabled private television to be established in Spain (STC 127/1994, of 5 May, FJ 6); when it was necessary to define the constitutional limits imposed to tax rules having some retrospective effects (STC 126/1987, of 16 July, FJ 9 and 11); when it was declared that hotel rooms are protected against entries and searches conducted in criminal proceedings under the right to inviolability of the home (STC 10/2002, of 17 January, FJ 8); or to distinguish between the guarantees applicable to “police questioning without a lawyer being present (European Court of Human Rights Judgment *Murray v. United Kingdom*, of 8 February 1996, U.S. Supreme Court Judgment *Miranda v. Arizona*, 384 U.S. 436, 1966)” and in relation to “statements provided before an Investigating Judge in the presence of a legal aid lawyer” (STC 127/2000, of 16 May, FJ 4).

In its judgment on homosexual marriage, the Constitutional Court included in its broad examination of comparative law the judgment by the Supreme Judicial Court of Massachusetts legalizing same-sex marriages; it also took into account the judgment of the Constitutional Court of Slovenia in a similar sense (STC 198/2012, of 6 November, FJ 9). The judgments defining the constitutional limits to immunity of foreign States, both as regards jurisdiction and enforcement, took into account the case-law of many different countries: Belgium, Switzerland, France, United Kingdom of Great Britain, and Germany (STC 107/1992, of 1 July, FJ 4 and 5; STC 292/1994, of 27 October, FJ 7; STC 140/1995, of 28 September, FJ 8).

However, most of the case-law from other countries quoted in Spanish judgments is restricted to the Constitutional Courts of Germany and Italy. That has been the case from the initial Judgment 4/1981, of 2 February (FJ 1.c), on the time effects of the Spanish Constitution. An affirmation that the right of association includes a right to not associate was backed up by judgments of Germany and Italy (STC 5/1981, of 13 February, FJ 19). A failure to provide prior notice of a demonstration in public streets, or a breach of the notification deadline, may entail a prohibition by the governmental authority, given that the illegal exercise of a right cannot be protected, as affirmed by the Italian Constitutional Court (STC 36/1982, of 16 June, FJ 6). The indemnity of members of Parliament is a prerogative protecting Parliament itself, as stated by the Italian Court, and therefore is ineffective whenever any of its members acts as a citizen (STC 51/1985, of 10 April, FJ 6).

The constitutionality of an alternative custodial sentence, in the event of non-payment of a fine imposed by a criminal judgment due to the convicted party's insolvency, was analysed further to the ruling issued by Italian Constitutional Court No. 131, of 16 November 1979, which declared a similar precept invalid (STC 19/1988, of 16 February, FJ 7). The boundary between what constitutes a removal or deprivation of the right to property, and what is a mere general limitation of such right, was analysed in relation to spring water discovered in private land, based on a judgment of the German Constitutional Court (STC 227/1988, of 29 November, FJ 12). A legal provision ordering employers to pay part of a social security benefit (specifically, for temporary occupational disability), was defined as a property contribution for public purposes, not a tax (Arts. 31.3 and 33 CE), reaching the same conclusion as the Italian Constitutional Court (STC 182/1997, of 28 October, FJ 16).

Judgment 91/2000, of 30 March, concluded that the Spanish Constitution forbids a Spanish court from extraditing somebody subject to a serious imprisonment sentence, in a trial where he or she was not present to exercise his right of defence. This conclusion was reached in light of the European Court of Human Rights' declarations (European Court of Human Rights Judgment *Soering*, of 7 July 1989), and "likewise, with respect to essential values recognised in their respective Constitutions, both the German Federal Constitutional Court (Judgment of 2 June 1992) and —which is particularly significant [the extradition petition came from Italy]— the Constitutional Court of the Italian Republic (Judgment of 25 June 1996) has declared unconstitutional the surrender to the U.S. of a person subject to capital punishment" (FJ 8).

One of the provisions of the Spanish Civil Code (adopted in 1889, rewritten in the matter in 1974), which designated the husband's national law as the subsidiary economic regime, was declared as repealed by the Constitution in Judgment 39/2002, of 14 February. The ruling pointed out that this same conclusion had been reached by both the German Federal Constitutional Court and Italian Constitutional Court (FJ 5). Recently, Judgment 163/2011, of 2 November, considered that it was not contrary to

the Spanish Constitution for an election law to demand that candidatures presented by political parties, federations or coalitions not represented in Parliament in prior elections, to include a certain number of voter signatures endorsing them. The Judgment pointed out that “this requirement is not unknown in neighbouring countries, e.g. Germany has declared it constitutional if it represents a way of guaranteeing the adequacy of an electoral proposal and is aimed at advising voters about the real possibilities available to a candidate they intend to endorse [Judgments of Chamber Two of the German Federal Constitutional Court, of 16 July 1998 (BverfG, 2 BvR 1953/95, of 16.7.1998, 34) and of Chamber One, of 12 October 2004 (BverfG, 1 BvR 2130/98, of 12.10.2004, 86)], as well as compatible with the principle of electoral equality [Judgment of Chamber One of 24 February 1971 (BverfGE 30, 227, 63)]” (FJ 5).

2. If so, does the constitutional court tend to refer primarily to jurisprudence from the same language area?

No. There is a random order of citation. Furthermore, there is no record of citations being made to judgments issued in Spanish.

3. In which fields of law (civil law, criminal law, public law) does the constitutional court refer to the case-law of other European and non-European constitutional courts?

Further to the foregoing answer, the Spanish Constitutional Court has explicitly taken into account the case law of other countries’ Courts in many different situations. Perhaps, of particular relevance are those related to constitutional guarantees in criminal proceedings.

4. Have decisions of the constitutional court noticeably influenced the jurisprudence of foreign constitutional courts?

There are no studies available on the matter.

5. Are there any forms of cooperation going beyond the mutual acknowledgement of court decisions?

The Spanish Constitutional Court holds ties of friendship and cooperation with similar institutions in other countries. Cooperation as part of this European Conference of Constitutional Courts is highly valuable. Likewise, the Spanish Constitutional Court participates in the Iberoamerican Conference on Constitutional Justice: the IX

Conference was held in 2012 at Cádiz, as part of the commemoration of the Two Hundredth Anniversary of the 1812 Constitution, on the topic “Presidentialism and Parliamentarism in Constitutional Case-Law”. Each year, highly relevant annual meetings are held by the justices of the Constitutional Courts from Italy, Portugal and Spain. The XIV Conference, held at Lisbon in 2012, focused on the issue of extradition, the European Arrest Warrant and other forms of cooperation in the field of criminal justice.

Court cooperation under the auspices of the European Commission for Democracy through Law (Venice Commission), of the Council of Europe, is highly relevant. The Spanish Constitutional Court’s contribution consists of a quarterly selection of judgments to be included in the “Codices” database, as well as in the institution’s constitutional case-law bulletins.

Beyond Europe and Latin America —which are a traditional priority due to their legal and cultural affinity— over the last few years the Constitutional Court has participated in various international cooperation initiatives related to constitutional Justice, in countries such as the Philippines, Morocco, Tunisia or Vietnam. In 2012, the Constitutional Court participated in the Summit of Presidents of Supreme, Constitutional and Regional Courts, arranged by the Mexican Supreme Court of Justice, with the support of the United Nations; it was devoted to examining common challenges in case-law interpretation and development by national courts in relation to international human rights rules and principles.

The Spanish Constitutional Court is also part of the World Conference on Constitutional Justice. It is one of its founding members and has participated in its meetings since the very first one held in January 2009 under the auspices of the Constitutional Court of South Africa, in Cape Town.

All these activities are described by the Court in its annual reports (Chapter VII). Information is also available on its website (www.tribunalconstitucional.es), directly providing details of the main events.

III. Interactions between European courts in the jurisprudence of constitutional courts

1. Do references to European Union law or to decisions by the Court of Justice of the European Union in the jurisprudence of the European Court of Human Rights have an impact on the jurisprudence of the constitutional court?

There is no record of the Spanish Constitutional Court's case-law being influenced in this way.

2. How does the jurisprudence of constitutional courts influence the relationship between the European Court of Human Rights and the Court of Justice of the European Union?

We have not found any situation where the case-law of Spain's Constitutional Court may have influenced relations between these two European courts.

3. Do differences between the jurisprudence of the European Court of Human Rights, on the one hand, and the Court of Justice of the European Union, on the other hand, have an impact on the jurisprudence of the constitutional court?

The right to domestic privacy enjoyed by legal entities, by virtue of Article 18.3 of the Spanish Constitution, has been influenced by a progressive decantation of European case-law on that particular issue (initially, Court of Justice Judgment *Hoechst v. Commission*, of 21 September 1989, 46/87 and 227/88; later, by European Court of Human Rights Judgment *Niemietz v. Germany*, of 16 December 1992, 13710/88; and, finally, by CJ Judgment *Roquette Frères*, of 22 October 2002, case C-94/00). Judgment 69/1999 of the Spanish Constitutional Court, of 26 April summarizes Spanish doctrine in terms that have been clearly influenced by an apparent dissonance between European courts, as follows:

"In regard to who enjoys the right acknowledged by Art. 18.2 C.E. we should start in STC 137/1985 ... In this decision, we declared that the Constitution, 'when establishing a right to inviolability of the home, does not limit it to individuals, and therefore includes and may also apply to legal bodies' (likewise, STC 144/1987 and STC 64/1988). This declaration has been qualified from the very start pondering the 'nature and specialty of purposes' of such legal bodies (STC 137/1985, ground of law 5). — This conclusion does not imply, therefore, that such fundamental right [of legal persons] is identical to the right that individuals enjoy. In fact, the home that is constitutionally protected, as a dwelling or abode of any individual, is closely linked to his or her scope

of privacy, as declared since STC 22/1984, ground of law 5 (see also STC 160/1991 and STC 50/1995, amongst others); the constitutional protection is afforded, not just to a physical space but also to what is contained therein, as an emanation from an individual and his or her private sphere (STC 22/1984 and Constitutional Court Order 171/1989), which is certainly not the case of legal bodies. However, it is also true that legal bodies do also hold certain places, as a result of their activity, which need protection from third party intrusion. — Consequently, the essence of a constitutionally protected home is the dwelling of individuals, the ultimate haven of their personal and family privacy. There are other premises that enjoy a lower degree of protection, as in the case of legal entities, lacking any close link to privacy in its original sense, i.e. referring to one's personal and family life, only applicable to individuals. As a result, given the nature and specificity of the purposes of the bodies under examination, it should be understood that the constitutional protection for legal entities and corporations —in this case— only covers any physical place that is indispensable in order for them to exercise their activity without intrusions from third parties, as the central administration of a company or any dependent establishment, or those used to store documents or any device related to the daily life of the company or establishment" (FJ 2).

ANNEX - TABLE OF JUDGMENTS ⁷

A) EUROPEAN COURT OF HUMAN RIGHTS

European Court of Human Rights Judgment, 20 July 1957 (German Communist Party v. German Federal Republic)

Generally.- Judgment 31/2009, g. 13.

European Court of Human Rights Judgment, 1 July 1961 (Lawless v. Ireland)

§ 7.- Judgment 136/1999, O. III.

European Commission of Human Rights Decision 986/61, 7 May 1962 (X v. German Federal Republic)

Generally.- Judgment 161/1997, g. 7.

European Commission of Human Rights Decision 1793/63, 22 July 1963 (X v. Austria)

Generally.- Decision 195/1991.

European Court of Human Rights Judgment, 27 June 1968 (Neumeister v. Austria)

Generally.- Judgments 41/1982, g. 5; 196/1987, g. 4; 223/1988, g.2; 81/1989, g. 2; 8/1990, g. 4; 206/1991, g. 5; 13/1994, g. 6; 128/1995, g. 4; 62/1996, g. 5; 66/1997, g. 6; 156/1997, g. 4; 157/1997, g. 2; 33/1999, g. 6; 58/1999, g. 6; 47/2000, g. 10; 305/2000, g. 7; 60/2001, g. 4; 98/2002, g. 4; 35/2007, g. 2; 149/2007, g. 2; 151/2007, g. 2; 152/2007, g. 3; 65/2008, g. 4.

Decision 85/1998.

§ 14.- Decisions 158/2000; 312/2003.

European Court of Human Rights Judgment, 27 June 1968 (Wemhoff v. Germany)

Generally.- Judgments 41/1982, g. 5; 223/1988, g. 2; 81/1989, g. 2; 8/1990, g. 4; 206/1991, g. 5; 13/1994, g. 6; 128/1995, g. 4; 66/1997, g. 6; 58/1999, g. 6; 305/2000, g. 7; 98/2002, g. 4; 35/2007, g. 2; 149/2007, g. 2; 151/2007, g. 2; 152/2007, g. 3; 65/2008, g. 4.

§ 8.- Judgments 41/1998, g. 13; 87/2001, g. 2; 174/2001, g. 2.

§ 9.- Judgments 128/1995, g. 2; 41/1998, g. 13; 87/2001, g. 2; 174/2001, g. 2.

§ 17.- Judgments 41/1998, g. 13; 87/2001, g. 2; 174/2001, g. 2.

§ 20.- Judgments 41/1998, g. 13; 87/2001, g. 2; 174/2001, g. 2.

⁷ List of European and foreign courts judgments and decisions quoted in Spanish Constitutional Court judgments and/or dissenting and concurring opinions.

European Court of Human Rights Judgment, 23 July 1968 (case related to certain aspects of the linguistical regime of teaching in Belgium)

Generally.- Judgment 337/1994, O. I, O. II.

§ 3.- Judgment 236/2007, g. 8.

European Court of Human Rights Judgment, 10 November 1969 (Matznetter v. Austria)

Generally.- Judgments 128/1995, g. 4; 62/1996, g. 5; 66/1997, g. 6; 156/1997, g. 4; 157/1997, g. 2; 33/1999, g. 6; 47/2000, g. 10; 60/2001, g. 4; 35/2007, g. 2; 149/2007, g. 2; 151/2007, g. 2; 152/2007, g. 3; 65/2008, g. 4.

Decision 85/1998.

European Court of Human Rights Judgment, 10 November 1969 (Stögmüller v. Austria)

Generally.- Judgments 31/1981, O.; 8/1990, g. 4; 206/1991, g. 5; 13/1994, g. 6; 128/1995, g. 4; 66/1997, g. 6; 33/1999, g. 6; 305/2000, g. 7; 98/2002, g. 4.

Decision 85/1998.

§ 4.- Judgment 128/1995, g. 3.

European Court of Human Rights Judgment, 17 January 1970 (Delcourt v. Belgium)

Generally.- Judgments 223/1988, g. 7; 81/1989, g. 7; 170/1993, g. 1; 60/1995, g. 4; 162/1999, g. 5; 5/2004, g. 2.

Decision 26/2007.

§ 31.- Judgments 155/2002, g. 6; 229/2003, O. II.

European Court of Human Rights Judgment, 18 June 1971 (De Wilde, Ooms and Versyp v. Belgium)

Generally.- Judgments 115/1987, g. 1; 3/1992, g. 4; 96/1995, g. 3.

Decision 191/2000.

§ 39.- Judgment 73/1983, g. 5.

§ 65.- Judgment 341/1993, g. 4.

European Court of Human Rights Judgment, 16 July 1971 (Ringelsen v. Austria)

Generally.- Judgments 223/1988, g. 2; 81/1989, g. 2; 157/1993, g. 2; 58/1999, g. 6.

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§ 97.- Judgments 240/2005, g. 3; 269/2005, g. 4; 313/2005, g. 2.

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European Court of Human Rights Judgment, 21 February 1975 (Golder v. United Kingdom)

Generally.- Judgments 73/1983, g. 5; 74/1985, g. 4; 65/1994, g. 2.

Decision 297/1995.

§ 26.- Judgment 304/1994, g. 3.

§§ 37 a 39.- Judgment 140/1995, g. 6.

§ 43.- Judgment 15/2011, g. 5.

European Court of Human Rights Judgment, 27 October 1975 (National Union of the Belgian Police)

Generally.- Judgments 53/1982, g. 1; 19/1983, g. 2; 263/1994, g. 3; 147/2001, g. 3.

§ 28.- Judgment 75/1992, g. 2.

§ 39.- Judgment 75/1992, g. 2.

European Court of Human Rights Judgment, 6 February 1976 (Schmidt and Dahlström v. Sweden)

§ 36.- Judgment 75/1992, g. 2.

European Court of Human Rights Judgment, 6 February 1976 (Swedish engine drivers union v. Sweden)

Generally.- Judgments 53/1982, g. 1; 19/1983, g. 2; 263/1994, g. 3; 147/2001, g. 3.

§ 39.- Judgment 75/1992, g. 2.

European Court of Human Rights Judgment, 8 June 1976 (Engel and others v. The Netherlands)

Generally.- Judgments 138/1992, g. 1; 120/1994, g. 2; 204/1994, g. 6; 270/1994, g. 4; 288/1994, g. 2; 50/1995, g. 6; 89/1995, g. 4; 45/1997, g. 3; 14/1999, gs. 3, 9; 272/2006, g. 9.

§ 54.- Judgment 371/1993, g. 4.

§ 91.- Judgment 33/2003, g. 9.

§§ 99 a 103.- Judgment 371/1993, g. 4.

European Court of Human Rights Judgment, 7 December 1976 (Handyside v. United Kingdom)

Generally.- Judgments 63/1982, g. 5; 6/1988, g. 6; 171/1990, g. 9; 176/1995, g. 5; 187/1999, g. 8; 21/2000, g. 4; 46/2002, g. 5; 52/2002, g. 4; 148/2002, g. 4; 213/2002, g. 11; 235/2007, g. 4.

Decisions 161/1989; 56/2002.

§ 24.- Judgments 110/2000, g. 9; 297/2000, g. 6; 127/2004, g. 4; 278/2005, g. 5; 9/2007, g. 5.

Decision 125/2001.

§ 49.- Judgments 136/1999, O. III; 23/2010, g. 3.

§ 63.- Judgment 136/1999, O. III.

§ 65.- Judgment 171/1990, g. 9.

Decision 40/1999.

European Court of Human Rights Judgment, 7 December 1976 (Kjeldsen, Busk Madsen and Pedersen v. Denmark)

Generally.- Judgments 133/2010, g. 6; 133/2010, g. 6.

§ 52.- Judgment 236/2007, g. 8.

§ 54.- Judgment 133/2010, g. 8.

European Commission of Human Rights Decision, 5 July 1977 (X v. German Federal Republic, application 7705/76)

§ 1.- Judgment 55/1996, g. 5.

European Commission of Human Rights Decision 6094/73, 6 July 1977 (Association X v. Sweden)

Generally.- Decision 162/1995.

European Court of Human Rights Judgment, 18 January 1978 (Ireland v. United Kingdom)

Generally.- Judgments 120/1990, g. 9; 137/1990, g. 7; 196/2006, g. 4; 116/2010, g. 2; 182/2012, g. 4.

§ 162.- Decision 333/1997.

§ 167.- Decision 333/1997.

§ 238.- Judgment 236/2007, g. 8.

European Court of Human Rights Judgment, 25 April 1978 (Tyrer v. United Kingdom)

Generally.- Judgments 65/1986, g. 4; 120/1990, g. 9; 137/1990, g. 7; 91/2000, g. 9; 196/2006, g. 4; 116/2010, g. 2.

§ 30.- Decision 333/1997.

European Court of Human Rights Judgment, 28 June 1978 (König v. Germany)

Generally.- Judgments 18/1983, g. 4; 223/1988, g. 2; 81/1989, g. 2; 58/1999, g. 6.

European Commission of Human Rights Decision 7572/76, 7586/76 and 7587/76, 8 July 1978 (Ensslin, Baar and Raspe v. Germany)

Generally.- Judgment 136/1999, O. III.

European Court of Human Rights Judgment, 6 September 1978 (Klass and others v. Germany)

Generally.- Judgments 85/1994, g. 3; 50/1995, g. 6; 181/1995, g. 5; 49/1996, g. 3; 54/1996, g. 7; 123/1997, g. 4; 166/1999, gs. 2, 8; 171/1999, gs. 5, 8; 8/2000, g. 4; 126/2000, g. 6; 299/2000, g. 4; 14/2001, fg. 2,5; 138/2001, g. 3; 202/2001, fg. 2, 4; 167/2002, fg. 2, 4; 259/2005, g. 2; 261/2005, g. 2; 26/2006, g. 6; 253/2006, g. 2.

Decisions 374/1996; 272/1999.

§ 41.- Judgments 49/1999, g. 5; 184/2003, O. I.

§ 50.- Judgment 49/1999, g. 5.

§ 51.- Judgments 49/1999, g. 8; 166/1999, g. 8; 171/1999, g. 8; 184/2003, g. 11 a); 146/2006, g. 2.

§ 55.- Judgment 49/1999, g. 6.

European Court of Human Rights Judgment, 28 November 1978 (Luedicke, Belkacem and Koç case)

Generally.- Judgments 71/1988, g. 3; 30/1989, g. 3.

European Commission of Human Rights Decision 8239/78, 4 December 1978 (X v. The Netherlands)

Generally.- Judgments 207/1996, g. 4; 161/1997, g. 7.

European Court of Human Rights Judgment, 26 April 1979 (Sunday Times n° 1 v. United Kingdom)

Generally.- Judgments 171/1990, g. 9; 134/1999, g. 7; 187/1999, gs. 8, 10; 192/1999, g. 7; 112/2000, g. 8; 2/2001, g. 7; 49/2001, g. 7; 148/2001, g. 6; 204/2001, g. 6; 76/2002, g. 3; 99/2002, g. 7; 121/2002, g. 3; 184/2003, g. 4.

Decision 404/2003.

§ 49.- Judgments 136/1999, O. III; 169/2001, g. 6.

§ 63.- Judgments 171/1990, g. 9; 136/1999, g. 8, O. III.

§ 65.- Judgment 136/1999, g. 8, O. III.

European Commission of Human Rights Decision 8227/78, 7 May 1979 (Association X v. German Federal Republic)

Generally.- Decision 162/1995.

European Court of Human Rights Judgment, 13 June 1979 (Marckx v. Belgium)

Generally.- Judgments 184/1990, O. I; 116/1999, g. 13; 313/2005, g. 3; 197/2006, g. 3.

Decision 457/2004.

§ 58.- Judgment 245/1991, g. 2.

European Court of Human Rights Judgment, 9 October 1979 (Airey v. Ireland)

Generally.- Judgments 47/1987, g. 3; 194/1987, g. 3; 216/1988, g. 3; 12/1994, g. 6; 91/1994, g. 4; 18/1995, g. 3; 92/1996, g. 3; 105/1996, g. 2; 105/1999, g. 3; 13/2000, g. 2; 152/2000, g. 3; 221/2000, g. 2; 101/2002, g. 2; 145/2002, g. 3; 47/2003, g. 2; 215/2003, g. 3; 91/2004, g. 4; 217/2005, g. 3; 18/2006, g. 2; 20/2006, g. 3; 146/2007, g. 3; 258/2007, g. 3; 160/2009, g. 4.

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European Court of Human Rights Judgment, 24 October 1979 (Winterwerp v. The Netherlands)

Generally.- Judgments 104/1990, g. 2; 3/1992, g. 4; 129/1999, g. 3; 191/2004, g. 6; 124/2010, g. 4; 141/2012, g. 3.

Decision 191/2000.

§ 60.- Judgment 248/2004, g. 3.

European Court of Human Rights Judgment, 4 December 1979 (Schuesser v. Switzerland)

Generally.- Judgments 3/1992, g. 4; 113/1995, O.I; 69/2001, g. 17.

Decision 191/2000.

European Commission of Human Rights Decision 8278/78, 13 December 1979 (X v. Austria)

Generally.- Judgments 103/1985, g. 3; 107/1985, g. 3; 207/1996, g. 4.

European Court of Human Rights Judgment, 27 February 1980 (Deweert v. Belgium)

Generally.- Judgments 74/1985, g. 4; 196/1987, g. 4; 40/1989, g. 3.

Decision 206/2005.

§ 54.- Judgment 91/2000, g. 15.

European Court of Human Rights Judgment, 10 March 1980 (König v. Germany)

Generally.- Judgment 83/1989, O..

European Court of Human Rights Judgment, 13 May 1980 (Artico v. Italy)

Generally.- Judgments 196/1987, g. 4, 5; 37/1988, g. 6; 71/1988, g. 3, 4; 180/1990, g. 3; 162/1993, g. 4; 12/1994, g. 6; 91/1994, g. 4; 18/1995, g. 3; 105/1999, g. 3; 13/2000, g. 2; 38/2000, O.; 221/2000, g. 2; 47/2003, g. 2; 217/2005, g. 3; 146/2007, g. 3; 258/2007, g. 3; 160/2009, g. 4.

Artículo 33.- Judgment 178/1991, g. 3.

§ 33.- Judgments 339/2005, g. 5; 1/2007, g. 3.

§§ 33, 36.- Judgment 37/1988, g. 6.

§ 36.- Judgment 1/2007, g. 3.

European Commission of Human Rights Decision 8317/78, 15 May 1980 (McFeeley and others v. United Kingdom)

Generally.- Judgment 218/2002, g. 4.

European Court of Human Rights Judgment, 6 November 1980 (Van Oosterwijk v. Belgium)

§ 34.- Judgments 310/2000, g. 3; 313/2005, g. 2; 156/2007, g. 5.

European Court of Human Rights Judgment, 6 May 1981 (Buchholz v. Germany)

Generally.- Judgments 19/1983, g. 2; 5/1985, g. 4, 6, 8; 223/1988, g. 2; 81/1989, g. 2; 8/1990, g. 6; 206/1991, g. 7; 7/1995, g. 1; 181/1996, g. 2; 58/1999, g. 6.

Decision 189/2005.

§ 51.- Judgment 141/2010, g. 4.

European Court of Human Rights Judgment, 23 June 1981 (Le Compte, van Leuven and Meyere v. Belgium)

Generally.- Judgments 89/1989, g. 8; 65/1994, g. 2.

Decision 297/1995.

§ 58.- Judgment 136/1999, g. 9, O. III.

European Commission of Human Rights Decision 9234/81, 14 July 1981 (Association X v. German Federal Republic)

Generally.- Decision 162/1995.

European Court of Human Rights Judgment, 22 October 1981 (Dudgeon v. United Kingdom)

Generally.- Judgment 198/2012, g. 11.

European Court of Human Rights Judgment, 5 November 1981 (X v. United Kingdom)

Generally.- Judgments 3/1992, g. 4; 129/1999, g. 3; 124/2010, g. 4.

Decision 191/2000.

§ 23.- Judgment 73/1983, g. 5.

European Court of Human Rights Judgment, 12 December 1981 (Clooth v. Belgium)

§ 36.- Judgment 128/1995, g. 3.

European Court of Human Rights Judgment, 25 February 1982 (Campbell and Cosans v. United Kingdom)

Generally.- Judgments 120/1990, g. 9; 137/1990, g. 7; 57/1994, g. 4; 196/2006, g. 4.

§ 28.- Judgment 34/2008, g. 5.

Decision 333/1997.

§§ 39 a 41.- Decision 382/1996.

European Court of Human Rights Judgment, 26 March 1982 (Adolf v. Austria)

Generally.- Judgment 196/1987, g. 4.

European Court of Human Rights Judgment, 24 June 1982 (Van Droogenbroeck v. Belgium)

Generally.- Judgment 3/1992, g. 4.

European Court of Human Rights Judgment, 15 July 1982 (Eckle v. Germany)

Generally.- Judgments 74/1985, g. 4; 83/1989, O.; 13/1994, g. 5; 7/1995, g. 1; 181/1996, g. 2; 58/1999, g. 6.

European Court of Human Rights Judgment, 23 September 1982 (Sporrong and Lönnroth v. Sweden)

Generally.- Judgment 65/1994, g. 2.

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§ 69.- Judgment 48/2005, g. 7.

European Court of Human Rights Judgment, 1 October 1982 (Piersack v. Belgium)

Generally.- Judgments 106/1989, g. 2; 245/1991, O. I; 113/1992, g. 3; 119/1993, O.; 32/1994, g. 2; 105/1994, g. 5; 299/1994, g. 3; 60/1995, gs. 4, 6; 7/1997, g. 3; 64/1997, g. 3; 142/1997, gs. 2, 3; 162/1999, g. 5; 59/2000, O.; 75/2000, O.; 76/2000, O.; 92/2000, O.; 122/2000, O.; 310/2000, g. 4; 52/2001, g. 3; 64/2001, g. 2; 65/2001, g. 2; 66/2001, g. 2; 69/2001, fg. 14, 18; 155/2002, g. 2; 229/2003, O. II; 5/2004, g. 2.

Decisions 799/1985; 219/1993; 204/1998; 115/2002; 81/2003; 26/2007.

§ 30.- Judgments 136/1999, g. 8, O. III; 162/1999, g. 5; 5/2004, g. 2; 39/2004, g. 3.

Decisions 178/2005; 380/2005; 26/2007; 224/2007; 387/2007; 25/2008; 81/2008.

European Court of Human Rights Judgment, 10 December 1982 (Corigliano v. Italy)

Generally.- Judgments 5/1985, g. 9; 83/1989, O.; 13/1994, g. 5; 58/1999, g. 6.

European Court of Human Rights Judgment, 10 December 1982 (Foti v. Italy)

Generally.- Judgments 223/1988, g. 2; 81/1989, g. 2; 83/1989, O.; 58/1999, g. 6.

European Court of Human Rights Judgment, 10 February 1983 (Albert and Le Compte v. Belgium)

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§ 63.- Judgments 180/1999, g. 4; 297/2000, g. 7; 49/2001, g. 5; 204/2001, g. 7; 127/2004, g. 5; 216/2006, g. 7.

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Generally.- Judgments 60/1995, gs. 4, 6; 64/2001, g. 2; 65/2001, g. 2; 66/2001, g. 2; 69/2001, g. 14.

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§ 30.- Judgment 128/1995, g. 3.

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Generally.- Judgments 60/1995, g. 4; 64/2001, g. 2; 65/2001, g. 2; 66/2001, g. 2; 69/2001, g. 14.

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§ 28.- Judgment 136/1999, g. 8, O. III.

§ 30.- Judgments 136/1999, g. 8, O. III; 39/2004, g. 3.

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Generally.- Judgments 50/1995, gs. 6, 7; 197/1995, g. 6; 153/1997, g. 6; 115/1998, g. 5; 239/1999, g. 5; 19/2000, g. 5; 292/2000, g. 9; 68/2001, g. 5; 69/2001, g. 32; 118/2001, g. 2; 182/2001, g. 6; 125/2002, g. 3; 25/2003, g. 5; 190/2003, g. 5; 196/2004, g. 6; 18/2005, g. 4; 10/2007, g. 3; 206/2007, g. 5; 70/2009, g. 3; 147/2009, g. 2; 159/2009, g. 3.

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§ 48.- Judgment 141/2000, g. 4.

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Generally.- Judgments 141/2000, fg. 4, 5; 46/2001, g. 11; 154/2002, g. 9; 71/2004, g. 8; 176/2008, g. 6; 198/2012, O. IV.

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§ 33.- Judgment 141/2000, g. 4.

§ 36.- Judgment 141/2000, g. 4.

§ 38.- Judgment 141/2000, g. 4.

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Generally.- Judgments 186/1995, g. 4; 103/2000, O..

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European Court of Human Rights Judgment, 25 August 1993 (Chorherr v. Austria)

§ 25.- Judgment 136/1999, O. III.

European Court of Human Rights Judgment, 20 September 1993 (Saïdi v. France)

Generally.- Judgments 141/2001, g. 5; 94/2002, g. 4; 148/2005, g. 2.

§ 43.- Judgments 153/1997, g. 5; 2/2002, g. 4; 57/2002, g. 3; 155/2002, g. 10; 195/2002, g. 3; 174/2003, g. 5.

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§ 31.- Judgments 91/2000, fg. 13, 15; 183/2000, g. 4; 51/2003, g. 6; 65/2009, g. 4.
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§ 35.- Judgment 136/1999, g. 8, O. III.

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Generally.- Judgments 116/1999, g. 13; 71/2004, g. 8.

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§ 57.- Judgment 136/1999, O. III.

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§ 37.- Judgment 136/1999, g. 9, O. III.

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§ 27.- Judgments 91/2000, fg. 13, 15; 198/2003, g. 6.

European Court of Human Rights Judgment, 22 September 1994 (Pelladoah v. The Netherlands)

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§ 40.- Judgment 91/2000, g. 13.

European Court of Human Rights Judgment, 23 September 1994 (Hokkanen v. Finland)

Generally.- Judgments 71/2004, g. 8; 176/2008, g. 6; 198/2012, O. IV.

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European Court of Human Rights Judgment, 23 September 1994 (Jersild v. Denmark)

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§ 31.- Judgments 136/1999, g. 18, O. III; 139/2007, g. 11; 12/2012, g. 6.

§ 34.- Judgment 136/1999, O. III.

§ 35.- Judgment 136/1999, O. III.

§ 37.- Judgment 136/1999, O. III.

European Court of Human Rights Judgment, 27 October 1994 (Kroon v. The Netherlands)

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European Court of Human Rights Judgment, 28 October 1994 (Murray v. United Kingdom)

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§ 37.- Judgment 136/1999, O. III.

European Court of Human Rights Judgment, 9 December 1994 (Hiro Balani v. Spain)

Generally.- Judgments 91/1995, gs. 4, 5; 56/1996, g. 4; 85/1996, g. 3; 26/1997, g. 4; 16/1998, g. 4; 187/1998, g. 2; 206/1998, g. 4; 74/1999, g. 2; 101/1999, g. 2; 77/2000, g. 2; 187/2000, g. 4; 253/2000, g. 2; 205/2001, g. 2; 116/2002, g. 2; 114/2003, g. 3;

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§ 28.- Judgment 8/2004, g. 5.

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Generally.- Judgments 199/1996, gs. 2, 4; 119/2001, fg. 5, 6, O. II; 16/2004, g. 3; 150/2011, O. I; 173/2011, g. 3.

§ 51.- Judgments 119/2001, g. 6; 150/2011, g. 5.

§§ 54 a 58.- Judgment 150/2011, O. II.

European Court of Human Rights Judgment, 9 December 1994 (Raffineries Grecques Stran and Stratis Andreadis v. Greece)

§§ 42 a 50.- Judgment 73/2000, g. 10.

European Court of Human Rights Judgment, 9 December 1994 (Ruiz Torija v. Spain)

Generally.- Judgments 91/1995, gs. 4, 5; 56/1996, g. 4; 85/1996, g. 3; 26/1997, g. 4; 16/1998, g. 4; 187/1998, g. 2; 206/1998, g. 4; 215/1998, g. 3; 74/1999, g. 2; 101/1999, g. 2; 77/2000, g. 2; 187/2000, g. 4; 253/2000, g. 2; 205/2001, g. 2; 116/2002, g. 2; 114/2003, g. 3; 2/2004, g. 4; 8/2004, g. 4; 4/2006, g. 3; 85/2006, g. 5; 138/2007, g. 2; 144/2007, g. 4; 167/2007, g. 2; 165/2008, g. 2; 73/2009, g. 2; 141/2009, g. 5; 204/2009, g. 3.

Decisions 265/1995; 56/1996; 128/1999; 132/1999; 167/1999; 205/1999.

§ 27.- Judgment 212/2000, g. 4.

§ 29.- Judgments 82/1998, g. 3; 206/1998, g. 2; 230/1998, g. 2.

§ 30.- Judgment 8/2004, g. 5.

European Court of Human Rights Judgment, 19 December 1994 (Vereinigung Demokratischer Soldaten Österreichs & Gubi v. Austria)

§ 38.- Judgment 136/1999, O. III.

European Court of Human Rights Judgment, 3 February 1995 [Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania]

§§ 56, 57.- Judgment 138/2012, g. 5.

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European Court of Human Rights Judgment, 23 February 1995 (Gasus Dosier-und Förrtechnik GmbH v. The Netherlands)

§ 48.- Judgments 310/2000, g. 3; 313/2005, g. 2; 156/2007, g. 5.

§ 49.- Judgments 310/2000, g. 3; 313/2005, g. 2; 156/2007, g. 5.

European Court of Human Rights Judgment, 24 February 1995 (McMichael v. United Kingdom)

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European Court of Human Rights Judgment, 22 March 1995 (Quinn v. France)

Generally.- Judgment 305/2000, g. 8.

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§ 48.- Judgment 147/2000, g. 6.

European Court of Human Rights Judgment, 23 March 1995 (Loizidou v. Turkey)

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European Court of Human Rights Judgment, 26 April 1995 (Prager and Oberschlick v. Austria)

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§ 34.- Judgment 136/1999, O. III.

European Court of Human Rights Judgment, 27 April 1995 (Piermont v. France)

§ 63.- Judgments 169/2001, g. 6; 184/2003, g. 4.

§ 77.- Judgment 136/1999, O. III.

European Court of Human Rights Judgment, 13 July 1995 (Tolstoy Miloslavsky v. United Kingdom)

Generally.- Judgments 134/1999, g. 7; 136/1999, g. 20, O. IV; 192/1999, g. 7; 112/2000, g. 8; 2/2001, g. 7; 49/2001, g. 7; 148/2001, g. 6; 204/2001, g. 6; 99/2002, g. 7.

- § 37.- Judgment 136/1999, O. III.
- § 51.- Judgment 136/1999, g. 24.
- §§ 52 a 55.- Judgment 110/2000, g. 5.
- § 52 a 55.- Judgment 88/2003, g. 8.

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- § 48.- Judgment 136/1999, O. III.
- § 52.- Judgment 136/1999, O. III.
- § 64.- Judgment 236/2007, g. 7.

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- Generally.- Judgment 5/2004, g. 4.

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- Generally.- Judgment 2/2003, g. 3.
- § 55.- Judgment 2/2003, g. 5.

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- § 38.- Judgment 48/2005, g. 7.

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- § 34.- Judgment 34/2008, g. 7.

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- Generally.- Judgments 127/2000, g. 4; 67/2001, g. 7; 155/2002, g. 15, O.; 48/2006, g. 4.
- § 45.- Judgments 161/1997, g. 5; 136/1999, O. III; 127/2000, g. 4; 202/2000, g. 3; 18/2005, g. 2; 68/2006, g. 2; 142/2009, g. 3; 9/2011, g. 5.
- Decisions 143/2001; 303/2005.
- § 46.- Judgments 136/1999, O. I; 127/2000, g. 4.
- § 47.- Judgment 136/1999, O. I, O. III.
- § 50.- Judgment 136/1999, O. III.
- § 51.- Judgment 136/1999, O. I, O. III.
- § 54.- Judgment 136/1999, O. III.

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§ 36.- Judgments 310/2000, g. 3; 313/2005, g. 2; 156/2007, g. 5.

§ 39.- Judgment 154/2011, g. 5.

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§ 31.- Judgment 136/1999, g. 8, O. III.

§ 32.- Judgment 136/1999, g. 9, O. III.

§ 40.- Judgments 167/2002, g. 10; 198/2002, g. 3; 120/2009, g. 3.

§ 41.- Judgments 167/2002, g. 10; 198/2002, g. 3; 120/2009, g. 3.

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§ 69.- Judgment 75/2013, g. 5.

§ 70.- Judgment 75/2013, g. 5.

§ 72.- Judgment 75/2013, g. 5.

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§ 31.- Judgment 136/1999, O. III.

§ 33.- Judgment 136/1999, O. III.

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Generally.- Judgments 162/1999, g. 5; 69/2001, g. 21.

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§ 46.- Judgment 136/1999, g. 8, O. III.

European Court of Human Rights Judgment, 10 June 1996 (Pullar v. United Kingdom)

§ 32.- Judgments 136/1999, g. 9, O. III; 64/2001, g. 2; 65/2001, g. 2; 66/2001, g. 2; 69/2001, g. 14.

§ 37.- Judgment 136/1999, g. 8, O. III.

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§ 30.- Judgment 136/1999, g. 8, O. III.

§ 31.- Judgment 136/1999, g. 9, O. III.

§ 63.- Judgment 313/2005, g. 2.

European Court of Human Rights Judgment, 25 June 1996 (Amuur v. France)

Generally.- Judgments 179/2000, fg. 2, 4; 53/2002, g. 4, O. I.

§ 42.- Judgment 53/2002, O. I.

§ 43.- Judgment 53/2002, O. I.

§ 45.- Judgment 53/2002, O. I.

European Court of Human Rights Judgment, 7 August 1996 (Allenet de Ribemont v. France) (Interpretation of Judgment 10 February 1995)

§§ 19, 21 a 23.- Judgments 313/2005, g. 3; 197/2006, g. 3.

European Court of Human Rights Judgment, 7 August 1996 (Ferrantelli and Santangelo v. Italy)

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§ 58.- Judgment 126/2011, g. 15.

European Court of Human Rights Judgment, 25 September 1996 (Buckley v. United Kingdom)

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European Court of Human Rights Judgment, 26 September 1996 (Manoussakis and others v. Greece)

§ 44.- Judgment 198/2012, g. 12.

§ 47.- Judgment 141/2000, g. 4.

§ 51.- Judgment 141/2000, g. 4.

§ 53.- Judgment 141/2000, g. 4.

European Court of Human Rights Judgment, 22 October 1996 (Stubbings and others v. United Kingdom)

§ 46.- Judgments 63/2001, g. 7; 64/2001, g. 3; 65/2001, g. 3; 66/2001, g. 3; 68/2001, g. 6; 69/2001, g. 34; 70/2001, g. 3; 63/2005, fg. 2, 9; 29/2008, g. 7; 79/2008, g. 2; 195/2009, g. 2.

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European Court of Human Rights Judgment, 15 November 1996 (Chahal v. United Kingdom)

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§ 79.- Judgment 181/2004, g. 13.
§ 96.- Judgment 32/2003, g. 3.
§ 97.- Judgment 32/2003, g. 3.

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Generally.- Judgments 175/1997, g. 4; 200/1997, g. 4; 201/1997, g. 7.
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European Court of Human Rights Judgment, 25 November 1996 (Wingrove v. United Kingdom)

§ 13.- Judgment 136/1999, O. III.
§ 40.- Judgment 136/1999, O. III.
§ 42.- Judgment 136/1999, O. III.
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§ 46.- Judgment 136/1999, O. III.
§ 63.- Judgment 136/1999, O. III.

European Court of Human Rights Judgment, 28 November 1996 (Ahmut v. The Netherlands)

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§ 67.- Judgment 236/2007, g. 11.

European Court of Human Rights Judgment, 17 December 1996 (Ahmed v. Austria)

§ 39.- Judgments 32/2003, g. 3; 181/2004, g. 14; 140/2007, g. 2.
§ 40.- Judgment 181/2004, g. 13.

European Court of Human Rights Judgment, 17 December 1996 (Saunders v. United Kingdom)

Generally.- Judgments 127/2000, g. 4; 67/2001, fg. 6, 7; 18/2005, fg. 2, 4.
§ 68.- Judgments 161/1997, g. 5; 127/2000, g. 4; 202/2000, g. 3; 2/2002, g. 6; 57/2002, g. 4; 155/2002, g. 11; 18/2005, g. 2; 68/2006, g. 2; 142/2009, g. 3; 9/2011, g. 5.

Decisions 143/2001; 303/2005.

§ 69.- Judgments 161/1997, g. 7; 18/2005, g. 3; 68/2006, g. 4.

European Court of Human Rights Judgment, 18 December 1996 (Aksoy v. Turkey)

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European Court of Human Rights Judgment, 18 December 1996 (Efstratiou v. Greece)

Generally.- Judgment 133/2010, g. 8.

European Court of Human Rights Judgment, 18 December 1996 (Scott v. Spain)

Generally.- Judgment 305/2000, g. 8.

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§ 74.- Judgment 147/2000, g. 6.

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Decisions 100/2001; 226/2002.

§ 37.- Judgment 136/1999, g. 8, O. III.

§ 49.- Judgment 235/2007, g. 4.

European Court of Human Rights Judgment, 25 February 1997 (Findlay v. United Kingdom)

§ 73.- Judgment 136/1999, g. 8, O. III.

§ 76.- Judgment 136/1999, g. 8, O. III.

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Generally.- Judgments 162/1999, g. 5; 69/2001, g. 21.

Decisions 61/2003; 80/2005; 18/2006.

§ 43.- Judgment 136/1999, g. 8, O. III.

§ 45.- Judgment 136/1999, g. 8, O. III.

European Court of Human Rights Judgment, 25 February 1997 (Z v. Finland)

Generally.- Judgments 134/1999, g. 5; 144/1999, g. 8; 115/2000, g. 4; 292/2000, g. 9; 127/2003, g. 7; 196/2004, g. 6; 206/2007, g. 5; 70/2009, g. 3; 159/2009, g. 3.

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§§ 77, 97.- Judgment 114/2006, g. 7.

§ 95.- Judgments 70/2009, g. 2; 159/2009, g. 3.

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European Court of Human Rights Judgment, 22 April 1997 (X, Y and Z v. United Kingdom)

§ 36.- Judgment 198/2012, g. 5.

European Court of Human Rights Judgment, 23 April 1997 (Van Mechelen and others v. The Netherlands)

§ 51.- Judgments 174/2001, g. 7; 209/2001, g. 4; 1/2006, g. 4; 344/2006, g. 4; 345/2006, g. 3; 56/2010, g. 3; 68/2010, g. 5; 134/2010, g. 3; 174/2011, g. 3; 75/2013, g. 4.

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§ 52.- Judgment 75/2013, g. 5.

§ 53.- Judgment 75/2013, g. 5.

§ 54.- Judgment 75/2013, g. 5.

European Court of Human Rights Judgment, 25 June 1997 (Halford v. United Kingdom)

Generally.- Judgments 49/1999, g. 5; 166/1999, g. 2; 171/1999, g. 5; 126/2000, g. 6; 14/2001, g. 2; 202/2001, g. 2; 167/2002, g. 4.

§ 44.- Judgment 241/2012, g. 6.

European Court of Human Rights Judgment, 1 July 1997 (Pammel v. Germany)

Generally.- Judgments 124/1999, g. 2; 125/1999, g. 4; 230/1999, g. 2.

European Court of Human Rights Judgment, 3 July 1997 (Hentrich v. France) (Interpretation of Judgment 3 July 1995)

§§ 13 a 16.- Judgments 313/2005, g. 3; 197/2006, g. 3.

European Court of Human Rights Judgment, 26 August 1997 (De Haan v. The Netherlands)

Generally.- Judgments 162/1999, g. 5; 240/2005, g. 3; 156/2007, g. 6; 126/2011, g. 15.

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European Court of Human Rights Judgment, 29 August 1997 (Worm v. Austria)

Generally.- Judgments 134/1999, g. 7; 192/1999, g. 7; 112/2000, g. 8; 2/2001, g. 7; 49/2001, g. 7; 64/2001, g. 2; 65/2001, g. 2; 66/2001, g. 2; 69/2001, g. 14; 148/2001, g. 6; 204/2001, g. 6; 99/2002, g. 7.

§ 40.- Judgments 162/1999, g.5; 5/2004, g. 2.

Decisions 26/2007; 224/2007; 387/2007; 81/2008.

§ 50.- Judgment 136/1999, g. 8, O. III.

§ 51.- Judgment 136/1999, g. 8, O. III.

§ 52.- Judgment 136/1999, g. 8, O. III.

§ 53.- Judgment 136/1999, O. III.

§ 54.- Judgment 136/1999, g. 8, O. III.

European Court of Human Rights Judgment, 23 September 1997 (Robins v. United Kingdom)

Generally.- Judgments 124/1999, g. 2; 198/1999, g. 3; 303/2000, g. 4; 237/2001, g. 2; 177/2004, g. 2; 153/2005, g. 3.

European Court of Human Rights Judgment, 25 September 1997 (Aydin v. Turkey)

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European Court of Human Rights Judgment, 20 October 1997 (Serves v. France)

§ 46.- Judgments 18/2005, g. 2; 68/2006, g. 2; 142/2009, g. 3.

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European Court of Human Rights Judgment, 22 October 1997 (Papageorgiu v. Greece)

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European Court of Human Rights Judgment, 23 October 1997 (National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. United Kingdom)

Generally.- Judgment 73/2000, g. 10.

European Court of Human Rights Judgment, 25 November 1997 (Grigorias v. Greece)

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European Court of Human Rights Judgment, 25 November 1997 (Zana v. Turkey)

§ 49.- Judgment 136/1999, g. 27, O. III.

§ 50.- Judgment 136/1999, g. 27, O. III.

- § 51.- Judgment 136/1999, O. III.
- § 55.- Judgment 136/1999, O. III.
- § 58.- Judgment 136/1999, O. III.
- § 59.- Judgment 136/1999, O. III.
- § 60.- Judgment 136/1999, O. III.
- § 70.- Judgments 51/2003, g. 6; 65/2009, g. 4.

European Court of Human Rights Judgment, 16 December 1997 (Raninen v. Finland)

- § 63.- Judgment 37/2011, g. 4.

European Court of Human Rights Judgment, 30 January 1998 (United Communist Party of Turkey and others v. Turkey)

- Generally.**- Judgments 136/1999, O. IV; 48/2003, g. 12; 31/2009, g. 3.
- § 41.- Judgment 136/1999, O. III.
- § 44.- Judgment 136/1999, O. III.
- § 46.- Judgment 136/1999, g. 24.
- § 56.- Judgment 136/1999, O. II.
- § 57.- Judgment 136/1999, O. III.
- § 58.- Judgments 136/1999, O. III; 138/2012, g. 5.
- § 60.- Judgment 136/1999, O. III.

European Court of Human Rights Judgment, 19 February 1998 (Dalia v. France)

- §§ 39 a 45.- Judgment 236/2007, g. 11.
- §§ 52 a 54.- Judgment 236/2007, g. 11.

European Court of Human Rights Judgment, 19 February 1998 (Guerra and others v. Italy)

- Generally.**- Judgments 119/2001, g. 5, 6; 16/2004, g. 3; 150/2011, O. I, O. II; 173/2011, g. 3.
- § 60.- Judgments 119/2001, g. 6; 37/2011, g. 4; 150/2011, g. 5.

European Court of Human Rights Judgment, 24 February 1998 (Botta v. Italy)

- § 32.- Judgment 37/2011, g. 4.

European Court of Human Rights Judgment, 24 February 1998 (Larissis and others v. Greece)

- § 34.- Judgment 136/1999, O. III.
- § 38.- Judgment 141/2000, g. 3.
- § 45.- Judgment 141/2000, fg. 3, 4.

§ 47.- Judgment 141/2000, g. 4.

§ 52.- Judgment 136/1999, O. III.

§ 53.- Judgment 141/2000, g. 4.

§ 54.- Judgment 141/2000, g. 4.

European Court of Human Rights Judgment, 25 March 1998 (Kopp v. Switzerland)

Generally.- Judgments 49/1999, g. 5; 166/1999, g. 2; 171/1999, g. 5; 126/2000, g. 6; 14/2001, g. 2; 202/2001, g. 2; 167/2002, g. 4.

§ 64.- Judgment 233/2005, g. 6.

§ 74.- Judgment 184/2003, g. 4.

European Court of Human Rights Judgment, 21 April 1998 (Estima Jorge v. Portugal)

Generally.- Judgments 124/1999, g. 2; 125/1999, g. 4; 198/1999, g. 3; 230/1999, g. 2; 303/2000, g. 4; 237/2001, g. 2; 177/2004, g. 2; 153/2005, g. 3.

European Court of Human Rights Judgment, 22 April 1998 (Pailot v. France)

Generally.- Judgments 124/1999, g. 2; 125/1999, g. 4; 230/1999, g. 2.

European Court of Human Rights Judgment, 22 April 1998 (Richard v. France)

§ 49.- Judgments 51/2003, g. 6; 65/2009, g. 4.

European Court of Human Rights Judgment, 24 April 1998 (Mavronichis v. Cyprus)

Generally.- Judgments 124/1999, g. 2; 125/1999, g. 4; 230/1999, g. 2.

European Court of Human Rights Judgment, 20 May 1998 (Gautrin and others v. France)

Generally.- Judgments 162/1999, g. 5; 52/2001, g. 3; 64/2001, g. 2; 65/2001, g. 2; 66/2001, g. 2; 69/2001, fg. 14, 16; 155/2002, g. 2; 5/2004, g. 2.

Decisions 61/2003; 81/2003; 26/2007.

§ 58.- Judgment 136/1999, g. 8, O. III.

European Court of Human Rights Judgment, 20 May 1998 (Schöpfer v. Switzerland)

§ 33.- Decision 241/2003.

European Court of Human Rights Judgment, 25 May 1998 (Socialist Party and others v. Turkey)

Generally.- Judgments 136/1999, O. IV; 48/2003, g. 12; 31/2009, g. 13.

§ 29.- Judgment 138/2012, g. 4.

- § 33.- Judgment 136/1999, O. III.
- § 36.- Judgment 136/1999, O. III.
- § 41.- Judgment 136/1999, g. 24.
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- § 53.- Judgment 136/1999, O. III.

European Court of Human Rights Judgment, 9 June 1998 (Bronza v. Italy)

Generally.- Judgments 71/2004, g. 8; 176/2008, g. 6; 198/2012, O. IV.
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European Court of Human Rights Judgment, 9 June 1998 (Incal v. Turkey)

- Generally.**- Judgment 136/1999, g. 29, O. III, O. IV.
- § 42.- Judgment 136/1999, O. III.
 - § 46.- Judgment 136/1999, g. 24, O. III.
 - § 48.- Judgment 136/1999, O. III.
 - § 50.- Judgment 136/1999, O. III.
 - § 51.- Judgment 136/1999, O. III.
 - § 54.- Judgment 136/1999, O. III.
 - § 55.- Judgment 136/1999, O. III.
 - § 56.- Judgment 136/1999, O. III.
 - §§ 56 a 58.- Judgment 136/1999, g. 24.

European Court of Human Rights Judgment, 10 July 1998 (Sidiropoulos and others v. Greece)

- §§ 38 a 40.- Judgment 138/2012, g. 5.
- § 39.- Judgment 136/1999, O. III.
- § 40.- Judgments 236/2007, g. 6; 170/2008, g. 3; 37/2009, g. 3; 38/2009, g. 3.
- § 46.- Judgment 136/1999, O. III.

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- Generally.**- Judgment 91/2000, g. 8.
- § 43.- Judgment 91/2000, g. 15.
 - § 44.- Judgment 91/2000, g. 15.
 - §§ 44, 45.- Judgment 198/2003, g. 6.
 - § 45.- Judgment 91/2000, g. 15.

European Court of Human Rights Judgment, 29 July 1998 (Omar v. France)

- §§ 40 a 44.- Judgments 91/2000, g. 15; 198/2003, g. 6.

European Court of Human Rights Judgment, 30 July 1998 (Sheffield and Horsham v. United Kingdom)

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European Court of Human Rights Judgment, 30 July 1998 (Oliveira v. Switzerland)

Generally.- Judgment 2/2003, g. 5.

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§ 27.- Judgment 2/2003, g. 6.

European Court of Human Rights Judgment, 30 July 1998 (Valenzuela Contreras v. Spain)

Generally.- Judgments 166/1999, g. 2; 171/1999, g. 5; 126/2000, g. 6; 14/2001, g. 2; 64/2001, O.; 65/2001, O.; 66/2001, O.; 202/2001, g. 2; 167/2002, g. 4; 184/2003, fg. 3, 4; 261/2005, g. 2.

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§ 1.- Judgment 49/1999, g. 5.

§ 46.- Judgments 49/1999, g. 7; 166/1999, g. 3; 126/2000, g. 7; 310/2000, O.; 169/2001, fg. 6, 8; 169/2003, g. 4; 233/2005, g. 6.

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§ 46 iii).- Judgment 49/1999, g. 5.

§ 46 iv).- Judgment 49/1999, g. 5.

§ 58.- Judgment 49/1999, O. II.

§ 59.- Judgments 205/2005, g. 5; 26/2006, fg. 5, 9.

European Court of Human Rights Judgment, 24 August 1998 (Lambert v. France)

§ 38.- Judgment 184/2003, g. 4.

European Court of Human Rights Judgment, 25 August 1998 (Hertel v. Switzerland)

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§ 42.- Judgment 180/1999, g. 5.

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§ 47.- Judgment 180/1999, g. 5.

§ 49.- Judgment 136/1999, O. III.

European Court of Human Rights Judgment, 2 September 1998 (Ahmed and others v. United Kingdom)

§ 46.- Judgment 136/1999, O. III.

§ 47.- Judgment 136/1999, O. III.

§ 55.- Judgment 136/1999, O. III.

§ 61.- Judgment 136/1999, O. III.

§ 70.- Judgment 236/2007, g. 7.

European Court of Human Rights Judgment, 23 September 1998 (A. v. United Kingdom)

Generally.- Decision 28/2001.

European Court of Human Rights Judgment, 23 September 1998 (I.A. v. France)

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European Court of Human Rights Judgment, 23 September 1998 (Lehiux and Isorni v. France)

Generally.- Judgments 136/1999, O. III; 235/2007, g. 5.

§ 39.- Judgment 136/1999, O. III.

§ 50.- Judgment 136/1999, O. III.

§ 51.- Judgment 136/1999, O. III.

§ 53.- Judgment 136/1999, O. III.

§ 57.- Judgment 136/1999, O. III.

European Court of Human Rights Judgment, 23 September 1998 (Steel and others v. United Kingdom)

§ 101.- Judgment 136/1999, O. III.

European Court of Human Rights Judgment, 28 October 1998 (Assenov and others v. Bulgaria)

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§ 102.- Judgment 34/2008, g. 5.

European Court of Human Rights Judgment, 28 October 1998 (Castillo Algar v. Spain)

Generally.- Judgments 64/2001, g. 2; 65/2001, g. 2; 66/2001, g. 2; 69/2001, fg. 2, 14; 229/2003, O. II; 39/2004, g. 4; 143/2006, g. 3; 156/2007, g. 6; 36/2008, g. 2.

Decisions 195/2000; 96/2001; 68/2002; 81/2003; 456/2006.

§ 35.- Judgments 310/2000, g. 3; 231/2002, g. 3; 39/2004, g. 2; 313/2005, g. 2; 156/2007, g. 5.

§ 43.- Judgment 39/2004, g. 3.

§ 45.- Judgments 162/1999, g. 5; 5/2004, g. 2.

Decisions 148/1999; 26/2007; 224/2007; 387/2007; 81/2008.

§§ 45, 48.- Judgment 229/2003, O. II.

§ 46.- Judgment 39/2004, g. 3.

§§ 46 a 50.- Judgment 14/1999, g. 4.

§ 48.- Judgments 162/1999, g. 5; 310/2000, O.; 39/2004, g. 4.
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§ 24.- Judgments 45/2011, g. 3; 153/2011, g. 6; 154/2011, g. 5; 126/2012, g. 2.

§ 25.- Judgments 126/2012, g. 2; 201/2012, g. 5; 88/2013, g. 8.

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§ 72.- Judgment 20/2012, g. 4.

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§ 141.- Judgment 12/2012, g. 6.

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§ 28.- Judgments 131/2012, g. 2; 182/2012, g. 4.

§ 30.- Judgments 12/2013, g. 2; 153/2013, g. 3.

§§ 39, 41, 42.- Judgment 12/2013, g. 2.

§§ 39, 41, 42.- Judgment 153/2013, g. 3.

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§ 72.- Judgment 34/2011, g. 4.

§ 80.- Judgment 34/2011, g. 6.

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§ 48.- Judgment 182/2012, g. 4.

§ 49.- Judgment 182/2012, g. 4.

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§ 113.- Judgment 12/2012, g. 6.

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§§ 29, 31.- Judgment 154/2011, g. 5.

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§ 98.- Judgment 39/2012, O. I.

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§§ 57-61.- Judgment 27/2013, O. I.

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§ 109.- Judgment 182/2012, g. 2.

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§ 47.- Judgment 126/2012, g. 4.

§ 49.- Judgment 126/2012, g. 4.

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§ 32.- Judgments 126/2012, g. 2; 201/2012, g. 5.

§ 37.- Judgments 126/2012, g. 4; 126/2012, g. 4.

§ 39.- Judgment 126/2012, g. 4.

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§ 127.- Judgment 75/2013, g. 5.

§ 147.- Judgment 75/2013, g. 5.

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§ 45.- Judgments 12/2013, g. 2; 153/2013, g. 3.

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§ 66.- Judgment 142/2012, g. 4.

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§ 31.- Judgments 126/2012, g. 2; 201/2012, g. 5; 88/2013, g. 8.

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§ 45.- Judgments 12/2013, g. 2; 153/2013, g. 3.

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§ 50.- Judgment 198/2012, g. 5.

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§ 47.- Judgments 182/2012, g. 5; 12/2013, g. 3; 153/2013, g. 4.

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§ 57.- Judgment 182/2012, g. 7.

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§ 38.- Judgment 75/2013, fg. 4, 5.

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§ 40.- Judgment 182/2012, g. 4.

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§ 38.- Judgments 12/2013, g. 2, O.; 153/2013, g. 3.

§ 39.- Judgments 12/2013, g. 2; 153/2013, g. 3.

§ 41.- Judgment 12/2013, O..

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§ 45.- Judgment 75/2013, g. 5.

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§ 38.- Judgments 57/2013, g. 4; 75/2013, g. 4.

§ 41.- Judgment 75/2013, g. 5.

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§ 3.- Declaration 1/2004, O. III.

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§§ 25, 26.- Judgment 75/2011, g. 7.

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§ 24.- Judgment 250/2000, g. 3, O..

§ 25.- Judgment 250/2000, g. 3, O..

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§ 22.- Judgment 64/1991, g. 4.

§ 23.- Judgment 64/1991, g. 4.

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§ 13.- Judgment 250/2000, O.

§ 16.- Judgment 250/2000, O.

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§ 14.- Judgment 250/2000, O.

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§ 24.- Judgment 240/1999, O.

§ 32.- Judgment 240/1999, O.

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§ 59.- Judgment 27/2013, g. 4.

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§ 80.- Decision 86/2011.

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§ 57.- Judgment 240/1999, O..

§ 59.- Judgment 240/1999, O..

§ 69.- Judgment 240/1999, O..

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§ 44.- Judgment 129/2013, g. 7.

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§ 59.- Judgment 129/2013, g. 7.

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§ 35.- Judgment 27/2013, O. I.

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