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COMMUNICATION

In accordance with Rule 9.2 of the Rules of the Committee of Ministers regarding the supervision of the execution of judgements and of terms of friendly settlements by Rights International Spain

López Martínez vs. Spain (Application nº 32897/16)

Judgment date: 09/03/2021

INTRODUCTION

This communication submitted in accordance with Rule 9.2 of the Rules of the Committee of Ministers aims to provide information regarding the general measures necessary for the implementation of the ECtHR judgment in *López Martínez vs. Spain* (Application nº 32897/16).

Rights International Spain (RIS) is a non-profit organization, based in Spain, focusing on the defense of civil rights and freedoms.

CASE SUMMARY

The case concerns the forceful evacuation by the police of a number of persons in a bar who had taken part in a demonstration close to the Congress, in September 2012, during which the applicant was injured. The Court found that the investigation carried out by the domestic courts into the ill-treatment suffered by the applicant during the police operation did not meet the Convention standards and constituted a violation of Article 3, procedural limb.

EXECUTIVE SUMMARY

This submission is a response to the updated Action Plan communicated by the Spanish authorities to the Committee of Ministers on March 24, 2022. National authorities consider that all necessary measures in the execution of the López Martínez Judgement have been taken and no further individual nor general measures are needed to prevent breaches of Article 3 of the Convention in its procedural aspect.

However, RIS is still concerned that:

- A systemic failure of the Spanish judicial authorities to carry out effective investigations of ill-treatment complaints persists;
- The system of identification of agents of the National Police is still inadequate.

Accordingly, we conclude in this Communication that the request of the Spanish authorities that the Committee of Ministers adopts a final resolution resolving that the supervision of the execution of the present case has been completed, would not yet be justified.

Furthermore, we consider that general measures to comply with the judgment in this case should include:

- specific mandatory training for prosecutors and judges on how to conduct effective investigations of torture and ill-treatment allegations, as well as the approval of binding protocols for prosecutors,
- the amendment of the regulations on both the system of identification of National Police officers and on their disciplinary regime.

GENERAL MEASURES

Judiciary application of the ECtHR case-law (Section III.A.4 of the Action Plan)

Spanish authorities state in their Action Plan that “*domestic courts have clearly assumed the ECtHR doctrine of the requirements of a sufficient investigation*” (Section III.A.3, last paragraph, p. 11) and by way of example refer to and quote two recent judgements of the Constitutional Court that do indeed extensively rely on the ECtHR case-law.

It is worth recalling that the Spanish Constitutional Court is not part of the judicial structure. It has competence to control the protection, or infringement, of fundamental rights by the judiciary. An extraordinary appeal can be filed before it, *recurso de amparo*, that requires the previous exhaustion of all domestic judicial remedies.

Hence, the fact that the Constitutional Court, intervening as last resort, has in numerous occasions granted amparo to claimants for absence of an effective investigation of ill-treatment allegations¹, implies that domestic investigating courts have in numerous occasions incurred in breaches of their duty to effectively investigate such allegations, thus disregarding the long-standing doctrine of the Constitutional Court, as well as the ECtHR case-law.

The most recent Judgments of the Constitutional Court, issued in February 2022, and quoted by the national authorities in their Action Plan, indeed show that the systemic failure of investigating courts and prosecutors to fulfil their investigatory duties in such cases persists:

First, in both cases, when analysing the steps taken within the framework of the preliminary investigations of ill-treatment complaints, the Constitutional Court enumerates the measures ordered by investigating judges, as well as those

¹ Since 2007, the Spanish Constitutional Court has issued fifteen Judgements granting amparo for absence of an effective investigation of ill-treatment allegations: Judgments of 22 October 2007, nº 224/2007; 25 February 2008, nº 34/2008; 14 April 2008, nº 52/2008; 23 June 2008, nº 69/2008; 22 September 2008, nº 107/2008; 19 July 2010, nº 40/2010; 18 October 2010, nº 63/2010; 18 June 2012, nº 131/2012; 9 September 2013, nº 153/2013; 18 July 2016, nº 130/2016; 19 September 2016, nº 144/2016; 24 April 2017, nº 39/2017; 4 October 2021, nº 166/2021 and 7 February 2022, nº 12/2022 and nº 13/2022.

requested for by the claimants, but there is no mention of a single investigatory measure requested by the prosecutors. This passivity of prosecutors is not extraordinary and limited to these two last cases brought before the Constitutional Court, but indeed reflects a pattern that can also be inferred from its previous decisions in similar cases.

Second, in both judgments, the Constitutional Court identifies a number of investigating measures that should have been ordered by investigating judges but were not. As stated by the Spanish authorities in their Action Plan, *“in an exhaustive manner, the case law of the ECHR with respect to Article 3 is assessed and applied by the Constitutional Court, both in its substantive and procedural aspects”* (p. 13). However, it is not sufficient that the Constitutional Court makes references to the ECtHR case-law and identifies in detail the steps that should be taken in order for an investigation of ill-treatment to be exhaustive, if ordinary investigating judges and prosecutors persist in not observing such doctrine², and the former continue ordering premature closings of the proceedings, failing to exhaust investigating means.

Third, it is noteworthy that the Constitutional Court, in its Judgement 13/2022, of February 7, underlines the fact that neither the investigating court nor the Court of Appeal did make any reference in their decisions to the positive obligation to carry out effective investigations, pursuant article 3 of the Convention and article 15 of the Spanish Constitution, in spite of the express allegations made by the claimant referring to such legal provisions³.

Consequently, the recent Judgements issued by the Constitutional Court show that ordinary courts continue to fail in their duty to investigate and that prosecutors are still not active enough in cases of allegations of ill-treatment. Thus, in spite of the existence of a well-established constitutional doctrine and of the dissemination of the ECtHR judgements, a systemic failure to investigate remains.

² In all of its fifteen Judgments issued to date, the Constitutional Court indicates investigative measures that should have been taken by ordinary Courts, which were again recalled in its recent Judgments of 2022, as in the Second Legal Ground (*Fundamento Jurídico 2º*) of the Judgement 13/2022 in which the following are mentioned: hearing the alleged victim, hearing the lawyer that assisted the claimant while in police custody, taking a witness statement from the doctors who examined the alleged victim, identifying and hearing the police agents. The original text in Spanish reads: “Con base en esta doctrina hemos estimado la pretensión de amparo en supuestos en que, existiendo sospechas razonables de delito, se había concluido la instrucción sin haber tomado declaración a la persona denunciante [por todas, SSTC 34/2008, de 25 de febrero, FJ 8; 52/2008, de 14 de abril, FJ 5, 107/2008, de 22 de septiembre, FJ 4; 63/2010, de 18 de octubre, FJ 3 b); 131/2012, de 18 de junio, FJ 5; 153/2013, de 9 de septiembre, FJ 6 y 39/2017, de 24 de abril, FJ 4], sin haber oído al letrado de oficio que asistió a la persona detenida en dependencias policiales (SSTC 52/2008, de 14 de abril, FJ 5; 130/2016, de 18 de julio, FJ 5, y 144/2016, de 19 de septiembre, FJ 4), sin haber recibido declaración a los profesionales sanitarios que le asistieron (STC 52/2008, de 14 de abril, FJ 5), o sin haber identificado, y tomado declaración, a los agentes de los cuerpos y fuerzas de seguridad del Estado bajo cuya custodia se encontraba quien formuló la denuncia (SSTC 107/2008, de 22 de septiembre, FJ 4; 40/2010, de 19 de julio, FJ 4; 144/2016, de 19 de septiembre, FJ 4, y 39/2017, de 24 de abril, FJ 4).”

³ 4th Legal Ground of the Judgement 13/2022, p. 18; the original text in Spanish reads: “Tanto al desestimar el recurso de reforma como el de apelación, los órganos judiciales, sin hacer referencia alguna a las exigencias positivas de investigación efectiva que derivan del contenido de los arts. 15 CE y 3 CEDH que le habían sido expresamente alegadas”.

Identification system of acting police officers (Section II. A. 5.iii of the Action Plan)

Spanish authorities state in their Action Plan (p. 20-21) that *“it is especially relevant the possibility of identification of any given police officer that took part in any case of exercise of force”*. They refer to the Resolution of the Directorate General of the Police, dated 19 April 2013, that establishes the identification number on the accessory garments of the uniforms of the National Police intervention units. According to the quote of such text included in the Action Plan, *“the anti-trauma waistcoats of the officers of the Police Intervention Units must be provided with an identification number that will correspond to the organic numbering that corresponds to the officer who wears it within the Unit and that in any case will allow its correct identification”* (p. 21).

It is to be noted that the aforementioned Resolution of the Directorate General of the Police is not publicly available. This lack of transparency is unjustified. As authorities underline in their Action Plan, citizens do have a right to know the identification number of police officers, which implies knowing how and in which circumstances such number should be displayed. Likewise, officers have a duty to comply with the norms regulating their identification and should be held accountable in cases of infringement, which requires that the content of such norms be publicly available.

Although the Resolution of the Directorate General of the Police is not public, the characteristics of the identification system of anti-riot agents of the National Police are mentioned in a press note from the Office of the Spanish Ombudsperson, dated April 24, 2013⁴, according to which anti-collision or bullet-proof vests shall be fitted with a high visibility number (4,5 cm long and tall on a badge 27 cm long by 6,5 cm high), displayed on a velcro piece.

However, the badge is only fitted at the back of the waistcoats, not at the front, is not carried on the helmet or on any other garment and the velcro it is displayed on can be removed.

Other Spanish police forces, such as the Mossos d’Esquadra, the Catalan regional police force, have recently changed their anti-riot uniforms⁵ to include the identification number of agents both at the front and the back of their waistcoats or bullet-proof vests, as well as on their helmets, allowing for what they call a “360º identification”⁶.

Besides, the font used by the National Police on their uniforms is “Terminator”, which is particularly difficult to read, as some letters and numbers cannot be easily distinguished from one another (see Annex 1).

On numerous occasions, when intervening in riot control, agents of the National Police do not wear their anti-collision waistcoats fitted with the high visibility identification number. In such cases, agents carry the regular smaller identification badge, whose size

⁴ Press note from the office of the Ombudsperson available at: <https://www.defensordelpueblo.es/noticias/la-policia-aumentara-el-tamano-de-los-numeros-de-identificacion-que-portan-los-agentes-de-las-uip-tras-aceptar-una-recomendacion-de-la-defensora-2/>

⁵ <https://www.publico.es/politica/antidisturbios-mossos-iran-identificados-delante-y-casco.html>

⁶ <https://www.lavanguardia.com/politica/20201016/484105772632/los-antidisturbios-de-los-mossos-mejoran-su-identificacion.html>

is 30mm by 10mm⁷. Hence, the Ombudsperson recommended in 2016 that the use of the high visibility identification number be extended to all actions of the police intervention units, even when they do not use anti-trauma vests. This recommendation was rejected by the Ministry of Interior⁸ and, to date, has not been implemented.

Hereafter, some recent examples of National Police officers not wearing any visible identification number, including cases in which the officers wear anti-collision waistcoats, that should show the high visibility number, but the velcro displaying it has been removed:

- During the protests against the NATO summit held in Madrid on June 28-30, 2022 (includes photos)⁹
https://twitter.com/centre_irdia/status/1542098934495154183?s=11&t=CvrBx4FF3Xdy839o2uWu8w
- Protest against the Public Security Act held in Madrid on February 13, 2022 (includes video)
https://twitter.com/Andres_gberrio/status/1492830356004823041?s=20&t=qktoi9XJ0wl2g8gdnDZcbg
- Anti-riot agents wearing anti-collision waistcoats without the velcro displaying the identification number, November 23, 2021 (includes videos)
<https://twitter.com/Mamua/status/1463190786057588739?s=20&t=qktoi9XJ0wl2g8gdnDZcbg>
- Protest of the group “Extinction Rebellion”, October 25, 2021 (includes photo)
<https://twitter.com/laredjuridica/status/1452688258194886658?s=20&t=qktoi9XJ0wl2g8gdnDZcbg>
- Protester being arrested by officer not wearing any visible identification number, January 3, 2020 (includes video)
<https://twitter.com/fanetin/status/1213180931583946753?s=20&t=qktoi9XJ0wl2g8gdnDZcbg>
- Protest in Pamplona, January 30, 2020
<https://twitter.com/fanetin/status/1222950401453981704?s=20&t=qktoi9XJ0wl2g8gdnDZcbg>

As recalled by authorities in their Action Plan, according to national legislation police officers have the duty to identify themselves and citizens have the right to know their identification number.

Yet, the disciplinary regime of the National Police currently in force does not expressly include the fact of not carrying a visible identification badge as an infraction. Such a

⁷ See Orden INT/430/2014, of 10 March, which regulates uniforms in the National Police Corps; art. 16. Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2014-2997>

⁸ Recommendation of 20/07/2016 on the characteristics of the identification number of police forces agents, complaint number 11018475. Rejected. Available at: <https://www.defensordelpueblo.es/resoluciones/identificacion-de-las-unidades-de-intervencion-policial/>

⁹ The network “Red de Observación de Derechos en Contexto de Protesta” displayed observers during the protest in Madrid and published the following statement in which, among other issues, they point out that numerous officers were not carrying their identification numbers: <https://iridia.cat/es/informe-del-dispositivo-de-observacion-de-la-manifestacion-no-a-la-otan-no-a-las-guerras-por-la-paz/>

behaviour could be considered as a less serious infraction, either to the rules on uniforms¹⁰ or of lack of consideration towards citizens¹¹.

Consequently, the national Ombudsperson recommended¹² some years ago that the infringements by officers of their duty to carry their identification badges be always considered a serious infraction and sanctioned accordingly. However, the Law on the disciplinary regime has not been amended to include any provision in such sense.

¹⁰ Art. 9.h of the Law on the disciplinary regime of the National Police Corps (“falta de descuido personal en el aseo personal y el incumplimiento sobre la uniformidad”).

¹¹ Art. 9.b of the Law on the disciplinary regime of the National Police Corps (“incorrección con los ciudadanos”).

¹² Recommendation of 04/05/ 2015, on sanctions for infringements by National Police officers of their duty to carry the identification number, complaint number 14001965. Available at: <https://www.defensordelpueblo.es/resoluciones/investigacion-de-sanciones-derivadas-del-incumplimiento-por-parte-de-los-funcionarios-del-cuerpo-nacional-de-policia-del-deber-de-portar-sobre-sus-prendas-el-numero-de-identidad-personal-2/>

CONCLUSIONS AND RECOMMENDATIONS TO THE COMMITTEE OF MINISTERS

In light of the above, we conclude that:

In spite of the existence of a well-established constitutional doctrine and of the dissemination of the ECtHR judgements, a systemic failure to investigate remains, that could be overcome through systematic training, for both judges and prosecutors, and specific binding guidelines for the latter.

The existent system of identification of agents of the National Police Force is inadequate. The provisions contained in the Resolution of the Directorate General of the Police from 2013 should be amended to ensure that the system is efficient and the disciplinary regime should be modified accordingly.

We respectfully recommend that the Committee of Ministers continue the supervision of the execution of the *López Martínez vs. Spain* judgment and recommend the Spanish authorities to:

- Set up specific systematic mandatory training for prosecutors and judges on how to conduct effective investigations on torture and ill-treatment allegations;
- Establish binding protocols for prosecutors indicating how to act in these cases and what investigatory measures to request, similar to the protocols for prosecutors that already exist in Spain for cases of, for instance, gender based violence;
- Modify the existent regulation on the system of identification of police officers in the sense that:
 - The identification number shall appear not only at the back of the garments, but also at the front and on the helmets used by officers;
 - All uniforms shall display a high visibility number, not only anti-collision or bullet-proof vests;
 - The font used shall be modified and substituted by one less confusing;
 - The identification number shall be printed on the garments to avoid its removal.
- Publish on publicly available sites all the norms regulating the system of identification of police officers;
- Amend the Law on the disciplinary regime of the National Police and include as a serious infraction the fact of not carrying the identification number visible during public interventions.