



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

THIRD SECTION

CASE OF GRACIA GONZALEZ v. SPAIN

(Application no. 65107/16)

JUDGMENT

Art 6 § 1 (criminal proceedings) • Adversarial trial • No formal opportunity for applicant to make submissions in respect of Public Prosecutor's request to discontinue criminal proceedings • Legitimate interest in reacting • Extent to which submissions would have influenced the domestic court's assessment not decisive for right to a fair hearing, as litigants' confidence in the workings of justice at stake • Applicant placed at disadvantage *vis-à-vis* the Public Prosecutor in the appeal proceedings

STRASBOURG

6 October 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gracia Gonzalez v. Spain,

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Alena Poláčková,

María Elósegui,

Gilberto Felici,

Erik Wennerström,

Ana Maria Guerra Martins, *judges*,

and Milan Blaško, *Section Registrar*,

Having deliberated in private on 23 June 2020 and 1 September 2020,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 65107/16) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Spanish national, Ms Rosa Gracia Gonzalez (“the applicant”), on 21 October 2016.

2. The applicant was represented by Mr J.V. Gracia Gonzalez, a lawyer practising in Madrid. The Spanish Government (“the Government”) were represented by their Agent, Mr R.A. León Caveró, State Attorney.

3. The applicant alleged that the proceedings under the Spanish judicial system had violated her right to a fair and public hearing as guaranteed by Article 6 § 1 of the Convention. More specifically, she alleged that she had not had the benefit of adversarial proceedings, since at one stage in the proceedings she had been unable to submit the arguments she considered necessary to the case, unlike the Public Prosecutor.

4. On 16 March 2017 the complaint was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and lives in Teruel.

6. The applicant was married to a Spanish firefighter who worked for a forest brigade in Alcorisa, Teruel.

7. At around 2.30 p.m. on 19 March 2011 the applicant’s husband and another six firefighters were being transported by helicopter to a forest fire which had broken out in the municipality of Teruel. The aircraft crashed,

killing six of the occupants, including the applicant's husband. One occupant was severely injured.

8. On the same day, Teruel Investigating Judge No. 2 initiated criminal proceedings in order to investigate the circumstances under which the accident had occurred and to determine whether there was any potential criminal liability for it.

9. Simultaneously, a technical investigation was initiated by the *Civil Aviation Accident and Incident Investigation Commission* ("CIAIAC"), which operates under the Spanish Ministry of Public Works and Transport (*Ministerio de Fomento*).

10. The aircraft had been manufactured by Bell Helicopters, a Canadian company, and was owned and operated by *INAER Helicópteros S.A.* ("INAER"), a contractor of the Government of Aragón.

11. The CIAIAC conducted an investigation, which included an extensive analysis of the aircraft's components. No other expert assessments were requested or allowed by the investigating judge.

12. According to the preliminary report submitted to the investigating judge on 28 April 2011, the only visible mechanical damage which may have caused the accident was that one servo actuator (out of a total of three) was damaged.

13. The CIAIAC released a provisional statement on 3 May 2012. It confirmed that, in light of the analysis to date, it was possible to determine that the motor had been in an adequate state of functioning until the aircraft hit the ground, and that "it had been verified that the programmed inspections had been complied with". It pointed out, however, that the helicopter manufacturer had issued a Service Bulletin on 10 November 2005, warning of the need for some of its aircraft to undergo an inspection of the assembly used on the hydraulic servo assembly.

14. On 20 April 2011, meanwhile, the applicant had joined the proceedings as a private prosecutor (*acusador particular*) in her capacity as a victim. The Association of Civil Aviation Commercial Pilots ("Professional Pilots Association") also joined the proceedings in order to defend their interests.

15. On 11 February 2013 the investigating judge provisionally ordered the discontinuation of proceedings (*sobreseimiento provisional*) because the commission of the offence leading to the opening of the investigation had not been duly established (Article 641 (1) of the Code of Criminal procedure, see paragraph 45 below).

16. On 18 February 2013 the applicant filed an appeal (*recurso de reforma*) before the same investigating judge requesting the continuation of the investigation, in order to establish possible liability on the part of a person or entity on the grounds of a failure to exercise due diligence (*culpa in vigilando*). Other parties also filed appeals. The Public Prosecutor challenged the applicant's *recurso de reforma* and requested that the

decision to discontinue the proceedings be confirmed by the investigating judge.

17. On 15 April 2013 the investigating judge dismissed the applicant's *recurso de reforma* and confirmed the provisional discontinuation of the proceedings, recalling that the criminal investigation could be continued if new facts arose.

18. The applicant filed an appeal before the Teruel *Audiencia Provincial*. She alleged that the CIAIAC's technical report was not sufficient and that an additional expert witness should be appointed to establish the cause of the accident, the inspections that should have been carried out in the aircraft and whether they had actually been carried out, and to provide information on the defects observed in one of the components and the extent to which they might have been a factor in the accident. She also requested that the expert be heard by the parties and the judge. The Public Prosecutor challenged the applicant's appeal.

19. On 7 November 2013 the *Audiencia Provincial* dismissed the applicant's appeal and confirmed the provisional discontinuation of the proceedings. It specified that the discontinuation of the criminal proceedings did not prevent the applicant from filing a separate civil action.

20. On 27 March 2014 the CIAIAC issued its Final Report, concluding that a direct link could be established between the accident and the fact that the servo actuator had not been duly inspected as required by the 2005 Service Bulletin. The CIAIAC's experts expressly stated that their report was not forensic but merely technical in nature, that it should not be used in judicial proceedings and that it was not subject to judicial and adversarial guarantees; the judge was requested to order the necessary expertise respecting the procedural rules to analyse the facts and reach his own conclusion.

21. On 23 May 2014 the Investigating Judge made the Final Report available for consultation by all parties, including the applicant.

22. On 19 June 2014 the applicant filed a request to continue the investigation which had been discontinued on 7 November 2013 in the light of the CIAIAC Final Report which was published after that date. She considered that the Final Report had introduced essential facts which were new to the investigation and could imply the existence of criminal liability for the accident on the part of those responsible for the compliance with the 2005 Service Bulletin. She requested that the judge designate an independent expert.

23. On 10 July 2014 the Public Prosecutor challenged the applicant's request to continue the investigation, taking into account the CIAIAC's report, which included neither the model of the helicopter nor the servo actuator of the aircraft among the items subject to the contested compulsory inspection, and concluding that there were no relevant new facts in the final version of the said report.

24. On 14 August 2014 the investigating judge dismissed the applicant's request and ordered the final discontinuation of the proceedings pursuant to Article 637 (2) of the Code of Criminal Proceedings, as the facts of the case had not pointed to the commission of any criminal offence.

25. On 4 September 2014, the Professional Pilots Association filed a *recurso de reforma* and, in the alternative, an appeal requesting the continuation of the proceedings in order to investigate the possible criminal liability of INAER, the manufacturer of the helicopter, the State Agency for aerial security and the supplier of the damaged component.

26. The applicant adhered to that *recurso de reforma* before the investigating judge.

27. On 8 September 2017, the applicant also filed a separate appeal before the *Audiencia Provincial* against the decision to discontinue the proceedings of 14 August 2014 (see paragraph 24 above). She requested the continuation of the proceedings in order to investigate the potential criminal liability of those who had been involved in the failure to comply with the 2005 Service Bulletin, as stated in the CIAIAC's final report.

28. On 12 September 2014 the Public Prosecutor challenged the *recurso de reforma* of the Professional Pilots Association to which the applicant had adhered (see paragraphs 25 and 26 above) and also the applicant's appeal (see paragraph 27 above). The Public Prosecutor reiterated the content of her previous requests to discontinue the proceedings (including that of 10 July 2014 which had already taken the CIAIAC's report into account).

29. On 1 December 2014, the investigating judge upheld the Professional Pilots' Association's *recurso de reforma*, "entirely revoked" the decision of 14 August 2014 and, taking into account a new interpretation of the relevant documents officially translated into Spanish, ruled that "the file be reopened and the proceedings be addressed [only] against [the manufacturing company and/or the supplier of the component which failed]" (and not against the owner and operator of the aircraft, as also requested by the Pilots' Association), in order to investigate their potential criminal liability. The Judge considered a new and essential fact in the CIAIAC's Final Report consisting of the direct relationship of "cause/effect between the failure to inspect the damaged servo actuator which was subject to compulsory inspection, and the accident". He stated that it was not a "[simple] mechanical failure" as it was considered when the proceedings were discontinued, but a "mechanical failure in a component vital for aerial navigation which had been expressly indicated and the inspection of which had been ordered so as to avoid any risk". The separate appeal filed by the applicant (see paragraph 27 above) was declared moot.

30. The Public Prosecutor did not appeal against the investigating judge's order to continue proceedings (see paragraph 29 above).

31. The Professional Pilots' Association's filed a *recurso de reforma* and, in the alternative, an appeal requesting the continuation of the proceedings in order to investigate the potential criminal liability of the owner and operator of the aircraft.

32. On 21 December 2014, the Public Prosecutor challenged the *recurso de reforma* and, in the alternative, the appeal of the Professional Pilots Association (see paragraph 31 above), referring and entirely ratifying her submissions of 10 July 2014 (see paragraph 23 above). The other parties were informed and had the possibility of contesting the Prosecutor's submissions.

33. On 13 January 2015, the investigating judge dismissed the *recurso de reforma* of the Professional Pilots Association and confirmed his decision of 1 December 2014 (see paragraph 29 above), ordering the reopening of the proceedings, which had to be conducted [only] "against [the manufacturing company and/or of the supplier of the component which failed]" (and not against the owner and operator of the aircraft).

34. On 20 January 2015 the Professional Pilots Association (alone) filed an appeal against the decision of 13 January 2015 (confirming the decision of 1 December 2014) before the Teruel *Audiencia Provincial*, requesting that the investigation be continued in order also to investigate the potential criminal liability of the owner and operator of the aircraft.

35. On 13 February 2015 the investigating judge fixed a joint deadline for the parties to the proceedings to make submissions concerning the Professional Pilots' Association's appeal, which concerned only the request to extend the decision to continue the investigation, enabling them to support or challenge the appeal as they wished. INAER challenged the appeal and requested that no proceedings be brought against them.

36. On 19 February 2015 the Public Prosecutor challenged the appeal lodged by the Professional Pilots' Association on 20 January 2015, reiterating her previous submissions, particularly those of 10 July 2014 (see paragraph 23 above) and 21 December 2014 (see paragraph 32 above) requesting the discontinuation of proceedings as a whole.

37. The applicant and the other parties to the proceedings did not challenge the Professional Pilots' Association's appeal or make any further allegations. They were given no formal opportunity by the investigating judge to make submissions concerning the Public Prosecutor's challenge of 19 February 2015 to the appeal lodged by the Professional Pilots' Association on 20 January 2015 in which the Public Prosecutor had once again requested the discontinuation of proceedings as a whole (see paragraph 36 above). The investigating judge merely acknowledged the Public Prosecutor's challenge to the Professional Pilots' Association's appeal and transferred the file to the *Audiencia Provincial*.

38. On 4 May 2015 the *Audiencia Provincial* dismissed the appeal lodged by the Professional Pilots' Association and upheld the allegations

submitted by the Public Prosecutor, on the basis that the CIAIAC's Final Report had failed to provide evidence of any new essential facts. The *Audiencia Provincial* revoked the investigating judge's decision of 1 December 2014 (who had considered a new and essential fact in the CIAIAC's Final Report, see paragraph 29 above) and referred back to the *Audiencia Provincial* decision of 7 November 2013 (see paragraph 19 above), which had confirmed the discontinuation of the proceedings. The *Audiencia Provincial* recalled that once the proceedings had been provisionally discontinued, the decision could not be modified in the absence of new evidence enabling the person criminally responsible to be identified, or new objective facts. It held that the decision to continue the investigation (after a discontinuation decision) cannot be used to correct procedural mistakes made during the judicial investigation in interpreting reports or documents, without violating the defence rights of every party to the proceedings. This was particularly clear when the reopening of the investigation occurred after a decision to confirm the discontinuation of proceedings under Article 779 of the Code of Criminal Procedure and where the person criminally responsible has not been identified.

39. On 18 May 2015 the applicant filed an extraordinary appeal (*incidente de nulidad*) to declare void the decision of 4 May 2015, alleging that the *Audiencia Provincial* had decided *ultra petita*, insofar as the Public Prosecutor had only contested the Professional Pilots' Association's appeal (see paragraph 32 above) and had not filed an appeal against the decision of 1 December 2014 (see paragraph 29 above). On 30 June 2015, the *Audiencia Provincial* declared the extraordinary appeal inadmissible.

40. On 14 September 2015 the applicant lodged an *amparo* appeal. She argued that her fundamental right to a fair trial had been violated. More specifically, she stated that the fact that she had not had the opportunity to challenge the Public Prosecutor's request to discontinue the proceedings again had effectively deprived her of any means of defence. She also claimed that the fact that the CIAIAC's Final Report had not been considered a new and essential piece of evidence enabling the proceedings to be resumed after their discontinuation had violated her right to a fair trial.

41. On 11 April 2016 the Constitutional Court declared the appeal inadmissible for lack of sufficient constitutional relevance.

II. RELEVANT DOMESTIC LAW

A. The Criminal Code

42. The relevant provisions of the Criminal Code read as follows:

Article 109

“1. The execution of an act described by the Law as a crime or an offence obliges to repair, in the terms foreseen in the Laws, the damages and prejudices caused by it.

2. The injured party may, in any case, choose to claim civil liability before the Civil Jurisdiction.”

Article 110

“The liability established in the foregoing article includes:

1. Restitution.
2. Reparation of the damage.
3. Compensation for material and moral damage.”

Article 115

“When declaring the existence of civil liability, the Judges and Tribunals shall reasonably establish in their decisions the basis on which they base the amount of damages and compensation ...”

Article 116

“1. Any person criminally responsible for a crime or offence is also civilly responsible if the act gives rise to damage ...”

Article 117

“The insurers that have assumed the risk of pecuniary responsibilities derived from the use or exploitation of any good, company, industry or activity shall be directly liable up to the limit of the indemnity legally established or conventionally agreed upon, when, as a consequence of an event foreseen in this Code, the event that determines the insured risk occurs ...”

B. The Code of Criminal Procedure

43. Concerning the civil-party complaints in the criminal procedure and the status of private prosecutor (*acusador particular*), the following concepts and provisions of the Code of Criminal Procedure are relevant in the present case:

Article 100

“Any crime or minor offence gives rise to criminal proceedings for the punishment of the responsible party, and may also give rise to civil proceedings for the restitution of the thing, the reparation of the damage and the compensation for the harm caused by the punishable act.”

Article 101

“Criminal action is public. All Spanish citizens may exercise it in accordance with the legal provisions.

...”

Article 112

“When only the criminal action is brought, the civil action shall also be deemed to be brought, unless the victim or offended person waives it or expressly reserves it for exercise after the conclusion of the criminal procedure, if applicable.

...”

Article 116

“The extinction of the criminal action does not entail the extinction of the civil action ...”

44. The private prosecutor appears in the criminal proceedings in order to assert his/her rights as an offended or injured party for crimes that can be prosecuted either *ex officio* or at the request of a party (public, semi-public and private crimes). In other words, in Spanish criminal proceedings, even if the Public Prosecutor’s Office is a party, the injured party/victim can intervene not only to claim damages, but also as a party to the criminal proceedings acting as a private prosecutor. In such case, in addition to exercising the criminal action, separately or in coordination with the public prosecutor, against the person presumed guilty, the private prosecutor also acts as a civil party, unless he/she waives this right. From this position he/she exercises the civil action deriving from the crime, requesting restitution, reparation of the damage or compensation for the committed crime, as stated in Article 101, reproduced above. In both cases, either in the public or in the private prosecution, the criminal and civil actions are brought together, unless specified otherwise. Moreover, the discontinuance of the criminal action does not entail the discontinuance of the civil action (Article 116 of the Code of Criminal Procedure, see above).

45. Concerning discontinuance orders, the relevant provisions of the Code of Criminal Procedure are as follows:

Article 634

“A discontinuance order may be final (*libre*) or provisional, complete or partial.

...”

Article 637

“A final (*libre*) discontinuance order shall be made where:

...

2. no offence is made out.

...”

Article 641

“A provisional discontinuance order shall be made where:

1. it has not been duly established that the offence leading to the opening of the investigation has been committed;
2. it appears from the investigation that an offence has been committed, but there are no grounds for accusing a specific individual of that offence ...”

Article 779

“1. ... the judge shall adopt one of the following decisions:

1. If he considers that the facts do not constitute a criminal offence or that its commission is not sufficiently justified, he shall agree to discontinue the proceedings. If, even though he considers that the fact may constitute a crime, there is no known author, he will conclude to a provisional discontinuation and order the striking out of the case.

...”

46. Concerning the appeals regime (*recurso de reforma y subsidiario de apelación*), the relevant provisions of the Code of Criminal Procedure provide as follows:

Article 766

“An appeal and a *reforma* appeal may be exercised against decisions of the Investigating Judge and the Criminal Judge that are not excluded from appeal. ...

2. The appeal may be lodged simultaneously with the appeal of *reforma* or separately. ...

3. The appeal shall be filed within five days following notification of the decision appealed or of the decision of the appeal of *reforma*, stating the grounds of appeal. Once the Judge has accepted the appeal, the registrar shall forward it to the other parties to the proceedings for a joint maximum period of five days, so that they may set out all facts and matters known to them which they consider relevant ... Exceptionally, the *Audiencia* may request the file for consultation, provided that this does not hinder the progress of those proceedings; in such cases, the file must be returned to the Judge within a maximum period of three days.

4. When the appeal has been lodged simultaneously with the appeal of *reforma*, if the latter is totally or partially dismissed, before forwarding [the appeal] to the other parties, the registrar of the Court shall transfer [the appeal] to the appellant for a period of five days so that he may formulate arguments and may present, where appropriate, the documents justifying his petitions.

...”

C. The Air Navigation Law

47. The relevant provisions of the Air Navigation Law read as follows:

Article 120

“The reason to compensate has its objective basis in the accident or damage and shall operate, up to the limits of liability established in this chapter, in any event, including that of a fortuitous accident and even when the carrier, operator or their employees justify that they acted with due diligence.”

Article 121

“Notwithstanding the provisions of the foregoing article, the carrier or operator shall be liable for their own acts and those of their employees, and may not rely on the limits of liability established in this chapter if it is proved that the damage is the result of an act or omission by them or their dependents involving fraud or gross negligence ...”

Article 126

“The purpose of air insurance is to guarantee the risks inherent in navigation that affect the aircraft, merchandise, passengers and freight, as well as the responsibilities derived from damage caused to third parties by the aircraft on the ground, water or flight.”

THE LAW

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

48. The applicant complained under Article 6 § 1 of the Convention that her right to adversarial proceedings had been violated because the Public Prosecutor had introduced a new petition, namely to request the discontinuation of the proceedings, whereas she had no opportunity to challenge that request and put forward her arguments for the reopening of the proceedings. The relevant part of Article 6 § 1 provides:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...”.

A. Admissibility

1. Lack of victim status of the applicant and applicability of Article 6 § 1 of the Convention to the present case

49. The Government submitted that the applicant could not claim to be a “victim”, for the purposes of Article 34 of the Convention, of the violation of which she complained insofar as she had already been awarded compensation under strict civil liability as a result of the accident in which her husband had died. It further stated that, because she could not be further compensated in civil proceedings and she had not been accused in criminal proceedings, the applicant’s situation did not fall within the scope of Article 6 § 1 of the Convention.

50. The applicant, for her part, submitted that she had indeed been awarded civil compensation from the insurance company which covered the aircraft in the event of accidents. She and her son also received compensation from INAER for non-pecuniary damage caused by the accident under an out-of-court settlement. They had also received compensation from several life insurance policies taken out by the applicant's husband. She claimed, however, that she should be awarded further reparation for the subjective criminal liability derived from a criminal offence, which she had not waived. She considered herself still to be a victim for the purposes of Article 34 of the Convention.

51. In the instant case the Court notes that for the purposes of Article 34 victim status is closely linked to the scope of Article 6 § 1 of the Convention: one cannot be analysed without reference to the other. The applicability of Article 6 § 1 derives, in the present case, from the recognition of the applicant's victim status under Article 34.

52. The Court reiterates that, while the Convention does not confer any right, as such, to have third parties prosecuted or sentenced for a criminal offence (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I; *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 24, 20 March 2009; *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 218, 14 April 2015 and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 194 and 207, 25 June 2019), domestic law can provide for a right for the victim of an offence to claim reparation for the damage caused by that offence by means of civil-party proceedings, that is by allowing the victim to join criminal proceedings as a civil party. This is one possible way of providing for a civil action to obtain compensation for damage (see *Perez*, cited above, § 62). Article 6 § 1 is then applicable in its civil limb to a civil-party claim in criminal proceedings except in the case of a civil action brought purely to obtain private vengeance or for punitive purposes (see *Sigalas v. Greece*, no. 19754/02, § 29, 22 September 2005), or when he or she has unequivocally waived the right to reparation. Article 6 applies from the moment the victim has joined as a civil party, even during the preliminary investigation stage taken on its own (see *Nicolae Virgiliu Tănase*, cited above, § 207), and as long as the criminal proceedings are decisive for the civil right to compensation that is being asserted (see *Alexandrescu and Others v. Romania* (revision), nos. 56842/08 and 7 others, § 22, 28 March 2017). To fall within the scope of the Convention, such a right must be indissociable from the victim's exercise of a right to bring civil proceedings in domestic law (see *Nicolae Virgiliu Tănase*, cited above, §§ 188 and 194), even if only to secure symbolic reparation or to protect a civil right such as the right to a "good reputation" (see *Perez*, cited above, § 70).

53. Accordingly, a case-by-case examination is necessary to determine whether the domestic legal system recognises the claimant as having an

interest of a civil nature to be asserted in the criminal proceedings. It must be established that the claimant is seeking to secure the protection of a civil right and has an interest in claiming compensation, even at a later stage, for the violation of that right. Furthermore, the outcome of the proceedings in question must be decisive for obtaining redress for the damage (see *Arnoldi v. Italy*, no. 35637/04, §§ 31-36, 7 December 2017). The Court has specified that the question of the applicability of Article 6 § 1 cannot depend on the recognition of the formal status of a “party” in domestic law. Lastly, for Article 6 to be applicable, the date of submission of the compensation claim is not decisive, as the Court has found Article 6 to be applicable in cases where the claim had yet to be submitted or had not been submitted at all even though this possibility existed under domestic law (*ibid.*, § 29).

54. In the Spanish legal system, in order to obtain civil compensation for the liability derived from the offence, the person responsible for the offence has to be found guilty by a criminal court. Where appropriate, civil liability is awarded by the criminal judge by default. However, the alleged victim of the offence or other parties entitled to civil compensation can also choose to bring a separate civil action once the criminal proceedings lead to conviction of the responsible for the offence, by expressly opting for such a course of action during the criminal proceedings. They are also at liberty to waive their right to civil reparation.

55. In the present case the applicant did not choose to bring a separate civil action, nor did she waive her right to sue for civil liability imputable to the person potentially criminally responsible for the accident which had caused her husband’s death. Therefore, provided that she fulfilled the conditions set by law, she could expect to be awarded civil compensation derived from the offence within the scope of the criminal proceedings. The Court finds that the applicant is seeking to secure the enforcement of a civil right, and that she has an interest in claiming compensation for damage caused by the alleged offence. Therefore, the Court finds that Article 6 is applicable to the present case and that the applicant may claim to be a “victim” for the purposes of Article 34 of the Convention. The Government’s objection is therefore rejected.

2. Abuse of the right of application by misleading the Court by omission

56. The Government submitted that the applicant had failed to inform the Court at the outset of an essential factor for the examination of the case, that is to say that the civil liability issue had been resolved since she had already received compensation, from the insurance company, for the damage suffered in relation to the facts of the case.

57. The Court reiterates that the submission of incomplete and thus misleading information may amount to an abuse of the right of application within the meaning of Article 35 § 3 (a) of the Convention, especially if the

information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information (see *Predescu v. Romania*, no. 21447/03, § 25-26, 2 December 2008, and *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014). In such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Al-Nashif v. Bulgaria*, no. 50963/99, § 89, 20 June 2002; *Melnik v. Ukraine*, no. 72286/01, § 58-60, 28 March 2006; *Nold v. Germany*, no. 27250/02, § 87, 29 June 2006; *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, ECHR 2012, and *Safaryan v. Armenia* ((dec.)), no. 16346/10, § 24, 14 January 2020).

58. Turning to the circumstances of the present case, the Court does not find this intention established. In this regard, it notes that, while the information allegedly withheld concerned the compensation already awarded to the victim, this compensation only covered the life-insurance compensation, not the compensation for the damage caused by the alleged criminal offences, which the applicant had the right to claim within the criminal proceedings.

59. The Court also has regard to the fact that the information was promptly provided by the applicant when requested. It transpires from her lawyer's explanation that the reason for withholding the information on the compensation in question was simply that the amounts in question did not exclude or equate with the compensation which she could potentially obtain within the criminal proceedings. The Court considers that the information regarding other amounts already received did not concern the actual core of the matter underlying her complaint under the Convention.

60. The Government's objection is therefore dismissed.

3. *Failure to exhaust domestic remedies*

61. The Government submitted that the applicant's claim for compensation could have been dealt with under various judicial procedures which she had failed to exhaust. Thus, according to the Government, the applicant could have availed herself of the following remedies: (a) a criminal complaint for offences related to the causes of the aircraft's accident; (b) a civil claim for damages associated with the death of the applicant's husband, even if the accident did not constitute a criminal offence; or (c) a claim for compensation against the Spanish Administration, given that the accident had taken place while the aircraft's passengers were on public duty. Accordingly, the Government claimed that the applicant had failed to use all of the aforementioned available remedies, and therefore requested the Court to declare her complaint under Article 6 inadmissible for failure to exhaust domestic remedies.

62. The applicant contested that objection. She stressed that the violation of her right to adversarial proceedings as established in Article 6 derived from the decision given by the Teruel *Audiencia Provincial* during the

criminal proceedings. She further claimed to have duly exhausted domestic remedies and that she had lodged an *amparo* appeal with the Constitutional Court. The applicant emphasised that only a criminal court could establish the commission of a criminal offence to which civil liability could be attached.

63. The Court takes the view that domestic remedies other than criminal proceedings for obtaining compensation bear no relation to the specific alleged violation of the applicant's right to adversarial proceedings before the criminal courts which is the subject of this case. In any case, the Court reiterates that, if domestic law provides for several parallel remedies in different fields of law, an applicant who has sought to obtain redress for an alleged breach of the Convention through one of these remedies is not necessarily required to use others which have essentially the same objective (see *Jasinskis v. Latvia*, no. 45744/08, §§ 50 and 53-54, 21 December 2010).

64. Accordingly, the Court dismisses the Government's objection.

4. Conclusion

65. Lastly, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

66. The applicant complained that she had been unable to reply to the Public Prosecutor's submissions before the Teruel *Audiencia Provincial* challenging the appeal lodged by the Professional Pilots' Association and arguing that the proceedings should not be reopened at all (see paragraph 36 above). She also complained that the *Audiencia Provincial* had not considered that the CIAIAC's Final Report introduced essential facts which were new to the investigation in order to reopen it. This constituted a violation of her right to a fair trial and, in particular, to adversarial proceedings as guaranteed in Article 6.

67. The Government contended that the Public Prosecutor's submissions regarding his request that the proceedings should not be reopened had been reiterated throughout the proceedings. The applicant had already been well aware of the Public Prosecutor's position in this regard, and the submission of 19 February 2015 simply reiterated what had already been said in previous requests (mainly that of 10 July 2014). The applicant was therefore not left defenceless. The Government further stated that the applicant had not even adhered to the Professional Pilots' Association's appeal, and that

she had not submitted any request for the decision to reopen the proceedings to be maintained.

2. *The Court's assessment*

68. The Court recalls that the right to an adversarial trial is closely related to equality of arms. The principle of equality of arms is in fact one of the elements of the broader concept of a fair trial. It requires each party to be given a reasonable opportunity to present their case under conditions that do not place him/her at a substantial disadvantage *vis-à-vis* his opponent (*Öcalan v. Turkey* [GC], no. 46221/99, § 140, ECHR 2005-IV; *Foucher v. France*, 18 March 1997, § 34, *Reports of Judgments and Decisions* 1997-II; *K.S. v. Finland*, no. 29346/95, § 21, 31 May 2001; *Faig Mammadov v. Azerbaijan*, no. 60802/09, § 19, 26 January 2017; and *Regner v. the Czech Republic* [GC], no. 35289/11, § 146, 19 September 2017).

69. The Court notes that in the present case the Public Prosecutor challenged before the Teruel *Audiencia Provincial* the appeal lodged by the Professional Pilots' Association to request a further reopening of the proceedings (see paragraph 36 above). The applicant did not get a formal opportunity to make submissions as regards the concrete Public Prosecutor's request once again to completely discontinue the proceedings.

70. The Court further observes that the Public Prosecutor did not appeal against the investigating judge's decision of 1 December 2014 to order the continuation of the proceedings with a view to investigating whether the company manufacturing the aircraft and/or the supplier of a component could potentially be held criminally liable for the aircraft's accident. Only the Professional Pilots' Association lodged an appeal before the *Audiencia Provincial*, demanding the extension of the reopened investigation into the potential criminal liability of the owner and operator of the aircraft. The investigating judge gave the parties to the proceedings the opportunity to make submissions concerning the Professional Pilots' Association's appeal, so that they could challenge or adhere to the appeal as they wished. The Public Prosecutor challenged the above-mentioned appeal of the Professional Pilots' Association, referring to her previous submissions of 10 July 2014 and 21 December 2014, in which she had requested the complete discontinuation of the proceedings.

71. The Court notes, however, that even if the content of the said Public Prosecutor's request was a mere reference to previous requests that the proceedings should not be reopened, none of the other parties to the proceedings had an opportunity to make submissions regarding the last Public Prosecutor's request to completely discontinue the proceedings again.

72. This had the effect of depriving the applicant of the opportunity to reply in writing to the Public Prosecutor's pleadings. Such an opportunity

may be essential, since the right to adversarial proceedings means that each party must be given the opportunity to have knowledge of and comment on the observations filed or evidence adduced by the other party (see *Ruiz-Mateos v. Spain*, 23 June 1993, § 63, Series A no. 262). The Court has previously insisted that a court should not surprise the parties with arguments which have not been discussed by them (cf. *Clinique des Acacias and Others v. France*, nos. 65399/01 and 3 others, 13 October 2005; *Čepek v. the Czech Republic*, no. 9815/10, 5 September 2013; *Alexe v. Romania*, no. 66522/09, 3 May 2016; and *Liga Portuguesa de Futebol Profissional v. Portugal*, no. 4687/11, 17 May 2016). The Court notes that the present case raises the question whether the dismissal on 4 May 2015 of the Professional Pilots' Association's appeal upholding the allegations submitted by the Public Prosecutor (see paragraph 36 above) infringed the applicant's right to adversarial proceedings as guaranteed under Article 6 of the Convention, by preventing her from putting forward any arguments against the Prosecutor's request (compare, *mutatis mutandis*, *Clinique des Acacias and Others*, cited above, §§ 39-40, and *Prikyan and Angelova v. Bulgaria*, no. 44624/98, §§ 43-47, 16 February 2006).

73. While the Court is not competent to consider whether or not the CIAIAC's Final Report introduced essential facts which were new and relevant for the continuation of the investigation, it can be assumed that the applicant had a legitimate interest in reacting to the Public Prosecutor's request to discontinue the proceedings. The Court does not need to determine whether the failure to communicate the appeal document caused the applicant a prejudice; the existence of a violation is conceivable even in the absence of injury (see *Adolf v. Austria*, 26 March 1982, § 37, Series A no. 49). It was up to the applicant to decide whether or not that document called for her comments (compare *Nideröst-Huber v. Switzerland*, 18 February 1997, § 29, *Reports* 1997-I, and *Ferreira Alves v. Portugal* (no. 3), no. 25053/05, § 40-41, 21 June 2007). The extent to which those submissions influenced the court's assessment is not decisive from the point of view of the applicant's right to a fair hearing (see *Kuopila v. Finland*, no. 27752/95, § 35, 27 April 2000; see also *Milatová and Others v. the Czech Republic*, no. 61811/00, § 65, ECHR 2005-V, and *Nideröst-Huber*, § 27, cited above). What is particularly at stake here is litigants' confidence in the workings of justice, which is based, *inter alia*, on the knowledge that they have had the opportunity to express their views on every document in the file (see *Ferreira Alves* (no. 3), cited above, § 41). In the present case, the mere fact that the applicant was unable to respond meant that she was placed at a disadvantage *vis-à-vis* the Public Prosecutor in the appeal proceedings, in a manner at variance with the fair hearing guarantee in Article 6 § 1 of the Convention.

74. Accordingly, the Court finds that the failure to provide a formal opportunity to the applicant to contest the Public Prosecutor's submissions

before the Teruel *Audiencia Provincial* challenging the appeal of the Professional Pilots Association requesting a further reopening of the proceedings gave rise to a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. Article 41 of the Convention provides:

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

76. The applicant did not submit any claim for just satisfaction.

77. The Court considers that it is therefore not appropriate to make any award on this count.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 6 October 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Paul Lemmens
President