



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

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## FIFTH SECTION

Applications nos. 17736/26 and 18767/26  
Jose Miguel DE LA ROSA CORTINA against Spain  
and ASOCIACIÓN DE FISCALES against Spain  
lodged on 27 April 2026 and  
communicated on 20 August 2026

## SUBJECT MATTER OF THE CASE

The applicants are a court prosecutor, Mr. R (“first applicant”), and an association of prosecutors, “*Asociación de Fiscales*” (“second applicant”). The first applicant applied to the specific role of “Court Prosecutor for Minors” at the Public Prosecutor’s Office. On 30 March 2021, a different candidate, Mr. E, was appointed. He belonged to a different association of prosecutors, “*Unión Progresista de Fiscales*”. The applicants complain under Article 6 § 1 and Article 14 of the Convention that the appointment was arbitrary and discriminatory towards the first applicant.

In accordance with Article 13 § 1 and Article 41 of Law no. 50/1981, of 30 December regulating the Organic Statute of the Public Prosecutor’s Office (“Law no. 50/1981”), the appointment of prosecutors in Spain is carried out by the Government on the recommendation of the Public Prosecutor Office, a hierarchical institution headed by the Public Prosecutor General, who has the discretionary power to propose appointments but also to remove officials from office.

The applicants filed separate appeals with the Supreme Court seeking the annulment of the appointment decision. In their view, the decision had overlooked the superiority of the first applicant’s merits and had not sufficiently motivated the reasons for favouring the other candidate, Mr. E,

suggesting that he had not been selected for his skills nor experience but for his membership to an association allegedly aligned to the Government.

On 19 April 2022, the Supreme Court upheld the applicants’ separate appeals, highlighting the second applicant’s legitimacy to act in the interests of the prosecutorial profession. The court then quashed the decision to appoint Mr. E on account of the first applicant’s superior experience and ordered the Public Prosecutor General to provide more detailed reasoning concerning the merits of the candidate to be appointed.

On 31 May 2022, the Government reappointed Mr. E based on a more detailed recommendation of the Public Prosecutor General, which stressed his leadership and organisational skills, constitutional law expertise, as well as the alignment of his “action programme” to the emphasis on fundamental rights and gender equality of the Public Prosecutor’s Office.

The applicants appealed again before the Supreme Court, which upheld both separate appeals, on 18 and 20 July 2023, respectively. The appointment decision was newly declared null and void, on account of its insufficient motivation. However, for reasons of administrative efficiency, the court did not request the Public Prosecutor’s Office to provide yet another recommendation.

Mr. E lodged separate actions for the annulment of proceedings with the Supreme Court against both judgments, seeking the reinstatement of his appointment to the post in issue, but both appeals were dismissed on 11 October 2023.

Mr. E, then, lodged *amparo* appeals with the Constitutional Court against both the Supreme Court’s judgments and the related dismissals of the action for the annulment of proceedings. He also requested a provisional stay of the contested judgments to prevent that the position be filled by a third party in the meantime. The interim measure request was dismissed, and the cases were referred to the plenary. On 14 January 2025, the plenary declared both *amparo* appeals admissible on account of their constitutional significance.

On 6 February 2025, the first applicant challenged the participation of judge CP, the President of the Constitutional Court and former Public Prosecutor General, in the bench, as he had been the line manager of both candidates in the past. Accordingly, he also requested the retroactive annulment of the admissibility decision of 14 January 2025 in which judge CP had taken part. Four days later, judge CP decided to abstain from the examination of the merits in both *amparo* proceedings. The Constitutional Court upheld the abstention and excluded the judge from further

consideration of the appeal. However, it did not refer the proceedings back to the examination of the admissibility stage and ruled that the recusation appeal lodged by the first applicant had lost its purpose. On 3 April 2025, the second applicant joined the constitutional proceedings, seeking the dismissal of the *amparo* appeal.

Eventually, on 15 January 2026, the Constitutional Court upheld both of Mr. E's *amparo* appeals on the grounds that the Supreme Court's interpretation of the legal framework of discretionary appointments had been arbitrary to the detriment of the appointee's right to equal access to public office and career progression. Mr. E was therefore promoted to the role of court prosecutor, albeit not appointed to the specific post in issue, as it had already been filled on 20 March 2024, in the context of another public competition carried out in the meantime.

The applicants complain that the *amparo* appeal proceedings brought by Mr. E before the Constitutional Court were not conducted in a manner that ensured the impartiality required under Article 6 § 1 given that the recused President, judge CP, participated in the admissibility phase and abstained only from the subsequent examination of the merits. The applicants further complain that the Constitutional Court did not give adequate reasons for upholding Mr. E's appointment for the role in issue and that its decisions were accordingly arbitrary and discriminatory, contrary to Article 14, read in conjunction with Article 6 § 1 of the Convention.

### QUESTIONS TO THE PARTIES

1. Was Article 6 § 1 of the Convention applicable regarding the applicant association? In particular, did the domestic proceedings at issue concern its civil rights and obligations?
2. Were the *amparo* appeal proceedings concerning the appointment to the post of Court Prosecutor for Minors at the Public Prosecutor's Office compliant with the general requirements of fairness, under Article 6 § 1 of the Convention? In particular, did the participation of the recused judge in the admissibility phase of the proceedings undermine the independence and impartiality of the Constitutional Court? (see *Castillo Algar v. Spain*, 28 October 1998, § 45, *Reports* 1998-VIII; *Micallef v. Malta* [GC], no. 17056/06, § 98, ECHR 2009).
3. Did the courts decide in an arbitrary or manifestly unreasonable manner, undermining the fairness of the proceedings contrary to Article 6 of the Convention? In that regard, was the applicant discriminated against, on the basis of association membership, when applying to the post of Court Prosecutor for Minors at the Public Prosecutor's Office, in contravention of Article 14, read in conjunction with Article 6 § 1 (see, *mutatis mutandis*, *Alonso Saura v. Spain* no. 18326/19, § 38, 8 June 2023)?
4. The parties are invited to provide updated information on the number of active prosecutors in Spain, as well as the number of members of the associations “*Asociación de Fiscales*” and “*Unión Progresista de Fiscales*” and the number of prosecutors who do not belong to any association.
5. The Government is invited to provide copies of the following documents:
  - (a) The list of candidates who applied to the two subsequent calls for applications to fill in the post of Court Prosecutor for Minors at the Public Prosecutor's Office, published on 5 February 2021, and on 3 February 2024, respectively.
  - (b) The two recommendations of the Prosecutor General regarding the appointment, of 12 March 2021, and of 5 May 2022, respectively.