



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

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FIFTH SECTION

Application no. 10129/26
Maria Carolina SILVA INOSTROZA
against Spain
lodged on 11 March 2026
communicated on 24 August 2026

SUBJECT MATTER OF THE CASE

The application concerns the applicant's pending extradition to Chile from Spain, the applicant being the sole guardian of her 14-year-old daughter with whom she resides in Spain.

The applicant is a Chilean national and the mother of D., a Chilean national born in 2011, over whom she has sole custody and guardianship pursuant to the judgment of the Family Court of Curico (Chile) dated 5 March 2015. Allegedly, they both lawfully reside in Spain since 2022 and have no other family member in Spain or in Chile. According to the applicant, D.'s father lives in Chile and they barely have any relationship. It appears that D. is enrolled at *Institut Front Maritim* (a local school) and is a player in the Catalan Football Federation.

On 1 March 2024 the applicant was arrested in Barcelona pursuant to an international arrest warrant issued on 11 October 2023 by the Curico Criminal Oral Trial Court (Chile) for prosecution on fraud charges, punishable by a maximum sentence of five years' imprisonment. The next day she was granted provisional release. On 25 February 2025 the Council of Ministers agreed to proceed with the applicant's extradition proceedings through the courts.

The applicant objected to her extradition throughout the judicial proceedings, referring, notably, to her minor daughter's situation. On 15 October 2025 the *Audiencia Nacional* granted the extradition request in respect of the offences set out in the arrest warrant issued by the Chilean court. Notably, the court found that the applicant's having sole custody of her 14-year-old daughter was neither a ground for refusing extradition under the Extradition Treaty between the Kingdom of Spain and the Republic of Chile, and subsidiarily the Passive Extradition Act, nor a sufficient reason to make the surrender conditional or to postpone it until the daughter reached the age of majority, as requested by the applicant. The court concluded that the applicant could take measures appropriate to her daughter's age, by seeking assistance from relatives or other close persons, both in Spain or in Chile, or, failing that, through the competent authorities responsible for the protection of minors in both States, all prior to carrying out the surrender and with a view to its implementation.

On 21 November 2025 the Plenary of the Criminal Chamber of the *Audiencia Nacional* dismissed the applicant's appeal (*recurso de súplica*) against the above decision, finding that (i) the contested decision had indeed taken into account the best interests of the minor, but the protection of the family and children could not be used as a shield for impunity, particularly given that the daughter was 14 years old; (ii) the double criminality criterion was met, taking into account the nature of the offence for which the applicant was being prosecuted; (iii) the decision of 15 October 2025 contained sufficient reasoning and proportionality assessment, and there were (iv) neither exceptional serious humanitarian grounds precluding extradition (which the applicant failed to substantiate), nor (v) an undue interference with her family life, as the applicant's fears regarding the possible abandonment of her 14-year-old daughter once the applicant is surrendered for trial were unfounded, for the reasons given by the lower court's decision. The applicant's subsequent *amparo* appeal was declared inadmissible due to lack of constitutional significance.

On 24 February 2026 the Council of Ministers approved the applicant's extradition to Chile. On 26 February 2026 the *Audiencia Nacional* ordered the applicant's detention pending extradition. It appears that, pursuant to her appeal, the detention order was set aside, and unspecified less onerous measures were applied.

On 20 January 2026 D. was admitted to hospital as she had contemplated stepping in front of a car upon learning of her mother's possible extradition. On 8 March 2026 the minor attended the Emergency service due to an anxiety attack triggered by her mother's judicial proceedings, without suicidal intent. She has since then been receiving mental health support.

The applicant complains under Articles 8 and 13 of the Convention arguing that (i) the domestic authorities failed to carry out a sufficient and specific assessment of the child's best interest nor did they adequately consider less restrictive alternatives (namely, video conferences or voluntary court appearances) (ii) despite requests for a stay of proceedings she did not have an effective domestic remedy in relation to her complaints.

QUESTIONS TO THE PARTIES

1. Would there be an interference with the applicant's right to respect for her private and family life if the extradition order were enforced? If so, would such interference amount to a violation of Article 8 of the Convention? When deciding on the applicant's extradition, did the Spanish courts strike a fair balance between the interests at stake (see *Üner v. the Netherlands* [GC], no. 46410/99, § 57-58, ECHR 2006-XII; see further, in the context of extradition, *Shakurov v. Russia*, no. 55822/10, §§ 193-195, 5 June 2012)?

2. With reference to the applicant's complaint about the situation of her minor daughter and the ensuing risks for the applicant's daughter's well-being in case of the applicant's extradition, have the Spanish authorities complied with their positive obligation under Article 8 of the Convention to secure respect for the applicant's private and family life? In particular, did the authorities place the applicant in a position to arrange for, or otherwise ensure that her daughter will be taken care of in case the extradition takes place (see, *mutatis mutandis*, *Hadzhieva v. Bulgaria*, no. 45285/12, §§ 58 and 62, 1 February 2018)?

3. Did the applicant have an effective domestic remedy as provided for in Article 13 of the Convention in respect of her complaint under Article 8?

4. The Government are requested to submit factual information on the measures taken by the applicant or the domestic authorities to ensure the necessary care for the applicant's daughter prior to the extradition as well as to submit copies of the relevant administrative and judicial decisions regarding the applicant's extradition.