



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

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FIFTH SECTION

Application no. 16936/24
Alberto RODRÍGUEZ RODRÍGUEZ
against Spain
lodged on 5 June 2024
communicated on 15 September 2026

SUBJECT MATTER OF THE CASE

The application concerns the termination of the applicant's mandate as member of Parliament following his conviction and sentence.

The applicant was a member of the Congress of Deputies ("the Congress") since 2016. In November 2019 he was elected to be a member of the Congress for the XIV Legislature, which started on 3 December 2019 and lasted until 17 August 2023.

On 6 October 2021 the Supreme Court found the applicant guilty of having kicked a police officer during a protest in 2014 and convicted him of an offence of assaulting an authority officer. He was sentenced to one month and fifteen days of imprisonment and to an accessory penalty of special disqualification to stand for elections for the duration of the penalty. The prison sentence was replaced by a fine in the same judgment. On 8 October 2021 the Supreme Court ordered the execution of the penalty.

Following an exchange of letters between the President of the Supreme Court's Criminal Division and the President of the Congress, on 22 October 2021 the President of the Congress sent a letter to the applicant informing him that, in accordance with section 6 of the Institutional Law on the General Electoral Regime, she had sent the Supreme Court's decision to execute the penalty to the Central Electoral Commission, in order to replace him, and to the Secretary General of the Congress, "for relevant purposes".

On 27 October 2021 the Central Electoral Commission appointed the applicant's substitute as member of Parliament. The decision stated that the applicant's mandate had been terminated on 22 October 2021, according to a decision of the Bureau of the Congress of 26 October 2021.

A request by the applicant to suspend the execution of the penalty was dismissed by the Supreme Court.

The applicant lodged with the Constitutional Court an *amparo* appeal against the decision of the President of the Congress of 22 October 2021, arguing a violation of Articles 11 and 17 of the Convention, Article 3 of Protocol No. 1 to the Convention and Article 1 of Protocol No. 12 to the Convention, and the related constitutional provisions. He further asked for interim measures aimed at suspending the decision of the President of the Congress.

On 31 January 2024 the Constitutional Court issued a judgment upholding the applicant's claim in respect of his right to exercise representative functions (Article 23 of the Constitution) and declaring null the decision of the President of the Congress of 22 October 2021. The judgment referred to a previous judgment ruling on an *amparo* appeal lodged by the applicant against the Supreme Court's judgment of 6 October 2021 (Constitutional Court's judgment 8/2024, of 16 January 2024). By that judgment, the Constitutional Court had declared null the operative part of the Supreme Court's judgment imposing a penalty of imprisonment and disqualification to stand for elections, maintaining only the fine penalty. That decision implied that the legal basis for the loss of the applicant's status as member of Parliament had disappeared and, therefore, the decision of the President of the Congress had breached his right to exercise representative functions. The Constitutional Court stated that besides declaring null the relevant decision of the President of the Congress, no further redress measures could be ordered since the term of the Legislature for which he had been elected had already expired by that time. The applicant was served with this judgment on 7 February 2024.

The applicant alleges a violation of his right to sit as a member of Parliament under Article 3 of Protocol No. 1 of the Convention, as well as a violation of Article 13 of the Convention, in relation to Article 3 of Protocol No. 1 of the Convention.

QUESTIONS TO THE PARTIES

1. Can the applicant still claim to be a victim of a violation of the Convention, within the meaning of Article 34? In particular, have the national authorities acknowledged, either expressly or in substance, the alleged breach of the applicant's rights under the Convention and afforded appropriate and sufficient redress?

2. Has there been a breach of the applicant's right under Article 3 of Protocol No. 1 to the Convention? In particular, did the termination of his parliamentary mandate amount to a violation of his right to, once elected, sit as a member of the national legislature?

3. Did the applicant have at his disposal an effective domestic remedy for his complaint under Article 3 of Protocol No. 1 to the Convention, as required by Article 13 of the Convention? If so, has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention?

The parties are requested to submit copies of (i) the Supreme Court's decision of 8 October 2021 ordering the execution of the penalty; (ii) any decision of the Constitutional Court concerning the applicant's request for interim measures, if existing; (iii) the report of the Secretary General of the Congress of 25 October 2021 concerning the applicant's mandate, and (iv) the decision of the Bureau of the Congress of 26 October 2021, according to which the applicant's mandate had terminated on 22 October 2021.