



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

FIFTH SECTION

DECISION

Applications nos. 473/24 and 485/24
Francisco Javier RODRÍGUEZ QUINTERO against Spain
and Antonio MARTINEZ MARTIN against Spain

The European Court of Human Rights (Fifth Section), sitting on 17 September 2026 as a Committee composed of:

Diana Sârcu, *President*,

María Elósegui,

Sébastien Biancheri, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the applications 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”) on 22 December 2023 by a Spanish national, Mr Francisco Javier Rodríguez Quintero (“the first applicant”), who was born in 1968 and lives in Gibraleón, and on 28 December 2023 by a Spanish national, Mr Antonio Martínez Martín (“the second applicant”; together “the applicants”), who was born in 1964 and lives in Tiena, and were represented by Mr Francisco de Asis Parra Garofano, a lawyer practising in Almería;

the decision to give notice of the complaints concerning Article 6 § 1 and Articles 8 and 10 of the Convention to the Spanish Government (“the Government”), represented by Mrs H. E. Nicolás Martínez, co-Agent of Spain to the European Court of Human Rights, and to declare the remainder of the applications inadmissible.

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the disciplinary dismissals of the applicants for having exchanged work-related information via WhatsApp, in breach of the company’s confidentiality policy. The applicants complain under Articles 6,

8 and 10 of the Convention that their disciplinary dismissals, upheld by the domestic courts, violated their rights to a fair trial, to respect for private life and freedom of expression, as they were based on private correspondence, obtained in separate labour proceedings, without their alleged knowledge or consent.

2. The applicants were employed as transport security guards in a company operating in the field of storage, safekeeping and transport of explosives. On account of the high-risk nature of the goods carried, the employees were subject to strict confidentiality obligations. Under the applicable trade union agreement, the company's code of conduct and individual confidentiality agreements, they undertook not to share any work-related information – including transport routes, schedules or detonation sites – with any third parties, not even other employees.

3. In separate proceedings against the company and the labour authorities, an employee had challenged the suspension of his work contract under a temporary layoff scheme (*Expedientes de Regulación Temporal de Empleo*; ERTE). The labour authorities had authorised the ERTE on the grounds that a situation of *force majeure* (namely the COVID-19 pandemic) had significantly reduced the company's activities. To substantiate his claim that the company had remained operational during the pandemic, that employee had submitted transcripts of WhatsApp conversations he had exchanged with other employees, including both of the applicants.

4. The WhatsApp exchanges between the first applicant and the other employee read as follows:

...

“08/04/2020 21:28 – First applicant: Good evening. I am working.

08/04/2020 21:29 – Employee: What do you mean? Weren't you on vacation?

08/04/2020 21:30 – First applicant: Well, they called me in to work on the Friday of the holiday week.

08/04/2020 21:31 – Employee: Ah, but in Huelva?

08/04/2020 21:32 – First applicant: No, here.

08/04/2020 21:33 – Employee: Wasn't it closed? Good, this way, you won't waste any holiday days.

08/04/2020 21:34 – First applicant: Indeed

08/04/2020 21:34 –Employee: You and Manolo?

08/04/2020 21:34 – First applicant: Me, Manolo, Franco, Segundo, Juanfra and the new guy.

08/04/2020 21:35 – Employee: Meaning they have worked on the plaster casts? No wonder I heard blasting this morning.

...

09/09/2020 09:32 – Employee: Where are you assigned today? Lately you guys have been leaving a few minutes late.

09/09/2020 09:33 – First applicant: As always, right? To Zafarraya.”

5. The WhatsApp exchanges between the second applicant and the other employee read as follows:

“30/3/20 14:27 – Second applicant: Well, I know there’s Cerrao Pelao tomorrow and Rambla Orica on Thursday.

30/3/20 17:57 – Employee: [We’re] not allowed to work now. I’ve checked the Royal Decree-Law and the annex does not cover the safe transport of explosives.

...

4/8/20 11:30 – Second applicant: Hello, we’re working long hours today.

4/8/20 12:01 – Second applicant: We were in Macael and now in Darro.

...

5/8/20 11:44 – Second applicant: I am working ten hours or more.

...

14/08/20 22:04 – Second applicant: Yes, today in Tabernas.

...

9/9/20 14:15 – Employee: You’ve got off scot-free today of Zafarraya, you rascal. They’ll catch you tomorrow.

...

17/9/20 20:41. – Employee: One question: are you still doing the custody during the last shipment?

...

25/9/20 16:31 – Second applicant: He’s been in Marylen for most of the week.

25/9/20 16:32 – Second applicant: In Tabernas on Wednesday.

25/9/20 16:35 – Second applicant: Hector and his nephew are already coming up in the mornings.

...

28/9/20 16:15 – Employee: Work still starts at 5.45 am?

28/9/20 20:06 – Second applicant: I am there around 5.25 and 5.30 and everyone is already there.

28/9/20 20:06 – Second applicant: No, in Sorbas.

28/9/20 20:07 – Second applicant: Why has it been in four places?

28/9/20 20:10 – Second applicant: Now the risk manager is coming in for the morning shift, and Pelochó has arrived on time.”

6. In these WhatsApp exchanges, the employees discussed working hours, transport schedules and blasting sites, among other matters. The company became aware of these messages when they were submitted as evidence for

trial by the employee affected by the ERTE. The company found that the messages breached the contractual rules of good faith and confidentiality and dismissed all three employees on disciplinary grounds.

7. The applicants in the present case lodged two separate complaints against the company with the Almería Employment Tribunal no. 1, and the Almería Employment Tribunal no. 5, respectively. They relied on their right to a fair trial, the guarantee of indemnity, respect for private life and correspondence, freedom of expression and freedom of association. They sought that the dismissal be declared null and void on account of a breach of fundamental rights or, alternatively, that it be declared unreasonable. Although both tribunals found that the applicants' conduct had been reprehensible, they overturned their disciplinary dismissals: on 19 April 2021, the Almería Employment Tribunal no. 1 found the dismissal of the first applicant null and void on account of a breach of his right to respect for private life and correspondence, and on 13 May 2021, the Almería Employment Tribunal no. 5 declared the dismissal of the second applicant unfair considering the disproportionate severity of the sanction.

8. The company lodged an appeal with the High Court of Justice of Andalusia against each first-instance judgment. Whereas the first applicant lodged an objection to the company's appeal, seeking confirmation of the first-instance ruling, the second applicant lodged an appeal with the High Court of Justice of Andalusia, seeking the annulment of his disciplinary dismissal.

9. On 14 December 2021 and 13 January 2022, respectively, the High Court of Justice of Andalusia overturned the first-instance decisions and upheld the disciplinary dismissals. The court examined the applicants' argument that the messages had to be excluded from the case file because they had been obtained allegedly in breach of the applicants' right to respect for their private life. It found that, in line with the Constitutional Court's case-law, the evidence had not been obtained unlawfully, as the company had played no active role whatsoever in acquiring the evidence, but had rather become aware of it for reasons beyond its control, namely when it had been submitted as evidence for trial by a third party.

10. The court also found that the applicants had been informed of their employer's strict confidentiality policy, which prohibited the disclosure of work-related sensitive information, and that they had signed individual confidentiality agreements. Owing to the perilous nature of the company's operations, where security considerations were essential, the court concluded that the breach of the employee's confidentiality commitments sufficed as disciplinary grounds for dismissal. In particular, disclosing sensitive information, such as itineraries, schedules or blasting sites, via an unsafe channel such as WhatsApp, had rendered the explosive materials susceptible to interception by criminal actors, which might have triggered a serious national security threat.

11. The applicants lodged separate appeals on points of law with the Supreme Court, which were declared inadmissible on 31 January 2023 and 22 November 2022, respectively. They lodged separate *amparo* appeals with the Constitutional Court, which were found inadmissible for lack of constitutional significance, on 5 September 2023 and 27 October 2023, respectively.

THE COURT'S ASSESSMENT

A. Joinder of the applications

12. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. General ground of inadmissibility raised by the Government

13. The Government argued that the application should be declared inadmissible for non-exhaustion of domestic remedies on the ground that the applicants should have brought civil and/or criminal actions against the third employee who had disclosed the correspondence and which had subsequently led to their dismissal.

14. The Court considers it unnecessary to establish whether the applicants exhausted all effective domestic remedies within the meaning of Article 35 § 1 of the Convention, since the application is in any event inadmissible for the reasons set out below.

C. Alleged violation of Article 6 of the Convention

15. The Government asserted that domestic rules on the admissibility of evidence did not preclude a party to a dispute from relying on evidence lawfully procured in other legal proceedings to substantiate its conflicting claims. They also argued that this could not have had a chilling effect of deterring workers from bringing legal actions against their employers for fear of reprisals. They stressed that, in fact, the employee affected by the ERTE in the present case had had other procedural routes open to him to substantiate his claims, which had not involved breaching the company's confidentiality policy, such as requesting activity records or witness statements.

16. The applicants complained that the WhatsApp messages obtained in other labour proceedings had been admitted and used in evidence by the domestic courts to uphold their disciplinary dismissals. They argued that submitting a transcript of the correspondence had been essential for the third employee to challenge the suspension of his employment contract under the ERTE. They furthermore complained that the courts' decision to uphold the dismissals created a chilling effect on workers' right to judicial protection, as

they will inevitably refrain from raising legitimate complaints against their employers if they fear that the evidence submitted may be used against them afterwards.

17. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (*Schenk v. Switzerland*, 12 July 1988, § 45, Series A no. 140; and *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I [GC]). The Court should not act as a court of fourth instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (*Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015).

18. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence—even those allegedly obtained in contravention of domestic rules—may be admissible. The issue of whether an impugned item of evidence jeopardised the fairness of the proceedings has to be determined with regard to all the circumstances of the case, including the way in which the evidence was obtained, respect for the applicants' defence rights and the quality and importance of the evidence in question (*López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, §§ 150-151, 17 October 2019).

19. The Court observes at the outset that the way the evidence was obtained is not a matter in dispute between the parties. All parties acknowledge, and it has been verified by the Court, that the transcript of WhatsApp exchanges was lawfully provided by a third employee in earlier labour proceedings, without any company intervention, but disagree on whether it could be relied on in subsequent proceedings.

20. Concerning the applicants' defence rights, the Court notes that they had the opportunity to challenge the use in evidence of the WhatsApp messages on the grounds that they had been obtained in alleged breach of their privacy rights. The domestic courts dismissed the company's alleged liability, as it had learnt accidentally about the WhatsApp messages through its participation as the defendant in separate proceedings and without carrying out any surveillance or interception activity whatsoever.

21. As far as the quality of evidence is concerned, the Court notes that the applicants did not at any time dispute the authenticity or accuracy of the WhatsApp messages, their main complaint being based on its use as evidence in different proceedings against their interests. The Court thus does not see any reason to question the evidence's authenticity or reliability nor to seek its corroboration with any other material.

22. In the light of the foregoing, the Court takes the view that the use in evidence of the WhatsApp messages that the employer had obtained incidentally in separate legal instances did not undermine the fairness of the proceedings in the present case.

23. The Court concludes that this part of the application is thus manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

D. Alleged violation of Article 8 and Article 10 of the Convention

24. The applicants complained that the decision to dismiss them on disciplinary grounds had interfered disproportionately with their right to respect for their private life and correspondence under Article 8 and had amounted to a retaliatory measure in contravention of their right to freedom of expression under Article 10. Having regard to its case-law and the nature of the applicant's complaints, the Court, being the master of the characterisation to be given in law to the facts of a case (see, for instance, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), considers that the complaints raised by the applicant should be examined solely from the perspective of Article 8 of the Convention.

25. The Government argued that the WhatsApp correspondence covered work-related rather than personal or intimate matters, and as such, it fell outside of the scope of protection under Article 8. They further submitted that, even if a breach of privacy had been found, it would not have been attributable to the employer, but to the third employee who had submitted the correspondence in another trial.

26. In the applicants' view, the use of evidence acquired in previous proceedings to dismiss them on disciplinary grounds had amounted to an unfair and disproportionate interference with their right to respect for their private life and correspondence under Article 8. While they did not challenge the messages' authenticity, they emphasised their alleged lack of intent to cause harm and the absence of any potential or resulting damage inflicted on the company.

27. The Court observes at the outset that the object of Article 8 is not only to protect the individual against arbitrary interference by public authorities, but also to adopt measures to secure respect for private life even in the sphere of the relations of individuals between themselves (see *Söderman v. Sweden* [GC], no. 5786/08, § 78, ECHR 2013; *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 98 ECHR 2012; and *López Ribalda and Others*, cited above, § 110). Given that, in the present case, the alleged privacy breach was not committed by a State authority but by the employer and was upheld by the domestic courts, the Court will examine this complaint from the standpoint of the State's positive obligations under Article 8 of the Convention (see *Bărbulescu v. Romania* [GC], no. 61496/08, § 109, 5 September 2017; *Köpke v. Germany* (dec.), no. 420/07, 5 October 2010; *De La Flor Cabrera v. Spain*, no. 10764/09, § 32, 27 May 2014; and *López Ribalda and Others*, cited above, § 111).

28. The general principles concerning respect for private life and for the privacy of correspondence in the workplace have been summarised in *Bărbulescu* (cited above, §§ 113-23). The present case, however, differs considerably from that case, in which the employer had engaged in extensive monitoring of the employees' Yahoo Messenger accounts. In fact, in the present case, the company learned about the WhatsApp exchanges inadvertently, in the framework of separate proceedings in which the messages had been produced as evidence by the opposing party and without having carried out any surveillance or monitoring activity whatsoever. As the disclosure of the applicants' private correspondence occurred for reasons beyond the employer's control, it cannot be held liable for the alleged violation of the applicants' privacy, and it appears unnecessary to establish whether the disclosure of the correspondence complied with the proportionality and procedural guarantees against arbitrary surveillance, developed in the Court's case-law (see, *mutatis mutandis*, *Klass and Others v. Germany*, 6 September 1978, § 50, Series A no. 28, and *Bărbulescu*, cited above, §§ 120-21).

29. Notwithstanding the considerations above, the Court reiterates that the domestic authorities should ensure that an employee whose communications have been disclosed has access to a remedy before a judicial body with jurisdiction to determine, at least in substance, whether the impugned measures were lawful (see *Obst v. Germany*, no. 425/03, § 45, 23 September 2010; *Köpke*, cited above; and *Bărbulescu*, cited above, § 122). In the present case, the disciplinary proceedings were conducted in an adversarial manner, and the competent courts examined all relevant materials and delivered decisions in which they addressed all pertinent submissions of the applicants (see *Bărbulescu*, cited above, § 131).

30. The High Court of Andalusia found that the applicants had been informed of their employer's strict confidentiality policy, which prohibited the disclosure of work-related sensitive information, and that they had signed individual confidentiality agreements. Owing to the perilous nature of the company's operations, where security considerations were essential, the court concluded that the breach of the employee's confidentiality commitments sufficed as disciplinary grounds for dismissal (see paragraph 10 above).

31. In the light of all the considerations above, the Court concludes that the domestic authorities struck a fair balance between the interests at stake and that the State's positive obligations under Article 8 of the Convention have been fulfilled.

32. Therefore, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

RODRÍGUEZ QUINTERO v. SPAIN AND MARTINEZ MARTIN v. SPAIN DECISION

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 8 October 2026.

Martina Keller
Deputy Registrar

Diana Sârcu
President