# Breaking the silence: challenging legal limits to pursue human rights violations

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**Abstract:** Forced disappearance represents one of the most serious violations of human rights. In order to fight this humiliating practice, international community adopted the Convention for the Protection of All Persons from Forced Disappearance. Nowadays, Spain is being confronted with its bloody past under Franco's era. His fascist dictatorship is marked with grave violations of human rights. When turning to democracy, Spain opted for forgetting past wrongs. This consensus between former foes was embodied in the so-called Pact of Forgetting. Today, it serves as an argument for domestic courts for denying justice to the victims of Franco's regime calling for justice. Yet, the victims have been desperately calling for justice at Spanish courts and European Court of Human Rights. The Spanish courts, however, found themselves 'between the mill wheels'. They have to balance between the will of Spaniards embodied in the Pact of Forgetting, and the International Human Rights Framework.

**Keywords:** human rights; forced disappearance; crimes against humanity; Spanish Constitution; statute of limitations; international law; amnesty law; torture.

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## 1 Introduction

The (en)forced disappearance is a global phenomenon, roots of which can be traced back into the Latin American dictatorships [Preston, (1990), pp.41–42]. Forced disappearance is regarded as one of the most serious and worst interference with the fundamental rights of an individual. This practice can only be successfully applied as part of state policy. Therefore the conditionality by state policy is one of the specific elements forming the substance of enforced disappearance. Given the seriousness of interferences with individual rights and freedoms and the conditionality by state policy, international law considers this practice a crime against humanity.

Although the roots of forced disappearance originate in the Latin American countries, it was also practiced in some European states. In Nazis Germany, for example, forced disappearance was massively applied by the regime under the doctrine known as *Nacht und Nebel Erlass* proclaimed by Adolf Hitler on December 7, 1941. The main objective of this ordinance was prosecution of the crimes against Reich or against occupation power in occupied territory. As a result, more than 7,000 persons in France, Belgium, Luxemburg, Norway and Holland disappeared; they were deported into the concentration camps without a fair trial and stripped of their fundamental rights and freedoms [Nacht und Nebel – Haftlinge, Haus der Bayerischen Geschichte]. But later in 60's and 70's forced disappearance was widely applied by Latin American dictatorships. For instance, in Chille, *Comission Nacional para la Verdad y la Reconciliacion* estimates that during the era of Augusto Pinochet dictatorship (1973–1990) at least 3197 people disappeared [Comisión Nacional para la Verdad y la Reconciliacion, 2018]. However, recent studies show that forced disappearance has been applied in many conflict zones, like Syria and Iraq. In Iraq, government is blamed for detention and forced disappearance of dozens individuals in the last 4 year's war on terror group Islamic State [Human Rights Watch, 2020; Nowak, (2009), p.152]. In China, the forced disappearances serve as an instrument of political oppression [Illmer, (2018), BBC]. Another example where forced disappearance was systematically applied is Spain.

In 1979, just four years after the death of Francis Franco Bahamonde, Spain turned to democracy and new constitutional monarchy was established. But to this day the new young democratic state has not dealt completely with the past. It is estimated that at least 300,000 people were killed during the civil war (1936–1939) but it is not yet clear how many victims died in the fighting and how many were the victims of atrocities committed against the civilian population by Franco's allies [Preston, (1990), pp.41–42]. The fascist dictatorship that General Franco raised in 1939 and which lasted until his death in 1975, left a bitter legacy in Spanish society; recent studies show that the Spain is now ranked second place among all countries where the most people disappeared [Only Cambodia is worse than Spain, International Commission on Missing Persons (2018)]. Although we do not have accurate data on the number of missing persons, it is estimated that more than 150,000 people have disappeared during a 36-year dictatorship [Urdilo, (2012), pp.44–47].

For Spain, it was crucial to deal with its violent past during the transition toward democracy. Similarly, when Nazism was defeated in Germany, re-born democratic state had to deal with its non-democratic violent past. In transition to democracy it is vital for a state to deal with its past and make a 'thick line' to close the past. Those responsible for the atrocities committed during the era of Nazism were brought to justice (Matthäus, 2008). However, unlike Germany, Spain has opted for a completely different – today

oftentimes sharply criticised – approach. In response to Spanish violent past, in 1977, soon after General Franco's death Spanish Parliament passed Ley 46/1977 de 15 Octubre 1977, de Amnistia better known as *'Pacto del Olvido' (The Pact of Forgetting).* The primary objective of this legislative act was to support the transition towards democracy. The law, however, also amnestied war crimes and crimes against humanity committed by the Franco's regime. Thus, the law provided a legal shield for those who committed atrocities during the Franco era. This provision sparked the controversies in the beginning of Millennium. It has provoked negative reactions not only in the political representation, but also among the human rights NGOs and in particular among international bodies for the protection of human rights such as United Nations or Council of Europe. Thus it is not surprising that in 2002 Spain was listed for the first time in a list of countries that still did not resolve the problem of forced disappearance (UN Working Group on Forced Disappearances, 2002). In the Report published in 2002, the UN Working Group on Forced Disappearance explicitly stated that Spain has failed to investigate atrocities committed by Franco's regime. By failing to do so, Spain also breached international law, which stipulates a duty of state to investigate cases of systematic human rights violation (UN Working Group on Forced Disappearances, 2002).

The main objective of this paper is to map the state of art as regards the access of Spanish courts to right to justice, right to effective remedy and right to truth under the International Covenant on the Protection of all Persons from Forced Disappearance. In the first part, the paper deals briefly with the concept of forced disappearance as a crime against humanity and its attributes. The second part then focuses on the barriers in Spanish legal system that complicates right of the victims for justice, namely the amnesty law and constitutional constrains. The third part will then analyse judicial practice of Spanish courts and the limits of state liability, both from the perspective of international law and decision-making practice of international bodies for the protection of human rights as well as from a viewpoint of Spanish legal order.

## 2 Forced disappearance as a crime against humanity

### *2.1 General definition*

The term '(en)forced disappearance' [from a definitional point view, more versions of the term are acceptable; sometimes a term 'involuntary disappearance' is used, but first term – enforced or forced disappearance prevails among academics; if not stated otherwise, we will use 'forced disappearance' in the following paragraphs] implies a series of international lawrepressed acts that *per se* can be regarded as a serious interference with the fundamental rights and freedoms of individuals and which, in the complexity, constitute one of the most serious crimes against humanity – forced disappearance. These 'acts' include illegal detention, kidnapping or other means of deprivation of liberty by agents of the state or by persons acting under state authority or with the support of the state, without communicating place where the missing person is located, thus placing such a person 'in a hole' out of legal protection (International Convention for the Protection of All Persons from Enforced Disappearance). This in complex creates an extra-legal regime, where missing person is treated regardless of human rights and human dignity. In this extra-legal regime, missing individual is often subjected to illegal interrogation methods including torture, degrading treatment or

punishment, extra-legal punishments, including death penalty. This would lead, in its complexity, to *de facto* and *de jure* disappearance of and individual.

The main purpose of forced disappearance is a kind of 'dehumanisation' of an individual. This process of 'dehumanisation' involves two interrelated levels: while the first entails deprivation of the individual's personal freedom, the second includes the removal of any legal protection, which de facto negates the fundamental rights and freedoms of disappeared individual [Agamben, (1998), pp.158–159]. In other words, the disappeared person is deprived of his right to rights and finds himself de facto between life and death when his existence is confined to a mere biological entity whose existence or non-existence is determined by another sovereign power [Kesby, (2012), p.108 et seq.]. The victim of forced disappearance is usually tortured and oftentimes murdered, the remains are then buried in an unknown place, thrown into the sea or completely destroyed. The victim's family will never know what happened to their beloved one. As an example of such practice can be a discovery of mass graves in the Spanish autonomous region of Asturias. Here, at the time of Franco's dictatorship, 30 people including patients and medical staff, were removed from the Republican Hospital in Villaviciosa, and all of them were executed without any trial.

It is self-evident, that the severity of the crime of forced disappearance is that it fatally affects several fundamental rights and freedoms of individuals. These includes in particular right to life, the freedom not to be tortured or not to be subjected to inhuman or degrading treatment or punishment, the right to human dignity, the right to a fair trial and the right to a public hearing of the criminal case before an independent court. This is why forced disappearance is regarded as a crime against humanity and why it has attained status *jus cogens* in international law [Andreu-Guzman, (2001), pp.1–22].

## *2.2 Forced disappearance in a case-law of international bodies for the protection of human rights*

### *2.2.1 Early development*

It is worth to mention, that first references on missing persons can be find in the Optional Protocol I to the Geneva Conventions. Article 32 of the Optional Protocol I enshrined the right of the family of missing or dead person to know the fate of their beloved one. To this right corresponded the obligation of the State to search for the missing person and other obligation relating, in particular, to ensuring access to the burial ground and facilitating the return of the remains of the deceased [Additional Protocol I to the Geneva Conventions (1949) and relating to the Protection of Victims of International Armed Conflicts (1977)]. Despite the basis laid down in the Geneva Convention, the definition of forced disappearance was not grounded in international law until 1978 and thus international law lacked any legal instrument against the forced disappearance practiced by the states. In 1979 France took initiative and submit proposal of the resolution no. 33/1973/UN, which mentioned the forced disappearance for the first time. In 1980 a special working group on forced disappearance at the UNHRC was created. In 1992, just 4 years after the Velasquez Rodriguez judgment, the United Nations General Assembly adopted Resolution A/RES/47/133 on the protection of all persons from forced disappearance, where individual's criminal responsibility for committing this crime under international law was established (Declaration A/RES/47/133 on the Protection of All Persons from Enforced Disappearance). According to this Resolution, if forced

disappearance is practiced on mass scale or systematically, then it can be regarded crime against humanity. However, IACHR and Parliamentary Assembly of the Council of Europe share a different view; in their view the forced disappearance constitutes the crime against humanity per se (see judgment of the IACHR, Merchants v. Colombia; Resolution of the Parliamentary Assembly of the Council of Europe no. 828/1984). The general protection of the individual from forced disappearance was definitely enshrined in international law in 2007 when UN Convention on the Protection of All Persons from Enforced Disappearance was adopted by the UN General Assembly (hereinafter referred to as 'CPED') [Resolution UN GA A/RES/61/177 (2006)]. Similar provisions are contained in the Inter-American Convention on Enforced Disappearance [ACED (1994)], the Rome Statute of the International Criminal Court, and in the Resolution of the Parliamentary Assembly of the Council of Europe (Parliamentary Assembly of the Council of Europe).

It took almost 30 years from the first discussion on the prohibition of forced disappearance in international law until the CPED was finally adopted. The CPED confirmed already used definition of forced disappearance and provided that forced disappearance may constitute a crime against humanity if applied in mass scale or systematically. In this respect, CPED requires states to take appropriate measures in order to investigate all cases of forced disappearances and prosecute persons responsible for committing such a crime. In this context, it is necessary to mention also International Convention on the non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity adopted by UN General Assembly in 1969 [UN Resolution 2391 (XXIII), UN General Assembly]. Under this Convention, war crimes, as defined in the Statute of the Nuremberg International Military Court of Justice of 8 August 1945 and particularly serious violations of the Geneva Conventions for the Protection of War Victims, are not subject to the statute limitations. Also the crimes against humanity, regardless whether committed in time of peace or in times of war as defined in the Statute of the Nuremberg International Military Tribunal, are not subject to any statute limitations. In other words, it is irrelevant whether crime against humanity or war crime is crime under national law. Individual can be prosecuted for such crimes under international law. Therefore states are required to investigate all cases and prosecute persons responsible for committing crimes against humanity and war crimes, which are not subject to any statutory limitations. As we will see later on, the Spain is not a member of the International Convention on the non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which is reflected in a judicial practice of Spanish's courts in resolving claims arising from CPED.

### *2.2.2 Forced disappearance in a case-law of international bodies for the protection of human rights*

Until late 80's forced disappearance appeared to stay out of interest of the international bodies for protection of human rights. The first breakthrough decision, which challenged forced disappearance, was held by the Inter-American Court of Human Rights (hereinafter referred to as 'IACHR'). In *Velasquez Rodriguez v. Honduras* the IACHR held that although forced disappearance is not prohibited itself by the American Convention on Human Rights (hereinafter referred to as 'ACHR'), it nonetheless violates several fundamental rights and freedoms guaranteed by ACHR and breaches the principle of human dignity on which ACHR is based [Velasques Rodriguez v. Honduras (1988),

IACHR]. In this breakthrough decision the IACHR recognised forced disappearance as a practice, which is not compatible with ACHR and which breaches several fundamental rights. In *Goiburu et al. v Paraguay* the IACHR then granted status *jus cogens* to the prohibition of forced disappearance [Goiburu et al. v. Paraguay (2006), IACHR; Sarkin (2012), pp.537–583].

The case-law of the European Court of Human Rights (hereinafter referred to as 'ECtHR') in respect to state responsibility for forced disappearance is fairly constant and essentially coincides with the IACHR approach. In *Aslakhanova and Others v. Russia* the ECtHR held that specific nature of forced disappearance entails the maintenance of uncertainty and the lack of accountability of public authorities; this uncertainty is accompanied by the efforts of state authorities to hide the fact and the fate of the disappeared person individual respectively [*Aslakhanova and Others v. Russia* (2012), ECtHR]. In many cases, the ECHR reiterated that national statutory limits are irrelevant when it comes to crimes against humanity [*Kolk and Kislyi v. Estonia* (2006), ECtHR]. The victims of forced disappearance usually invoke violations of rights in article 2, 3, 5, 8 and 13 of the European Convention on Human Rights. In many cases, the ECtHR, however, given the time gap between the alleged violations of human rights guaranteed by ECHR and submission of complaint to the ECtHR has to deal with issue of *ratione temporis*. In *Janowiec et al. v Russia*, the ECtHR held that a state cannot be held liable under the ECHR for not investigating even the most serious crimes under international law if they were committed before the ECHR was adopted [Janowiec et al. v. Russia (2013), ECHR]. In *Varnava et al. v Turkey*, the Court explicitly acknowledged that jurisdiction of the Court could be established even if the victim's death occurred before the ECHR entered into force [*Varnava et al. v. Turkey* (2009), ECHR], however, it may be established only if, following the adoption of the ECHR, the State authorities continued to breach procedural obligation under article 2 of the ECHR or if the procedural obligation under Article 2 ECHR preceded the ECHR, but close temporal link exists between the breach of the rights and adoption of the ECHR [*Šilih v. Slovenia* (2009), ECtHR]. In *Varnava et al. v. Turkey*, the Court also called for a complaint to be brought before the ECtHR without undue delay if the obstacles preventing submission of the complaint were removed. It means, in the context of forced disappearance cases, that if too long time has elapsed since the act that fulfils the criteria for forced disappearance, a complainant must demonstrate that he exercised due diligence, particularly to prove that the authorities have effectively investigated the case, that there have been no unjustified delays and that the authorities have made progress in investigation, or at least that complainant reasonably hoped that investigation will continue and for this justified reason the complainant has not lodged a complaint with ECtHR [*Varnava et al. v Turkey* (2009), ECtHR].

## 3 The 'barriers' contained in domestic law

As was demonstrated above, Spain is committed to comply with International Human Rights Framework in regard to the protection of all persons against forced disappearance. While the previous section of this paper dealt with the characteristics and definition of forced disappearance, following section will concentrate on the rights stemming from CPED and Spanish constitutional order. The reader should be aware of the fact that the approach of internationalist scholars differs substantially from a view of

constitutionalists. Under internationalist doctrine, national law is perceived as a mere fact and vice versa, for constitutional scholars, international law is widely perceived as an international legal framework, which limits, however, lies in the sovereignty of the state. Thus, none of these scholastic views itself can be helpful when examining issues which roots originated in national law, nor when examining reasons and background behind the Spanish approach towards obligation to investigate and prosecute forced disappearance cases. We will therefore take step out of the exclusively 'constitutionalist' and/or genuine 'internationalist' view. Instead, focus will be on balanced approach, which would take into account key elements of both domestic and international law.

### *3.1 Pacto del Olvido: forgetting the past wrongs*

As was examined above, the CPED assures that no person may be subject to forced disappearance in whatever case. This right is applicable without any limitation both during the war and in peacetime. It has even attained *jus cogens* status under international law, meaning that state cannot derogate from this right under any circumstances and no deviation is allowed [Sarkin, (2012), pp.537–583]. The CPED was ratified by Spain in 2009, as a signatory, it must comply with. Following rights constitute pillars of CPED:

1 the right of victims or relatives of the victims to get the truth about the fate of disappeared person

2 right to justice

3 the right to an effective remedy

4 right to prevent the recurrence of such acts by the state.

The first of these rights includes the victim's right to know all the circumstances of the forced disappearance of missing persons, including the fate of the disappeared person and information on the investigation; this right corresponds to the state obligation to take adequate measures to ensure that the victim's rights resulting from CPED are safeguarded. The latter right includes the victim's right to justice, which on the other hand corresponds to the state's obligation to investigate and prosecute the perpetrators of the forced disappearance' [UNWGED, (2002), Spain].

As Spain turned to the democracy, 'a culture of silence' became the norm in the society, but it was later anchored in law. The well-known example of this 'culture of silence' is Pacto del Olvido, which is based on the so-called principle of 'collective amnesia' [Davis, (2005), pp.858–880]. The importance and benefits of this law are indisputable; it helped Spain to hold first peaceful and democratic election in the country after Franco's death. This amnesty law allowed the return of political opponents from exile back to Spain, it amnestied all those imprisoned for anti-state activity during the Franco's regime. So it still represents one of the fundamental pillars of Spanish democracy. However, it has also codified impunity for those who may have committed atrocities on civil population, especially – but not limited – to the politically motivated crimes that occurred before the transition. The main objective of this law was simply to let bygones be bygones and concentrate on the future; pursuing that objective, Article 2 of the Pacto del Olvido expressly provides: *En todo caso están comprendidos en la amnistía: (...) f) Los delitos cometidos por los funcionarios y agentes del orden público contra el ejercicio de los derechos de las personas.* It follows that the amnesty explicitly

applies to the offences violating fundamental rights and freedoms of an individual committed by state agents for the purpose of protecting public order. Thus, under this Pact of Forgetting the Franco's henchmen could and would not be tried for any past wrongs [Guarino, (2010), p.66].

In a view of the international law, amnesty of this type is considered a serious interference with the fundamental rights and freedoms of an individual; by adopting such an amnesty law, the state *de facto* contributes to an atmosphere of impunity for the perpetrators of serious crimes under international law, thereby undermining the democratic constitution of the state, while also contributing to further serious violation of human rights [*Rodriguez v. Uruguay* (1994), UNHRC]. The states may not grant impunity to the perpetrators of the crimes against humanity, if they violate fundamental rights guaranteed by CPED, nor it may adopt amnesty law, which aim is to ensure impunity to the perpetrators of the most serious crimes against humanity *ex post facto* [General Comment No. 31 (2004), UNHRC]. Similarly, the provisions of Articles 16 and 17 of the UN Declaration on the Protection of All Persons from Enforced Disappearance provides that persons, suspected of committing a forced disappearance crime under Article 4 (1) of the Declaration, may not be amnestied or otherwise exempted from their criminal liability for the crime committed, neither can they be brought before a military tribunal or otherwise favoured [CPED, article 18]. Likewise, the ECtHR also constantly requires effective investigation of the forced disappearance crime and related violations of the fundamental rights and freedoms of individuals and amnesty laws are generally perceived null and void.

However, the aforementioned Pacto del Olvido appears to be clearly in conflict with Spain's obligation resulting from the CPED. In addition, Spain also fails to abide obligation stemming from the International Covenant o Civil and Political Rights (hereinafter referred to as 'ICCPR'); according to article 7 ICCPR no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. The atrocities committed by Franco's henchmen are viewed as crimes against humanity by the UNHRC and require effective investigation [Guarino, (2010), p.72]. Nevertheless, the common practice of Spanish courts is completely different. When the Spanish Highest Criminal Court – Audiencia Nacional no. 5 tried to open the case of forced disappearance, it found out that more than 114 thousands people disappeared between 1936–1951 (see below). But the Spanish courts continually refuse the lawsuits filled by the victims or relatives of disappeared persons, if the indictments challenge events which happened before December 15, 1976. Furthermore, given the 'culture of silence', the central register of missing persons has not yet been established.

From an international law standpoint Pacto del Olvido clearly contradicts obligation stemming from the UN Convention on the non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity. Moreover, Spain has not become a signatory to the Convention mentioned above. This fact is reflected in the case-law of Spanish courts in dealing with claims under the CPED. Nothing changed on either the amendment of the Spanish Criminal Code of 2003, which explicitly provided that war crimes and crimes against humanity may not be subject to the statutory limitations; but the Spanish courts have repeatedly excluded retroactive application to all cases before the amendment of the Criminal Code entered into force in 2003 [Antonio Gutierrez Dorado y Carmen Dorado Ortiz (2006), Juszgado de Instruccion no. 2 de Cordoba; Cuartos J. El Pais 2003; Codígo Penal 2015].

### *3.2 The constitutional roadblocks*

Although Spain has been continually refusing to break the principle of collective amnesia embodied in Pacto del Olvido, some efforts to break this principle has been apparent since 2000. From 2000 on new non-governmental organisation focusing on uncovering and excavating mass graves across the Spain were established. In 2007 the Spanish Parliament adopted law well known as 'Ley de Memoria Historica' [Ley 57/2007]. Although it was undoubtedly a step forward, it lacked to provide any obligation of state to investigate the cases of forced disappearance. Quite the contrary, it presupposed certain level of activity on side of the families of disappeared. Article 11 of this law only laid down obligation of state authorities to cooperate with the victims. However, Pact of Forgetting still represents great obstacle in investigation of forced disappearance cases. In comparison to the national level, some attempts to break Pacto del Olvido can be seen in the autonomous community of Catalonia; in 2016 Associacion para la Recuperacion de la Memoria Historica altogether with Comissio de la Dignitat submitted a proposal of the law on historical responsibility which included obligation to investigate and prosecute all offences committed under Franco's regime on the territory of Catalonia, where more than 4.700 persons disappeared (Catalan News, 2016).

Notwithstanding the attempts of local governments like in Catalonia, the victims of forced disappearance are confronted with harsh reality in the courts. So far, all cases of forced disappearance have been rejected by Spanish courts on the ground of amnesty contained in Pacto del Olvido. Thus, the courts de facto resigned for any investigation of forced disappearance cases, although they should abide international law. Why is this so?

The fulfilment of the CPED obligations for Spain is complicated by several factors. First of all, when examining the core problem, i.e., rejection of all forced disappearance cases, we need to understand to Spanish constitutional architecture. In terms of hierarchy, the Spanish Constitution is superior to all other legal acts, the EU law ranks second place and the international treaties are subordinated to the Spanish Constitution as well as to the EU law. In addition, the validity of international treaties is subject to publication in gazette; consequently, international law is subordinated to constitutional law [Monseratt and Abat, (2010), pp.1–40]. According to Article 96 of the Spanish Constitution, international treaties do not become integral part of the Spanish legal order until they are published. The Spanish Constitutional Court (el Tribunal Constitucional) held that if an international treaty is inconsistent with certain provisions of the Spanish Constitution, then such treaty cannot be ratified until such a conflict has been rectified by adopting constitutional amendment (Declaración del Tribunal Constituciónal of July 1, 1992, D.T.C. 1/1992; Declaración del Tribunal Constituciónal of December 13, 2004, D.T.C. 1/2004). If certain provisions of the international treaty are in conflict with the Constitution, then such provisions cannot be applied. In other words, the Spanish Constitution is superior to all international treaties that are of constitutional nature regardless whether international human rights treaties or others.

From a constitutional standpoint, the next obstacle represents Article 25 (1) of the Spanish Constitution. It provides *nullum crimen sine lege* principle, which simply means that no one may be convicted or sentenced for actions or omissions which, when committed did not constitute a criminal offence. The next provision of the Spanish Constitution that must be taken into account is Article 9 (3), which contains a clause of non-retroactivity of punitive provisions that are not favourable or restrictive of individual rights (Constitución Espanola (1978), article 9). In its entirety, it makes virtually

impossible to interpret these provisions in accordance with international human rights treaties like CPED [Guarino, (2010), pp.61–85].

## 4 Challenging legal limits to pursue human rights violations

### *4.1 First attempt to break the silence*

Given the constitutional constrains mentioned above, one might raise concern whether Pacto del Olvido may be ever broken and if so on what ground?

The Spanish highest courts first entered into murky waters in 2008; several victims of forced disappearance and 19 interest groups filled petition against the perpetrators of the crimes against humanity at Audiencia Nacional [399/2006 V (2008), Audiencia Nacional no. 5]. Although the case brought to the court originated in 1930's, it was not dismissed by the court on the basis of Pacto del Olvido. Instead, investigating judge Baltazar Garzon accepted their petition and for the first time in history of democratic Spain allowed the investigation of crimes against humanity committed under the Franco's regime and admitted the right of victims to justice and right to an effective remedy stemming from international law. In its decision on the admissibility of criminal prosecution, the Court relied primarily on the International Human Rights Framework. The Court based its arguments on admissibility not only on a specific case brought before him, but the Court applied it in the wider context of the socio-political aspects of the time, when the crimes were allegedly committed. The Court held that all the reasons raised by the complainants must be considered in the wider context of planned and systematic oppression of the Franco regime, which was aimed at eliminating political opponents; those crimes even if committed in 1936, must be classified as crimes against humanity under the Spanish Criminal Code [Diligencia Previas 399/2006, V (2008), Audiencia Nacional no. 5]. According to the Court, forced disappearance was applied systematically and on mass scale by state authorities or their agents in order to prevent identification of victims, which in turn makes difficult or even impossible to hear the case before the courts. The aim of this massive and systematic attack was elimination of all political opponents of the Franco's regime. The Court also sought to respond to frequently raised objection of non-retroactivity clause. Court proceeded from the definition of forced disappearance contained in CPED and it emphasised the nature of forced disappearance as a continuing crime. The Court rightly pointed out that forced disappearance is initiated by the illegal detention of a person and continues until the state releases information to determine the fate of the disappeared person. This key characteristic of forced disappearance as a continuing crime is essential for allowing the prosecution of the perpetrators even if the act was not deemed criminal offence in the time when it was committed but it constitutes the crime against humanity under valid Criminal Code. This breakthrough into the constitutional principle of non-retroactivity is justified by the fact that Franco's regime used forced disappearance to an extent that fulfilled the massiveness and systematic nature of the attack on fundamental rights and freedoms of individuals; in a view of the Court such conduct constitutes crime against humanity under international law, which is non-statute barred and cannot be subject to the amnesty contained in Pacto del Olvido [Urdilo, (2012), pp.44–47]. The investigating judge also condemned the laxity on part of the state authorities, combined with constant obstruction by the prosecutor's office against the opening of investigation of crimes

committed during Civil War and era of the Franco's dictatorship that followed. Nevertheless, State prosecutor argued that alleged crimes were committed more than 70 years ago and that the Court ignored amnesty law passed in 1977, which covered all the crimes committed before this date, the argument of statute of limitations was also raised [Burnett, (2008), p.A7].

The case was finally ceded to regional courts and dismissed thereafter. In 2012, in its 'Garzon' decsision, Tribunal Supremo held that Pacto del Olvido should be seen as the legislative embodiment of a political consensus of both formerly warring parties; this amnesty law was not imposed by force by the winner of Civil War in order to conceal crimes committed by one of the parties. The transition to democracy must be understood as a manifestation of the will of the Spaniards and so the Pact of Forgetting, therefore for this reason, no court has a right to challenge this process. Pacto del Olvido may only be abolished by the Spanish Parliament (Manos Limpias and Association Liberty and Identity vs. Judge Baltasar Garzon STS 101/2012). By this decision, the Spanish Tribunal Supremo definitely shut the door to all the victims of the Franco regime seeking justice before domestic courts, while confirming deviation from the course of International Human Rights Framework.

### *4.2 European court of human rights as a last resort?*

Given that the Spanish Tribunal Supremo, in the Garzon decision referred to above, placed a bar between victims of forced disappearance and Spanish justice, the ECtHR appears to be the last resort.

The complainants applied to the ECtHR for breach of Articles 2, 3, 4, 5, 8 and 13 of the ECHR. But given the long delay, the ECtHR first had to deal with the question of admissibility of the complaint from a *ratione temporis* point of view. Spain acceded to the ECHR in 1979, so the ECtHR has no jurisdiction over the events that took place in 1936, long before the country's accession to the ECHR and 14 years before the entry into force of the ECHR as such. In relation to the alleged procedural obligations of the state to effective investigation of alleged violations of the rights referred to in Article 2 ECHR by the state, the Court reiterated his conclusions in Varnava et al. v Turkey, that this commitment represents a separate procedural obligation under Article 2 ECHR, nonetheless, jurisdiction of the Court may be established even if the victim's death occurred before the ECHR entered into force [Varnava et al. v Turkey (2009), ECtHR]. Nevertheless, the jurisdiction of the Court to hear the case from *ratione temporis* point of view cannot be indefinite; it can be established only if, following the adoption of the ECHR, the state authorities continues to breach the procedural obligation resulting from Article 2 ECHR, if the breach of the procedural obligation under Article 2 ECHR preceded the ECHR, but there is a close temporal link between the breach of the obligation and the adoption of the ECHR [*Varnava et al. v Turkey* (2009), ECtHR; *Šilih v. Slovenia* (2009), ECtHR].

In regard to alleged violation of the rights guaranteed by Article 3 ECHR, the Court once again made a reference to *Varnava et al. v Turkey* and stated that in forced disappearance cases, the complainant should not wait too long with lodging the complaint to ECtHR. The longer the period from forced disappearance elapsed, the less is the chance of thorough investigation of the case; reason for that is that the evidence may disappear, witnesses may die or their stay may become unknown. The complainants are therefore obliged to ensure that the case is brought to the Court without undue delay.

Thus, if too long has elapsed since the conduct, which is intended to establish forced disappearance crime, due diligence must be proved. In order to prove due diligence, the complainant must prove that the authorities effectively investigated the case without unreasonable delays, that the progress in investigation was made or that there was a reasonable hope that the investigations would continue and for those justified reasons the complainant had not lodged a complaint with the ECtHR [*Varnava et al. v Turkey* (2009), ECtHR]. Nevertheless, if the public authorities have not been active for several years since the complainant was able to first lodge a complaint with the ECtHR, then he has not acted with due diligence as required by the ECtHR case law. And it was also the case discussed herein.

The ECtHR concluded that the complainants had failed to prove due diligence and had lodged a belated complaint with the ECtHR. In the opinion of the ECtHR, the complainants were able to claim an infringement of the ECHR for the first time on July 1, 1981, when the ECHR became binding for Spain. Since no investigation by the state authorities took place between 1981 and 2006, it had to be clear to the complainants that there was no real chance of discovering the body of the missing person, nor that the fate of the missing person could be ascertained [*Antonio Gutierrez Dorado and Carmen Dorado Ortiz v. Spain* (2012), ECtHR]. With regard to the above said, the ECtHR dismissed the complaint on the basis of inadmissibility. The key point of Court's argument was a breach of due diligence resulting in failure to file a complaint with the ECtHR without undue delay.

Similar conclusions led the ECtHR to reject the complaint in *Fausto Canales Barmejo v. Spain* [*Fausto Canales Bermejo v. Spain* (2012), ECtHR]. In the latter case, however, the ECtHR's decision had even a bitter taste. The judgment of Tribunal Supremo in 'Garzon' case have preceded the decision of the ECtHR rejecting the complaint in Fausto Canales Barmejo case. In Garzon case, the Tribunal Supremo closed the doors for Franco's victims calling for justice at domestic courts [Manos Limpias y Associacion Libertas y Identitas c. Juzgar Baltasar Garzon, (2012), Tribunal Supremo].

Indeed, it is possible to understand the ECtHR's arguments regarding the due diligence, which must be demonstrated by the complainants and the subsequent requirement to lodge a complaint without undue delay, but in my view, these high demands, placed on the complainants, cannot be objectively fulfilled in a majority of cases. What the ECtHR missed in analysed decisions is the wider context as explained by judge Garzon in his landmark decision (see above). First of all, the socio-political context of the time should be emphasised. Just a few years after Spain's democratic transition, it was impossible for many victims to immediately launch a search and invoke a breach of the ECHR before the ECtHR. We cannot overlook the 'culture of silence', which became the norm after the Spain entered into era of democracy. As Angela M. Guarino puts it after 1976 "silence has shrouded the wrongs committed during the Civil War and the near forty-year dictatorship that followed" [Guarino, (2010), p.62]. Given the 'collective amnesia' which sparked in the society after turning to democracy, it would become extremely difficult to call for justice before domestic courts. On the contrary, in my opinion, the ECtHR should take more into account the specificities of a particular case and not applying the due diligence requirement globally.

It is clear, that in both cases analysed, the too long time interval since the forced disappearance represents the most pressing problem for the ECtHR. From the complainants' point of view, the most critical moment seems to be the requirement to lodge the complaint without undue delay, if the circumstances preventing access to the

ECtHR have ceased to exist [*Varnava et al. v. Turkey*, (2009), ECtHR]. The problem is that the ECtHR has so far been confronted with cases that have taken place since 1936 and that the families of the victims were able to file a complaint to the ECtHR only after the socio-political situation in the country has stabilised. But in a view of the ECtHR the long delay with lodging a complaint with the ECtHR and lack of due diligence are the main reasons for rejecting complaints. However, the ECtHR appears to ignore one of the most important characteristics of forced disappearance; the nature of ongoing crime. As international law demands states to investigate all cases of forced disappearance, then a lack of effective investigation on part of the state must be interpreted as continuing violation of states' obligation resulting from CPED. Accordingly, such a violation amounts to the continuance of a crime of forced disappearance, which continues until the fate of disappeared persons is ascertained. Thus, the approach of the ECtHR appears to be rather formalistic; if the Court would have put more focus on continuing character of the forced disappearance, then it would have reached the conclusion, that the breach of the rights guaranteed by the ECHR continues and therefore, the jurisdiction to hear the case is established.

Both decisions analysed suggest that, despite the socio-political context and seriousness of the interference on human rights guaranteed by the ECHR, the ECtHR does not intent to abandon the strict rules arising from its case-law. Thus, the doors for justice for thousands of victims of Franco's dictatorship and their families remain closed.

### *4.3 The end of Impunity (?): Gonzalez-Pacheco case*

Notwithstanding abovementioned approach of the Spanish courts, the calls for justice, backed by both domestic and international human rights NGOs, continued. Under strong international pressure of UNHRC, UN Committee against Torture and others, as well as victims of Franco's regime, the Spanish courts were again confronted with criminal demands for justice. As Spanish courts are reluctant to pursue criminal offences from Franco's era, the plaintiffs submit complaints in other countries under international law, which allow investigation to be carried out outside the country concerned, if it fails to investigate crimes against humanity. Thus, in 2013 Argentinian Court issued an international warrant for Juan Antonio Gonzalez Pacheco, well-known as 'Billy el Nino' ('Billy the Kid'), former police officer of Political Social-Brigade, for 13 counts of torture [Carracedo, (2018), The Guardian]. Those crimes were allegedly committed in 1970's at the outset of Franco's dictatorship. However, in 2014 Audiencia Nacional rejected the order, arguing that statutory limitation does not allow for criminal prosecution for crimes committed almost 40 years ago [Junquera, (2018), El Pais]. Under the auspices of several human rights NGOs' like Rights International Spain and CEAQUA, several lawsuits were filled against *'Billy the Kid'* again in 2017. He was charged for alleged involvement in brutal acts of torture, degrading treatment and violence against political prisoners, which were committed in the last years of Franco's regime. However, in February 2018, the Madrid District Court filled a case arguing that crimes of torture, of which *'Billy the Kid'* was accused of, had expired. Plaintiffs lodged an appeal to Provincial Court of Madrid. However, the Provincial Court endorsed the decision of Madrid District Court, arguing that "the crimes committed by Billy the Kid cannot be considered a crime against humanity because it lacks the requirement of being a systematic and organized attack on a group of the population". The Provincial Court also reinforced amnesty law contained in the Pact of Forgetting (Liberties, 2018). But in

2018, the accusations of torture as well as ongoing international pressure prompted Government to act. As result *'Billy the Kid'* was stripped off the medals he was awarded for his service as well as the extra pension.

One year later, in 2019, the Madrid Court number 49 has opened for the first time the investigation of alleged crimes against humanity committed by Gonzalez-Pacheco and four others former policemen. The investigating judge Maria Isabel Durantez admits that the complaint presented by Miguel Angel Gomez represented by the platform of victims CEAQUA, presume 'the possible existence of a criminal offense' [Un juzgado acepta por primera vez investigar a Billy el Nino (2019), El Pais] that needs thorough investigation. However, on the one side we must applaud decision of the court to pursue justice, on the other hand, one might recall the attempts for investigation of the crimes against humanity made by former judge Baltazar Garzon, which was finally dropped due to constant obstacles from conservative platforms and the State prosecutor (see above). Although this legal case does not challenge directly forced disappearance, nonetheless it challenges the crimes against humanity *vis-á-vis* the Pact of Forgetting. At this stage of the court hearing, it remains unclear, whether investigating judge would proceed with the case and whether she would be facing similar obstacles like judge Baltazar Garzon, who was suspended and even put on trial for alleged abuse of power. It is, however, clear that investigating judge must step out of the Spanish legal system and apply International Human Rights Framework, she would like to hear and try the case as crime against humanity. The strength and importance of Pact of Forgetting will be tested again.

## 5 Conclusions

In the process Spain's transition to democracy, political consensus was reached between two formerly warring parties of the Spanish Civil War on the need to draw a line beyond the past and the future. These efforts had been supported by the Pact of Forgetting, which became an integral part of the country's transition process. This amnesty law not only amnestied political prisoners, but also Franco's allies who often times have committed the most serious crimes against humanity during Spanish Civil War and Franco's dictatorship that followed. Despite its undisputable importance, the Pact of Forgetting has always had negative impact on the victims of forced disappearance; as a result, their families were denied the rights to truth and justice guaranteed by the CPED.

The Spanish courts continually reject to open and investigate cases of forced disappearance with reference to the Pact of Forgetting. Spanish courts, however, found themselves 'between the mill wheels'. They need to balance between the Pact of Forgetting and continuing 'peaceful' democracy on one hand and obligation stemming from International Human Rights Framework and resulting rights of the victims of Franco's regime on the other. In addition, the reasons why national courts dismissed lawsuits claiming criminal responsibility for perpetrators of the crimes committed during Spanish Civil War and ensuing Franco's dictatorship have deeper roots. Given the constitutional principles of non-retroactivity, nullum crimen sine lege and architecture of Spanish constitutional system, where international law is subordinated to the Constitution, the rights to truth and justice as stipulated in CPED, are hardly enforceable if we stick rigorously on domestic law. The constitutional setting of Spanish law forced victims to seek justice at international bodies for the protection of human rights such as the ECtHR or even at the courts of foreign countries under international law.

However, it is clear, that the long delay and the requirement to lodge a complaint with the ECtHR without undue delay, accompanied with due diligence requirement, represent a significant obstacle to the admissibility of complaint. In all the decisions analysed, the ECtHR imposed too strict criteria for admissibility, the fulfilment of which is virtually impossible for the complainant under given socio-political circumstances.

Although the Spanish courts dismissed all the lawsuits filed against former allies of Franco's regime, in March 2019, another attempt was made to open and investigate alleged crimes against humanity committed by former police officer Juan Antonio Gonzalez Pacheco. The criminal offenses were to be committed in 1970s' shortly before the Pact of Forgetting was passed. In this case Gonzalez-Pacheco is charged with several counts of torture and violence against political prisoners. Although it is hard to predict the future development of the case, it will be interesting to follow how the Court would challenge the amnesty law contained in Pacto del Olvido. But it wouldn't be that easy. It is clear, that the Spanish justice system found itself 'between the mill wheels'. The pressure comes from the victims calling for justice and international community demanding justice for them; in the opposition stand conservative platforms, that prevented courts from opening of forced disappearance cases in the past and even initiated criminal prosecution of the investigating judge.

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## References

Additional Protocol I to the Geneva Conventions (1949) and relating to the Protection of Victims of International Armed Conflicts (1977).

Agamben, G. (1998) *Homo Sacer: Sovereign Power and Bare Life*, Stanford University Press, Palo Alto, CA, 216pp.

Andreu-Guzman, F (2001) 'The draft international convention on the protection of all persons from forced disappearance', *The Review of the ICJ – Impunity, Crimes Against Humanity and Forced Disappearance*, September, Nos. 62–63, pp.1–22, Geneva.

Aslakhanova et al. (2012) Judgment of the European Court of Human Rights of December 18, 2012, Applications nos. 2944/06, 8300/07, 50184/07, 332/08, 42509/10, Russia.

Bermejo, F.C. (2012) Decision of the ECHR of 8 November 2012, Application. 56264/12, Spain.

Burnett, V. (2008) 'Spanish judge drops inquiry into atrocities of Franco and Allies', *New York Times*. November, p.A7.

Carracedo, A. (2008) 'No more silence: Franco's victims raise their voices', *The Guardian* [online] https://www.theguardian.com/film/2018/oct/20/no-more-silence-my-mission-to-let-franco-victims-be-heard (accessed 20 August 2019).

Catalan News (2016) *Organisations Claim to Open Mass Graves to Identify 4,700 Missing, 80 Years after Spanish Civil War* [online] http://www.catalannews.com/politics/item/organisations-claim-to-open-massgraves-to-identify-4700-missing-80-years-after-spanish-civil-war (accessed 15 September 2019).

Comisión Nacional para la Verdad y la Reconciliacion (2018) [online] https://comisiondelaverdad.co/la-comision/que-es-la-comision-de-laverdad (accessed 12 July 2019).

Constitución Espaňola aprobada por Las Cortes en sesiones plenarias del Congreso de los Disputados y del Senado celebradas el 31 de octubre 1978. Ratificada por el pueblo español en refréndum de 6 diciembre de 1978, Sancionada por S. M. el Rey ante Las Cortes el 27 de diciembre de 1978.

Convention for the Protection of All Persons from Enforced Disappearance. Resolution A/RES/61/177 adopted by UN General Assembly on 20 December 2006.

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity adopted by UN General Assembly on November 26, 1968.

Cuartos, J. (2003) *La memoria recuperada en el valle asturiano de la repression*, El Pais [online] https://elpais.com/diario/2003/07/28/espana/1059343218_850215.html (accessed 8 August 2019).

Davis, M. (2005) 'Is Spain recovering its memory? Breaking the Pacto del Olvido', *Human Rights Quarterly*, Vol. 27, No. 3, pp.858–880.

Declaración del Tribunal Constituciónal of December 13, 2004, no. 1/2004.

Declaración del Tribunal Constituciónal of July 1, 1992, D.T.C. 1/1992.

Declaration A/RES/47/133 on the Protection of All Persons from Enforced Disappearance adopted by the UN General Assembly on 18 December 1992.

Dorado, A.G. and Ortiz, C.D. (2012) *Decision of the ECHR of 27 March 2012*, Application no. 30141/09, Spain.

El Pais (2018) *Notorious Franco-Era Cop to be Stripped of Medals and Extra Pension* [online] https://elpais.com/elpais/2018/09/07/inenglish/1536324219_126161.html (accessed 20 July 2019).

El Pais (2019) *Un juzgado acepta por primera vez investigar a Billy el Niño* [online] https://elpais.com/politica/2019/03/07/actualidad/1551969765_421239.html.

General Comment No. 31 (2004) [80], The nature of the general legal obligation imposed on States Parties to the Covenant.

Goiburu et al. (2006) Judgment of the Inter-American Court of Human Rights of 22 September 2006, Paraguay.

Guarino, A.M. (2010) 'Chasing ghosts: pursuing retroactive justice for Franco-Era crimes against humanity', *Boston College International & Comparative Law Review*, Vol. 33, No. 1, pp.61–85.

Human Rights Watch (2020) *Human Rights Watch Submission to the Working Group on Enforced or Involuntary Disappearances*, Iraq [online] https://www.hrw.org/news/2020/05/17/iraq-human-rights-watch-submission-working-group-enforced-or-involuntary (accessed 20 May 2020).

Hunter, U. (2018) *Notorious Franco-Era Cop to be Stripped of Medals and Extra Pension*. El Pais [online] https://english.elpais.com/elpais/2018/09/07/.

Illmer, A. (2018) *China Disappearances Show Beijing Sets its Own Rules* BBC [online] https://www.bbc.com/news/world-asia-china-45806904 (accessed 7 May 2018).

Inter-American Convention on Forced Disappearance adopted. Resolution AG/RES. 890 (XVII-0-87) adopted by OAS General Assembly on June 9, 1994.

International Commission on Missing Persons (2018) *Where are the Missing* [online] https://www.icmp.int/the-missing/where-are-themissing/cambodia/.

Judgment of the European Court of Human Rights, GC of 21 October 2013, Application no. 55508/07 and 29520/09, Janowiec et al. v. Russia.

Judgment of the European Court of Human Rights, GC of 9 April 2009, Application no. 71463/01, Šilih v. Slovenia.

Judgment of the Inter-American Court of Human Rights of July 5, 2004, Case of the 19 Merchants v. Colombia.

Junquera, N. (2018) *Minister Moves to Strip Notorious Franco-Era Torturer of Extra Pension*, El Pais [online] https://elpais.com/elpais/2018/06/15/inenglish/1529055306_080335.html (accessed 7 july 2019).

Kesby, A. (2012) *The Right to Have Rights*, Judgment of the Spanish Constitutional Court DTC no. 1/1992, OUP, Oxford, 230pp.

Kolk and Kislyi (2006) *Judgment of the European Court of Human Rights, Application nos. 23052/04*, 24018/04, Judgment of the Spanish Constitutional Court DTC no. 1/2004, Estonia.

Ley Organica 10/1995 de 23. Noviembre 1995 de Código Penal (2015).

Ley Organica 46/1977 de 15 Octubre 1977, de Amnistia [online] https://www.boe.es/buscar/act.php?id=BOE-A-1977-24937 (accessed 18 July 2018).

Ley Organica 57/2007 por la que se reconocen y amplían derechos y se establecen medidas en favor de quienes padecieron persecución o violencia durante la Guerra Civil y la Dictadura (accessed 18 July 2018).

Liberties (2018) ‘‘Billy el Nino’ gets away with torture again’, *Liberties* [online] https://www.liberties.eu/en/news/billy-kid-torture/16308 (accessed 13 December 2019).

Matthäus, H.P. (Eds.) (2008) *Attrocities on Trial. Historical Perspectives on the Politics of Prosecuting War Crimes*, Nebraska Press, Lincoln, 360pp.

Monseratt, M.J. and Abat, N.A. (2010) ‘Monism versus dualism in current Spanish Constitutional System’, *International Review of Constitutionalism*, Vol. 10, No. 2, pp.1–40.

Nacht und Nebel – Häftlinge (1941) *Hause der Bayerische Geschichte* [online] http://www.hdbg.de/dachau/pdfs/09/09_03/09_03_01.PDF (accessed 15 August 2019).

Nowak, M. (2009) ‘Torture and enforced disappearance’, in Krause, C. and Scheinin, M. (Eds.): *International Protection of Human Rights: A Textbook*, pp.139–152, Institute for Human Rights, Abo Akademi University, Turku.

Preston, P. (1990) *The Politics of Revenge: Fascism and the Military in the 20th Century: Spain*, 1st ed., Routledge, 240pp.

Resolution no. 2200A (XXI) International Covenant on Civil and Political Rights adopted by UN General Assembly on December 16, 1966, Resolution of the Parliamentary Assembly of the Council of Europe, no. 1463/2005.of 3 October 2005.

Resolution of the Parliamentary Assembly of the Council of Europe no. 828/1984.

Sarkin, J. (2012) ‘Why the prohibition of enforced disappearance has attained Jus Cogens Status in International Law’, *Nordic Journal of International Law*, Vol. 81, No. 4, pp.537–583.

Sentencia de la Tribunal Supremo de Espaňa, STS 101/2012 de 27 Febrero 2012, Manos Limpias y Associacion Libertas y Identitas c. Juzgar Baltasar Garzón, causa special no. 20048/2009. Prevaricación judicial.

UN Working Group on Enforced Disappearances Report (2002) Spain [online] https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/104/91/PDF/G0310491.pdf?OpenElement (accessed 10 May 2018).

United Nations Human Rights Committee, Merits, Communication No 322/1988, UN Doc CCPR/C/51/D/322/1988 (1994), Rodriguez v. Uruguay.

Urdilo, U. (2012) ‘Impunity for enforced disappearances in contemporary Spain’, *Interdisciplinary Journal of Human Rights*, Vol. 6, No. 1, pp.44–47.

Varnava et al. (2009) Judgment of the European Court of Human Rights, GC of 18 September 2009, Application nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Turkey.

Velasquez Rodriguez v. Honduras (1988) Judgment of the Inter-American Court of Human Rights of July 28, 1988.