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

FIFTH SECTION

DECISION

Application no. 39920/22
C.M.
against Spain

The European Court of Human Rights (Fifth Section), sitting on 6 June 2024 as a Committee composed of:

Lado Chanturia*, President*,
Carlo Ranzoni,
María Elósegui*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 39920/22) 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 18 August 2022 by a Spanish national, Mr C.M., who was born in 1975 and lives in Salou ("the applicant") and was represented by Mr J.A. Bitos Rodriguez, a lawyer practising in Salou;

the decision not to have disclose the applicant's name;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns an alleged breach of the applicant's right of access to a court under Article 6 § 1 of the Convention and to an effective remedy under Article 13 of the Convention based on the fact that M.E.S., who was suspected of shooting the applicant and causing him severe injuries, was granted access to euthanasia at his request before he stood trial for the injuries he had caused to the applicant, among other people.

2. M.E.S. worked as a guard for a security company. On 14 December 2021 he broke into the offices of the company for which he worked and shot three of his colleagues, who were severely injured. He fled and, in his attempt to escape, shot several police officers (*Mossos d'Esquadra*), among which was the applicant. M.E.S. was also severely injured in the crossfire.

3. As a consequence of the injuries sustained, M.E.S., aged 47 at that time, suffered from irreversible quadriplegia. His right lower limb had to be amputated. He needed a permanent bladder catheter and he suffered from permanent neuropathic pain in the upper limbs. He could not remain seated and was totally dependent on others for the basic activities of daily living, requiring constant assistance.

4. Criminal proceedings were initiated. On 17 December 2021 M.E.S. was placed in pre-trial detention, initially in a hospital and, following the recovery of his mental capacity and the stabilisation of his medical condition, in the hospital facilities of a prison. He was charged with four counts of attempted murder, assault against State agents and unlawful possession of weapons.

5. The investigation stage of the proceedings was still ongoing when on 17 June 2022 M.E.S. submitted a request to be euthanised. Following the requisite procedures and on the basis of Article 5 of the law which regulates euthanasia (*Ley Orgánica 3/2021, de 24 de marzo, de regulación de la eutanasia*), the medical authorities in charge concluded that M.E.S. met all the legal requirements to have his request granted. In particular, it confirmed that the applicant: (a) resided in Spain, was of legal age and was capable and conscious at the time of making the requests; (b) had received full information in written form about his medical condition and procedure, as well as of his treatment alternatives including palliative care; (c) had submitted two separate written requests for euthanasia in no less than 15 days and without having been subjected to any external pressure; (d) had a serious and incurable illness or was under serious, chronic and incapacitating suffering according to a medical diagnosis; (e) had given his informed consent to receiving euthanasia. Moreover, the applicant was in full use of his mental faculties. The regional Evaluation and Guarantees Commission confirmed that he met the above requirements and agreed to the request.

6. The euthanasia procedure was approved and scheduled for Tuesday, 23 August 2022.

7. On 21 June 2022 the applicant requested the investigating judge to suspend M.E.S.'s euthanasia until after the criminal proceedings and, notably, until the trial were concluded and until there was a judgment on the merits of the case. He complained that if the euthanasia took place, it would result in the termination of the criminal proceedings, he would not obtain redress as a victim and his right of access to a court would be violated.

8. On 6 July 2022 the investigating judge dismissed the applicant's claims on two grounds. First, under the law regulating euthanasia, only the doctors in charge together with the regional Evaluation and Guarantees Commission (a multidisciplinary team composed of medical personnel, nurses and jurists established by law to evaluate and ensure the necessary safeguards) were enabled to make a decision on the appropriateness of granting access to euthanasia to a patient. The legal framework did not attribute any jurisdiction

to the investigating judge in criminal proceedings; in fact, it did not provide for any judicial intervention in the process except for in cases where the person to be subjected to euthanasia was a minor or was unable to decide for himself or herself. The only possibility for judicial review was an appeal to the administrative authorities against the medical decisions taken. The suspension of the process of euthanasia could not, in the judge's view, be decided in the context of interim measures within criminal proceedings which were aimed at ensuring the presence of the accused during the proceedings. Second, the judge observed that in the case at hand, the balance of the conflicting fundamental rights at issue had to be weighted in favour of the accused. In particular, the accused's right to physical and moral integrity and to dignity, liberty and personal autonomy had overwhelming preponderance over the applicant's right of access to a court. The investigating judge's decision established that the competing rights were not comparable, since the rights of the accused had a strong connection to the core of the right to life and that dignity was considered an inalterable value which could not be affected by the person's actions. The relevant proceedings might take years to complete and it would not be acceptable to subject a person's access to euthanasia to such delay. In any event, the judge observed that the victims did not have a "right to have another person punished" and that their procedural rights and guarantees had been respected throughout the proceedings. Lastly, the judge noted that the applicant's access to compensation was not completely curtailed since other means of reparation were still available to him.

9. The applicant lodged an appeal. On 4 August 2022 it was dismissed by the Tarragona *Audiencia Provincial*. The *Audiencia Provincial* confirmed that the law did not attribute any power to the first-instance judge within criminal proceedings to adopt any decision on the process of euthanasia. The legislature had clearly and manifestly made the choice to exclude any judicial authorisation as a requirement to having access to euthanasia, even when the person was under investigation in criminal proceedings. In the light of the consideration of euthanasia as a fundamental right (which was related to other rights, such as the right to life and to human dignity and bodily and moral integrity), a judge could not authorise the limitation of the access to it just to ensure the presence of the accused in a trial. In its reasoning the *Audiencia Provincial* equated the consequences of a natural death to those of a death caused by euthanasia. In response to the applicant's assertion that M.E.S.'s consent might have been impacted by external pressure (of being investigated and likely condemned in criminal proceedings) the *Audiencia Provincial* ruled that going through a process of euthanasia could not be considered a voluntary means to escape justice. Additionally, it established that the Evaluation and Guarantees Commission was the body in charge of assessing the validity of the consent of the requesting person and that the appropriate jurisdiction in which to challenge the medical decision was the administrative

courts, not the investigating judge. After addressing the issue of competence, the court of appeal pointed out that the right of access to a court was not absolute and in any case would not be impaired if the proceedings were dismissed on the basis of legally established grounds. It further held that forcing the accused to go through the entire judicial proceedings in his state of health would amount to an intolerable hindering of his dignity and physical and moral integrity. Moreover, it noted that the criminal system attributed a predominant role to the rights to dignity and physical and moral integrity over the right of access to a court, citing examples of situations in which penalties had been suspended on account of the health condition of the convicted person. Lastly, it stated that there were other possible ways for the applicant to obtain compensation for the damage suffered.

10. On 7 August 2022 the applicant lodged an *amparo* appeal before the Constitutional Court. On 9 August 2022 the appeal was declared inadmissible on account of the absence of a violation of a fundamental right in addition to a lack of constitutional relevance.

11. On 18 August 2022 the applicant requested the Court to indicate an interim measure to the Spanish authorities under Rule 39 of the Rules of Court to have M.E.S.'s euthanasia suspended until the criminal proceedings against him were concluded. The request was dismissed by the Court on 19 August 2022 because it fell outside the scope of Rule 39.

12. On 23 August 2022 M.E.S. obtained assistance in dying. The criminal proceedings were therefore discontinued.

RELEVANT LEGAL FRAMEWORK

13. Under Spanish Organic Law 3/2021 of 24 March 2021 on the Regulation of Euthanasia, euthanasia is considered a fundamental right, provided that certain requirements are met. It is recognised as an individual right related to the right to life but must also be reconciled with the right to physical and moral integrity of the person, human dignity, the superior value of freedom, ideological freedom and freedom of conscience and the right to private life. In particular, Spanish law has considered euthanasia a legally acceptable practice in certain cases, provided that specific requirements and guarantees are observed.

14. More recently, following an appeal regarding constitutionality, the Constitutional Court ruled, in judgment no. 19/2023 of 22 March 2023, that the legislation was in accordance with the Constitution. The Constitutional Court confirmed that the right to life should be read in close connection with the rights to physical and moral integrity and to dignity and free development of an individual's own personality. According to the Constitutional Court, the right to life could not be considered absolute when the dignity of a person was at risk on account of a tragic situation relating to a health condition; when the decision to end one's own life was taken in a context of extreme suffering

or illness, euthanasia was considered a guarantee of the freedom to live according to one's self-determination. Concerning judicial control over the decision to grant euthanasia, the Constitutional Court noted that the law established a thorough administrative process, implemented in two stages, with sufficient safeguards and checks in order to guarantee that the person who requested the euthanasia had given free and informed consent. In particular, the process involved different steps and controls by two different doctors and a specialised Evaluation and Guarantees Commission, ensuring that all the requirements had been duly observed. The Spanish Constitutional Court asserted that the decision-making in the process of euthanasia was to be considered an administrative procedure and, as such, might be subjected to judicial control by the administrative authorities, even if there was no express reference in law concerning the means of challenging the decisions adopted by the administrative bodies concerned (the doctors and the Evaluation and Guarantees Commission). However, as in any administrative proceedings under Spanish law, only those who had a legitimate interest could lodge an appeal for a review of the administrative decision with the administrative courts.

THE COURT'S ASSESSMENT

15. The applicant complained that his rights of access to a court and to an effective remedy had been breached by the decision to grant the applicant's request for euthanasia before there was a trial and a judgment, in violation of Article 6 § 1 and Article 13 of the Convention.

16. The Court has recognised that matters such as euthanasia raise complex legal, social, moral and ethical issues (see, among other authorities, *Mortier v. Belgium*, no. 78017/17, § 142, 4 October 2022). The legal responses among the States Parties to the Convention vary greatly, and there is no consensus as to the right of an individual to decide how and when his or her life should end. Accordingly, in this area, States are afforded a margin of appreciation under the Court's case-law (ibid. §§ 142-43; see also *Haas v. Switzerland*, no. 31322/07, § 55, ECHR 2011, and *Koch v. Germany*, no. 497/09, § 70, 19 July 2012 as regards assisted suicide, and *Lambert and Others v. France* [GC], no. 46043/14, § 147, ECHR 2015 (extracts) as regards the possibility of permitting or not permitting the cessation of life-sustaining treatment).

17. The present case, however, does not concern questions related to the process of euthanasia, but the rights of access to a court and to effective remedies under Article 6 § 1 and Article 13 of the Convention of the applicant who considers himself victim of a criminal offence allegedly committed by the person who requested assistance to die. The Court's well-established case-law on those provisions is entirely applicable.

18. The Court also notes that, while the applicant did not formally complain of any alleged violation of the procedural aspects of Articles 2 and 3 of the Convention, he did refer to the rights of victims in criminal proceedings and their *ius ut procedatur*, that is, to be able to lodge a criminal complaint and to obtain an effective response from the authorities to investigate the facts and establish whether they have actually been victims of a criminal offence. The applicant alleged that, since there were reasons to believe he had sustained life-threatening injuries, an effective official investigation should have taken place and, more specifically, that the criminal proceedings against M.E.S. should have reached the trial stage in order to ascertain the criminal liability of the alleged offender. He furthermore complained that the domestic authorities had prioritised the right of the accused to obtain assistance in dying in the context of euthanasia granted by public authorities, over his own right as a victim to obtain redress within criminal proceedings.

19. While the Convention does not confer any right, as such, to have third parties prosecuted or sentenced for a criminal offence, domestic law can provide for a right for the victim of an offence to claim reparation for the damage caused by that offence by means of civil-party proceedings, that is by allowing the victim to join criminal proceedings as a civil party (see *Gracia Gonzalez v. Spain*, no. 65107/16, § 52, 6 October 2020, and the case-law cited therein). This is one possible way of providing for a civil action to obtain compensation for damage (see *Perez v. France* [GC], no. 47287/99, § 62, ECHR 2004-I). Article 6 § 1 is then applicable in its civil limb to a civil-party claim in criminal proceedings except in the case of a civil action brought purely to obtain private vengeance or for punitive purposes (see *Sigalas v. Greece*, no. 19754/02, § 29, 22 September 2005) or when he or she has unequivocally waived the right to reparation. Article 6 applies from the moment the victim has joined as a civil party, and as long as the criminal proceedings are decisive for the civil right to compensation that is being asserted (see *Alexandrescu and Others v. Romania* (revision), nos. 56842/08 and 7 others, § 22, 28 March 2017).

20. Concerning the applicant's indirect allusion to his rights under the procedural limb of Articles 2 and 3 of the Convention, the Court reiterates that States are under an obligation to have in place an effective independent judicial system so as to secure legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim under Article 2 of the Convention (*Sinim v. Turkey*, no. 9441/10, § 59, 6 June 2017). The procedural obligation has not been considered by the Court as being dependent on whether the State is ultimately found to be responsible for the death. When an intentional taking of life is alleged, the mere fact that the authorities are informed that a death has taken place gives rise *ipso facto* to an obligation under Article 2 to carry out an effective official investigation (see, among others, *Yaşa v. Turkey*, 2 September 1998, § 100, *Reports of*

Judgments and Decisions 1998-VI). Although the failure to comply with such an obligation may have consequences for the right protected under Article 13, the procedural obligation of Article 2 is seen as a distinct obligation (see *İlhan v. Turkey* [GC], no. 22277/93, §§ 91-92, ECHR 2000-VII; and *Šilih v. Slovenia* [GC], no. 71463/01, §§ 153-154, 9 April 2009).

21. Notwithstanding the above, the Court reiterates that a complaint or "claim" – which is the term used in Article 34 of the Convention – comprises two elements, namely factual allegations (that is, to the effect that the applicant is the "victim" of an act or omission) and the legal arguments underpinning them (that is, that the said act or omission entailed a "violation by [a] Contracting Party of the rights set forth in the Convention or the Protocols thereto" – see, among other authorities, *Grosam v. the Czech Republic* [GC], no. 19750/13, § 88, 1 June 2023). It has already stated that it is not sufficient that a violation of the Convention is "evident" from the facts of the case or the applicant's submissions. Rather, the applicant must complain that a certain act or omission entailed a violation of the rights set forth in the Convention or the Protocols thereto (ibid. § 90, and the case-law cited therein), in a manner which should not leave the Court to second-guess whether a certain complaint was raised or not (see *Grosam*, cited above, § 90). The Court has no power to substitute itself for the applicant and formulate new complaints simply on the basis of the arguments and facts advanced (ibid., § 91).

22. The present complaint will therefore be analysed from the perspective of access to a court under Article 6 § 1 of the Convention under its civil limb, as lodged by the applicant, who, as a victim, had a right to request compensation for the damage sustained as a consequence of having been the victim of a criminal offence. Moreover, given that Article 6 § 1 of the Convention is *lex specialis* in relation to Article 13, and that the alleged violation of the Convention took place in the context of judicial proceedings, the Court does not deem it necessary to rule separately on the complaint under Article 13 of the Convention.

23. The right of access to a court is not absolute, but may be subject to limitations, the regulation of which falls within the margin of appreciation of the State (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 195, 25 June 2019, and *Zubac v. Croatia* [GC], no. 40160/12, § 78, 5 April 2018). Those restrictions must not reduce the person's access to a trial in such a way that the very essence of the right is impaired. They must also pursue a legitimate aim and have a relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 115, 15 March 2018, and the case-law cited therein).

24. The Court has, moreover, already ruled on a lack of infringement of Article 6 when there were accessible and effective options for the applicants to make their civil claims, even after the criminal proceedings had been

terminated (see *Nicolae Virgiliu Tănase*, cited above, § 198). In cases where the applicants had at their disposal accessible and effective avenues for their civil claims, it found that their right of access to a court had not been infringed.

25. In the present case, the Court observes that, as was mentioned by the domestic courts, the applicant could still obtain redress as a victim and be compensated for the damage he suffered. At the time when he joined the criminal proceedings as a civil party, he could have brought separate civil proceedings against M.E.S. instead. While such proceedings might have been stayed pending the outcome of the criminal proceedings, the applicant could have obtained a determination of the merits of his civil claims upon the conclusion of the criminal proceedings. Moreover, the discontinuation of the criminal proceedings against M.E.S. following his death did not bar the applicant from lodging a separate civil action with a civil court to obtain compensation for damage from M.E.S.'s heirs. There is nothing to suggest to the Court that such an action could not be practical, effective and accessible. Even assuming that M.E.S. did not have any assets or heirs, the applicant's status of civil servant of the Catalan administration (*Mosso d'Esquadra*) and the fact that he had allegedly suffered injuries or been harmed in the line of duty as a result of unlawful actions of third persons, also made him a potential beneficiary of compensation from the public administration. He could also have initiated administrative proceedings in this regard.

26. In the light of the foregoing considerations, it cannot be said that the applicant was denied access to court for a determination of his civil rights. Accordingly, the applicant's complaints concerning the violation of his right of access to a court and to an effective remedy are manifestly ill-founded and are inadmissible within the meaning of Article 35 § 3 (a), and the application must therefore be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 27 June 2024.

Martina Keller Deputy Registrar	Lado Chanturia President