

La CEDU sulla violazione dell'art. 6 della Convenzione. (CEDU, sez. V, sent. 18 dicembre 2025, ric. n. 33818/22)

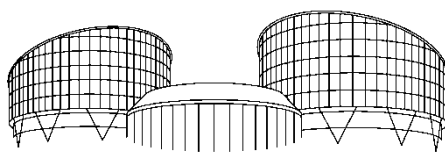
Nel caso di specie, i giudici di Strasburgo sono stati chiamati a pronunciarsi sulla presunta violazione dell'art. 6 § 1 della Convenzione, in relazione a un procedimento che aveva attribuito al ricorrente la responsabilità solidale per debiti fiscali di terzi, in qualità di ex curatore fallimentare di una nota società. Il ricorrente lamentava, in particolare, che i tribunali nazionali avessero emesso decisioni divergenti su fatti identici e non avessero preso in considerazione argomenti centrali della sua difesa, in violazione del diritto a un equo processo.

La Corte, in via preliminare, ha respinto l'eccezione *ratione materiae* sollevata dal Governo, ritenendo applicabile l'art. 6 § 1 CEDU, posto che, pur trattandosi formalmente di un procedimento di natura amministrativo-tributaria, la questione centrale riguardava l'accertamento della responsabilità civile personale del ricorrente, fondata su una presunta condotta illecita nell'esercizio delle sue funzioni professionali. Il procedimento dinanzi all'Audiencia Nacional implicava dunque la determinazione di "diritti e obblighi di carattere civile" ai sensi della Convenzione.

Nel merito, la Corte ha ribadito che il principio di certezza del diritto rappresenta uno dei fondamenti dello Stato di diritto. Tale principio può essere compromesso da decisioni giudiziarie contrastanti, specialmente se provenienti dallo stesso organo giudicante e in casi analoghi. Pur ammettendo che divergenze giurisprudenziali siano fisiologiche in un sistema giudiziario, la Corte ha rilevato che decisioni opposte, adottate in tempi ravvicinati, su fattispecie identiche e da parte della medesima sezione, generano un'intollerabile incertezza giuridica e possono equivalere a un diniego di giustizia.

A ciò si è aggiunta la mancata considerazione, da parte dell'Audiencia Nacional, di un argomento decisivo addotto dal ricorrente, relativo alla validità di taluni pagamenti effettuati, elemento potenzialmente determinante per la quantificazione della responsabilità. L'assenza di una motivazione su tale punto ha impedito alla Corte di verificare se l'argomento fosse stato esaminato o del tutto ignorato.

In conclusione, la Corte ha ritenuto che tali gravi vizi abbiano compromesso l'equità del procedimento interno, accertando la violazione dell'art. 6 § 1 CEDU.



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

FIFTH SECTION

CASE OF XXX v. SPAIN

(Application no. 33818/22)

JUDGMENT

STRASBOURG

18 December 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Spain,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Kateřina řimáčková, *President*,
María Elósegui,
Georgios A. Serghides,
Gilberto Felici,
Andreas Zünd,
Diana Sârcu,
Sébastien Biancheri, *judges*,
and Victor Soloveytkhik, *Section Registrar*,

Having regard to:

the application (no. 33818/22) 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”) by a Spanish national, Mr XXX (“the applicant”), on 5 July 2022;

the decision to give notice to the Spanish Government (“the Government”) of the complaint concerning an alleged violation of the right to a fair trial and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 25 November 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the alleged denial of a fair hearing in the proceedings arising from assignment-of-liability decisions that made the applicant jointly and severally liable for third-party tax debts. The applicant complained that the domestic courts delivered divergent judgments on

identical facts and failed to address decisive submissions, in breach of Article 6 § 1 of the Convention.

THE FACTS

2. The applicant was born in “Omissis” and lives in “Omissis”. He was represented by “Omissis”, a lawyer practising in Madrid.

3. The Government were represented by Alfonso B. Martínez de Villareal and Luis E. Vacas Chalfoun, Agent and Co-Agent.

4. The facts of the case may be summarised as follows.

5. In October 2009 the applicant, together with two other persons, was appointed insolvency administrator of the construction company “Omissis”. In July 2013 the applicant and one co-administrator were removed from their positions on grounds that they had failed to seek the suspension of the powers of the company’s management despite criminal investigations against the company’s director and had not exercised due diligence in supervising transactions.

6. On 22 March 2016 the Spanish Tax Agency (AEAT) opened and decided administrative assignment-of-liability (*derivación de responsabilidad*) proceedings against the three former insolvency administrators, including the applicant, under Article 42.2(a) of the General Tax Act (see paragraph 20 below). By those decisions, each administrator was declared jointly and severally liable for “Omissis”’s outstanding tax debts on the basis that they had authorised payments from the insolvency estate for over 2 million euros (EUR) to various companies, including “Omissis”. The AEAT considered that these payments were either supported by false invoices or should have been paid directly by the insolvency administration and that they had improperly depleted the estate and diverted funds which should have been available to discharge “Omissis”’s tax obligations. Under Article 42.2(a), assignment of liability places a non-taxpayer “tax obligor” (*obligado tributario*) alongside the primary debtor for collection purposes, to the extent of the assets allegedly concealed or transferred.

7. On 15 April 2016 the applicant contested the assignment-of-liability decision before the Central Economic-Administrative Tribunal and subsequently brought contentious-administrative proceedings before the *Audiencia Nacional*. The other two co-administrators did likewise. The three administrators’ cases were all assigned to the Seventh Section of the Contentious-Administrative Chamber of the *Audiencia Nacional*.

8. Both the first co-administrator and the applicant sought to demonstrate that, in parallel assignment-of-liability proceedings brought against “Omissis”’s partners, the AEAT had closed the case, evidencing the tax authorities’ recognition that “Omissis” had provided genuine services to “Omissis”. Both requested that a “Omissis” representative be heard as a witness. In the first co-administrator’s case, the *Audiencia Nacional* initially refused but later admitted the witness on appeal. In the applicant’s case, the court refused the witness and dismissed the applicant’s appeal against that refusal.

9. On 12 July 2019 the Seventh Section partly upheld the first co-administrator's action, reducing the scope of the assigned liability to approximately EUR 1.4 million. It held that the AEAT had acted inconsistently by acknowledging "Omissis"'s services in the parallel proceedings while denying them in the insolvency administrators' *derivación* cases; it expressly noted it was aware that a related appeal by "another member of the insolvency administration" (the applicant) was pending before the same Section.

10. On 21 October 2019 the same Section (Seventh) dismissed the applicant's action in full, upholding the AEAT's *derivación* for the entire amount of about EUR 2.5 million. The judgment made no reference to the evidence submitted by the applicant regarding "Omissis"'s payments, nor to the court's own reasoning in its judgment of 12 July 2019. The court did not address the applicant's argument concerning the AEAT's inconsistent treatment of the payments to "Omissis".

11. The applicant pursued further domestic avenues without success, including a request to supplement the judgment (*complemento de sentencia*) on the ground that the court had failed to address the "Omissis" submissions, an appeal on points of law to the Supreme Court alleging breaches of fair trial and equality, an application to annul the proceedings (*incidente de nulidad de actuaciones*) before the *Audiencia Nacional*, and an *amparo* appeal to the Constitutional Court, which was declared inadmissible on 18 January 2022 for lack of constitutional significance.

12. On 17 February 2021 the Seventh Section partly upheld the third co-administrator's appeal, again reducing the assigned liability to approximately EUR 1.4 million and invoking "the principles of unity of case-law and legal certainty". Thus, although all three cases concerned the same assignment-of-liability framework and overlapping underlying facts, the applicant alone remained liable for the full amount.

13. On 18 April 2022 the applicant brought proceedings before the Supreme Court seeking a declaration of a miscarriage of justice (*error judicial*). On 13 October 2022 the Supreme Court allowed the claim, finding that the *Audiencia Nacional* had delivered divergent judgments on identical facts without providing any explanation for the different treatment. The Supreme Court noted that the *Audiencia Nacional* "was aware of the evident relation between the two appeals, although in the end they had a very divergent result" and that "no justification was provided for issuing rulings so widely divergent". The Supreme Court found that the judgment of 21 October 2019 should have reached the same conclusion as the judgment of 12 July 2019, and that once the applicant had brought this to the court's attention through his request for a supplemental ruling, the *Audiencia Nacional* ought to have modified its ruling accordingly. The Supreme Court stated that its finding of miscarriage of justice operated as a prerequisite for any patrimonial liability claim against the State.

14. On 29 September 2023 the applicant lodged a claim before the Ministry of Justice seeking compensation for miscarriage of justice. On 18 October 2023 the Ministry acknowledged receipt of the claim.

15. On 16 October 2024 the Ministry notified the applicant that it had forwarded the file to the General Council of the Judiciary for a report which was required by law in cases of abnormal

functioning of the administration of justice. On 18 December 2024 the Plenary General Council had concluded that, according to applicable law, the report was not required since the claim arose from a miscarriage of justice already recognised by the Supreme Court rather than from any abnormal functioning of the administration of justice.

16. By letter of 19 September 2025, the Government informed the Court that no decision had yet been issued on the claim.

RELEVANT LEGAL FRAMEWORK

DOMESTIC LEGAL FRAMEWORK

A. Spanish Constitution

17. Individuals have the right to compensation for damage suffered to their property and rights as a consequence of the operation of public services, except in cases of *force majeure* (Article 106.2).

18. Damage caused by miscarriage of justice (*error judicial*) or abnormal functioning of the administration of justice gives rise to a right to compensation at the expense of the State (Article 121).

B. General Tax Act (*Ley General Tributaria*, “the GTA”), Law 58/2003 of 17 December 2003

19. Tax obligors include those who, without being taxpayers, must comply with tax obligations (Article 35.1-2).

20. Joint and several liability extends to those who cause or collaborate in the concealment or transfer of the taxpayer’s assets to impede tax collection, up to the value of the assets concerned (Article 42.2(a)).

21. Subsidiary liability applies to insolvency administrators who fail to take necessary steps for full compliance with tax obligations (Article 43.1(c)).

C. Institutional Law on the Judiciary (*Ley Orgánica del Poder Judicial*, “the LOPJ”), no. 6/1985 of 1 July 1985

22. Courts may issue supplemental rulings when judgments have manifestly failed to address duly alleged issues (Article 267.5).

23. Miscarriage of justice and abnormal functioning of the Administration of Justice give rise to State compensation, except in cases of *force majeure* (Article 292.1).

24. Damage must be effective, economically assessable and individualised (Article 292.2).

25. Mere revocation or annulment of judicial decisions does not presuppose a right to compensation (Article 292.3).

26. Claims for compensation due to miscarriage of justice must be preceded by a judicial decision recognising the judicial error (Article 293.1).

27. Claims for compensation are directed to the Ministry of Justice and processed according to State patrimonial responsibility rules (Article 293.2).

D. Administrative Procedure Act (*Ley del Procedimiento Administrativo Común de las Administraciones Públicas*), Law 39/2015 of 1 October 2015

28. A mandatory report from the General Council of the Judiciary is required in proceedings concerning State liability for the abnormal functioning of the administration of justice (Article 81.3).

E. Administrative Court Proceedings Act (*Ley de la Jurisdicción Contencioso-Administrativa*), Law 29/1998 of 13 July 1998

29. Final administrative decisions may be revised where the European Court of Human Rights has found a violation of the Convention that persists and can only cease via revision (Article 102 § 2).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant complained under Article 6 § 1 of the Convention that he did not have a fair trial because the *Audiencia Nacional* delivered contradictory judgments in respect of identical circumstances without providing reasoning for the divergent outcome and failed to examine his decisive submissions. The relevant part of Article 6 § 1 reads as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ...hearing ...”

A. Admissibility

1. *Compatibility* ratione materiae

(a) Submissions by the parties

31. The Government submitted that the assignment of liability proceedings leading to the contested judgment of the *Audiencia Nacional* fell outside the scope of Article 6 of the Convention, as they concerned tax matters which formed part of the “hard core” of public-law taxation and revenue collection (they referred to *Ferrazzini v. Italy* [GC], no. 44759/98, §§ 24-31, ECHR 2001-VII). As to the civil limb of Article 6 § 1, although pecuniary effects were involved, the dispute remained fiscal and thus outside the civil limb unless it concerned an ancillary private-law issue, which was not the case (they cited *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, §§ 66 and 68-75, 3 November 2022). The impugned decision did not determine a private right or resolve a dispute between private parties, but rather placed the addressee, such as the applicant, in an ancillary position to the principal tax debtor to ensure the collection of tax debts. The assignment of liability was implemented through unilateral acts of the tax authorities and executed through administrative enforcement, which confirmed the predominantly public character of the legal relationship.

32. As to the criminal limb, the Government submitted that the proceedings were not “criminal” within the autonomous meaning of the Convention (they referred to *Engel and Others v. the Netherlands*, 8 June 1976, §§ 82-83, Series A no. 22). In domestic classification, the assignment of tax liability was not classified as a criminal or administrative offence; it formed part of the tax-collection framework and pursued guarantee and compensatory aims rather than retribution or general prevention. As to the nature of the offence, the impugned measure did not have punitive features but operated as a civil-law style allocation of pecuniary responsibility triggered by specified statutory conditions of participation in asset-shielding, which distinguished it from the tax surcharges expressly designed to punish and deter non-compliance (they cited in contrast *Bendenoun v. France*, 24 February 1994, §§ 46-47, Series A no. 284, and *Jussila v. Finland* [GC], no. 73053/01, §§ 30-38, ECHR 2006-XIV). It also targeted a very specific group, that of insolvency administrators, who had particular responsibilities for the safeguarding of the insolvency estate and the protection of the debtor’s assets. Regarding severity, the Government maintained that the consequences were purely pecuniary and limited to securing payment of an existing public debt, without any addition of a punitive increment, statutory minimum, or tariff typical of criminal sanctions. The Government finally noted that any payment made as a consequence of the assignment of liability would permit claiming reimbursement from the principal taxpayer, and that any payment made should have been covered by the applicant’s professional liability insurance, which insolvency administrators were required to maintain.

33. The applicant contended that Article 6 § 1 was applicable under both its civil and criminal limbs. As to the civil limb, he submitted that the proceedings determined a civil obligation fixing his personal patrimonial liability, on the basis of allegedly wrongful conduct causally linked to loss to the Treasury, and that the outcome bore directly and immediately on his proprietary interests (he referred to *König v. Germany*, 28 June 1978, § 90, Series A no. 27). He emphasised that the issues examined (knowledge, participation, causation, scope of guarantee) were typical of civil liability and were adjudicated by courts with full jurisdiction over both facts and law. He distinguished this case from *Ferrazzini* on grounds that the latter concerned the assessment of a taxpayer’s own liability, whereas the present dispute concerned a third party’s personal liability for another’s debt on fault-based criteria, akin to a statutory guarantee or extra-contractual liability. He emphasised that the liability was not grounded in his ability to pay but rather on his allegedly wrongful conduct, demonstrating its non-fiscal character. He referred to the Court’s case-law recognising that, notwithstanding an administrative framework, the civil limb applies where the dispute decisively affects private pecuniary rights (see *Mennitto v. Italy* [GC], no. 33804/96, § 23, ECHR 2000-X). The use of unilateral administrative acts and public enforcement mechanisms did not, in his submission, displace the civil character of the underlying obligation (see *König*, loc. cit.).

34. The applicant further submitted that the liability measure met the *Engel* criteria to be classed as criminal in nature. He acknowledged that domestic law did not classify the measure as criminal, but submitted that this factor was not decisive. As to the nature of the offence, he contended that Spanish tax law treated liability under Article 42.2(a) of the GTA as criminal in nature, insofar as its wording included penalties imposed on the taxpayer as part of the debt. Its application was not limited to a specific group with very specific obligations. It applied to any person or entity that

caused or collaborated in the concealment or transfer of taxpayers' assets or rights with the purpose of preventing the action of the tax authorities and was not limited to members of the insolvency administration. The aim or objective of that provision revealed its punitive character, insofar as it targeted the conduct which was similar in content and scope to that described in Article 257 of the Spanish Criminal Code as the criminal offence of asset stripping. Finally, the penalty was sufficiently severe. Even though it was limited to the value of the assets concealed, the amount requested from the person found liable for concealment did not bear any relation to their ability to pay, while the possibility of claiming a refund from the main taxpayer was not practicable in the context of insolvency. Furthermore, events caused by bad faith or wilful misconduct of the insured person were excluded by law from insurance coverage.

(b) The Court's assessment

35. The Court reiterates that Article 6 § 1 applies, under its civil limb, where there is a "dispute" (*contestation*) over a right or obligation which can be said, at least on arguable grounds, to be recognised in domestic law; the dispute must be genuine and serious, and the outcome of the proceedings must be directly decisive for that right or obligation, which must be civil in character (see *Mennitto*, cited above, § 23). Tax disputes generally fall outside the scope of "civil rights and obligations" within the meaning of Article 6 § 1, even though they necessarily produce pecuniary effects (see *Ferrazzini*, cited above, § 29, and *Vegotex International S.A.*, cited above, § 66).

36. The present case, however, did not concern the determination of the applicant's own tax liability arising from a taxable event which he carried out, but the attribution to him of personal liability for the tax debts of a third party ("Omissis") on grounds related to his alleged conduct as insolvency administrator. The assignment of liability under Article 42.2(a) of the GTA was predicated on findings that the applicant had caused or collaborated in the concealment or transfer of the taxpayer's assets with the purpose of impeding the action of the tax authorities. The domestic courts were thus called upon to determine whether the applicant's conduct satisfied the statutory conditions for the imposition of such liability, requiring examination of factual and legal issues of knowledge, participation, causation and the scope of his professional duties.

37. Under the domestic legal framework, the applicant was not treated as the taxpayer but as a person designated jointly and severally liable. The liability assigned to him was not grounded in his own ability to pay, a constitutional principle governing taxation, but in his allegedly wrongful conduct in relation to the insolvency estate. The proceedings involved the determination, by courts exercising full jurisdiction, of whether his authorisation of certain payments constituted a breach of duty and whether such conduct could be characterised as causing or collaborating in asset concealment within the meaning of Article 42.2(a) of the GTA.

38. In the Court's view, while the proceedings took place within an administrative and fiscal framework and concerned the collection of tax debts owed by a third party, the decisive issue was the determination of the applicant's personal civil liability for allegedly wrongful conduct in his professional capacity. The nature and effects of that determination bear the hallmarks of civil liability proceedings, notwithstanding that the case was initiated by the tax authorities and governed by tax legislation. The issues examined, including knowledge and conduct, causal

connection and the scope of professional duties, are characteristic of disputes over civil obligations (see, *mutatis mutandis*, König, cited above, § 90).

39. The Government's argument that the proceedings retained a predominantly public character by virtue of unilateral administrative acts and enforcement mechanisms is not decisive. The use of administrative procedures does not, in itself, displace the civil character of the underlying obligation where, as here, the decision fixed the applicant's personal patrimonial liability and was directly decisive for his private property interests (see *Mennitto*, cited above, § 23; compare *Vegotex International S.A.*, cited above, §§ 74-75). Nor does the availability of recourse actions or insurance cover alter the substantive character of what was determined.

40. The Court accordingly concludes that the proceedings before the *Audiencia Nacional* concerned the determination of the applicant's "civil rights and obligations" within the meaning of Article 6 § 1 of the Convention and that that provision was applicable. The Government's objection *ratione materiae* must accordingly be dismissed.

41. Having regard to this conclusion, the Court considers that it is not necessary to examine separately whether the proceedings also involved the determination of a "criminal charge" within the meaning of Article 6 § 1.

2. *Compatibility ratione personae and exhaustion of domestic remedies*

(a) **Submissions by the parties**

42. The Government argued that the applicant could no longer claim to be a "victim" within the meaning of Article 34 of the Convention. They relied on the fact that the Supreme Court had already recognised the existence of a miscarriage of justice (*error judicial*), and that the applicant had since initiated proceedings before the Ministry of Justice for pecuniary liability under Article 292 of the LOPJ in connection with that miscarriage of justice. In their view, the domestic system had thus acknowledged the violation and opened an adequate channel for compensation, which was sufficient to deprive the applicant of his status as a "victim" of the alleged violation.

43. The Government further contended that the applicant had failed to exhaust available domestic remedies. They maintained that the patrimonial liability procedure constituted an "effective" remedy capable of providing redress for the alleged violation of Article 6, as had been accepted by the Court in its decisions of *Fernández-Molina González and Others v. Spain* (nos. 64359/01 and 369 others, 8 October 2002), *Muñoz Machado v. Spain* (no. 35743/04, 20 November 2006), and *Cortina de Alcocer and de Alcocer Torra v. Spain* (no. 33912/08, § 22, 25 May 2010). The applicant, who had recently availed himself of this channel, should therefore have awaited the outcome of those proceedings, which could in turn be subject to judicial review before the administrative courts. In the Government's submission, the application was accordingly premature and should be declared inadmissible for non-exhaustion of domestic remedies.

44. The applicant maintained that he retained victim status and had exhausted domestic remedies within the meaning of Article 35 of the Convention. He argued that the patrimonial liability proceedings did not restore his right to a fair trial. According to him, pecuniary compensation

could not erase the fact that the judgment of the *Audiencia Nacional* of 21 October 2019 remained in force, continuing to characterise his conduct as part of a fraudulent scheme. His legal position would only be restored if that judgment were annulled and a new assignment of liability issued. The applicant stressed that the Supreme Court itself had recognised that the effects of the miscarriage of justice mechanism were limited to enabling a subsequent claim for damages, without annulling the impugned judgment.

45. As to exhaustion requirement, the applicant maintained that he had already pursued all domestic remedies that were available and effective. He contended that the declaration of a miscarriage of justice and the ensuing patrimonial liability procedure were discretionary and extraordinary in nature. The patrimonial liability claim was intended to provide *ex post facto* monetary compensation but did not permit the domestic courts to reopen the proceedings or to eliminate the continuing legal and reputational consequences of the judgment that had been recognised as erroneous. The applicant further argued that recourse to the patrimonial liability claim imposed an excessive and unreasonable burden on litigants. The proceedings were complex and protracted, offered no guarantee of success, and could extend over many years. In his submission, the Court had consistently regarded remedies as ineffective where they were purely compensatory and where their duration failed to meet the requirement of promptness.

(b) The Court's assessment

46. The Court reiterates that an applicant may no longer claim to be a "victim" of a violation of the Convention if the national authorities have acknowledged, either expressly or in substance, the alleged breach and afforded appropriate and sufficient redress (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 193, ECHR 2006-V).

47. As to the acknowledgement, the Court is satisfied that the Supreme Court recognised the existence of a miscarriage of justice in respect of the judgment of the *Audiencia Nacional* which the applicant complained of. That decision, however, did not alter the applicant's legal position. It neither annulled the impugned judgment nor ordered the reopening of the proceedings or a fresh judicial determination of the applicant's liability. Its effect was confined to enabling the applicant to pursue State liability claim under Article 292 of the LOPJ. The Court has previously held that where, as in the present case, the alleged breach concerns the acknowledged divergent findings and allegedly deficient reasoning of a judgment that remains in force, the most appropriate form of redress would be a retrial or the reopening of the case (see *Melgarejo Martinez de Abellanosa v. Spain*, no. 11200/19, § 48, 14 December 2021). As the liability claim invoked by the Government may lead only to an award of compensation and does not permit the reopening of proceedings or the setting aside of a judgment vitiated by judicial error, it cannot be regarded as sufficient redress for the alleged violation of the applicant's right to a fair hearing.

48. In the same vein, the Court cannot accept that the patrimonial-liability claim was an effective remedy within the meaning of Article 35 § 1 of the Convention in the specific circumstances of this case. The Court reiterates that, to qualify as such, a remedy must be capable of addressing directly the impugned state of affairs (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 74, 25 March 2014). Since the liability procedure is limited to

compensation and does not provide for the annulment or reopening of the contested judgment, it cannot rectify the alleged violation of the applicant's right to a fair hearing.

49. In so far as the Government relied upon the Court's case-law recognising the patrimonial-liability procedure under Article 292 of the LOPJ as an effective remedy, the Court observes that those authorities concerned claims relating to the abnormal functioning of the administration of justice, notably excessive length of proceedings, where a compensatory mechanism can, as a rule, provide appropriate redress once the proceedings have concluded (see the authorities cited in paragraph 43 above and also *Balsells i Castelltort and Others v. Spain* (dec.), no. 62239/10, §§ 19-23, 6 January 2015; *Varela Geis v. Spain* (dec.), no. 61005/09, §§ 26-28, 20 September 2011; *Moreno Carmona v. Spain*, no. 26178/04, §§ 30-33, 9 June 2009; *Trome S.A. v. Spain* (dec.), no. 9442/06, 1 July 2008). By contrast, the present complaint does not concern any delay or administrative dysfunction but the fairness and reasoning of the judicial determination itself. Without casting doubt on the adequacy of the Article 292 mechanism in its proper context, the Court finds that, in the circumstances of the present case, a purely compensatory remedy cannot be regarded as being capable of addressing directly the impugned state of affairs.

50. Furthermore, the Court reiterates that the speed of the domestic remedy is also relevant to determining whether it was practically effective in the circumstances of a given case (see *Story and Others v. Malta*, nos. 56854/13 and 2 others, § 80, 29 October 2015). In the present case, two years after the filing of the patrimonial liability claim with the Ministry of Justice, it remains pending without a decision. It does not appear that the Ministry has undertaken any meaningful steps to process the claim, apart from sending a request to another authority for the preparation of a report that was later acknowledged to have been unnecessary (see paragraph 15 above). The Court reiterates that a remedy that functions only with considerable delay cannot be regarded as adequate, as it would fail to provide timely redress and would leave the applicant in a prolonged state of uncertainty (see, *mutatis mutandis*, *Marshall and Others v. Malta*, no. 79177/16, § 88, 11 February 2020).

51. The Court accordingly dismisses the Government's preliminary objections concerning the applicant's victim status and the alleged non-exhaustion of domestic remedies.

3. Conclusions as to the admissibility

52. The Court finds that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

53. The applicant submitted that the recognition of a miscarriage of justice by the Supreme Court confirmed his allegation that the three divergent judgments delivered between 2019 and 2021 by the same Section of the *Audiencia Nacional* on identical facts and circumstances had breached his right to a fair hearing. Moreover, the impugned judgment of 21 October 2019 provided no reasoning in response to his submissions concerning the payments to "Omissis", despite these being decisive for the outcome. Even though Spanish law provided mechanisms to overcome inconsistencies in the case-law, such as a *complemento de sentencia* (request to supplement the

judgment) and an *incidente de nulidad de actuaciones* (application to annul the proceedings), in his case the domestic courts had failed to make effective use of them.

54. The Government acknowledged that the Supreme Court had declared a miscarriage of justice in the applicant's case. They maintained, however, that the domestic legal system had thereby provided sufficient recognition of the violation and opened the possibility of adequate redress through the patrimonial liability mechanism. In their view, there was thus no outstanding issue for the Court to determine on the merits.

55. The Court reiterates that one of the fundamental aspects of the rule of law is the principle of legal certainty, which is implicit in the Convention. Conflicting judgments in similar cases delivered by the same court which, moreover, is the court of last resort in the matter, may infringe that principle and thereby undermine public confidence in the judiciary, such confidence being one of the essential components of a State governed by the rule of law. The Court acknowledges that the possibility of conflicting court decisions is an inherent trait of any judicial system and cannot, in itself, be considered contrary to the Convention. However, divergent decisions by domestic courts based on identical facts may run counter to the principle of legal certainty and could even amount to a denial of justice (see *Melgarejo Martínez de Abellanos*, cited above, §§ 30 and 34, and *Inmovilizados y Gestiones S.L. v. Spain*, no. 79530/17, §§ 40-41, 14 September 2021).

56. The Court observes that the judgments at issue were delivered by the same Chamber of the *Audiencia Nacional* within a relatively short period of time, concerning the same legal question and factual background. The divergence was thus the result of inconsistent adjudication by the same judicial formation acting in identical circumstances. The inconsistent adjudication of claims brought by several persons in similar situations led to a state of uncertainty, which must have reduced the public's confidence in the judiciary, such confidence clearly being one of the essential components of a State based on the rule of law (see *Ștefănică and Others v. Romania*, no. 38155/02, § 38, 2 November 2010). The three contradictory judgments (one dismissing and two upholding appeals based on the same reasoning) reveal a manifest inconsistency in the assessment of relevant facts and legal arguments by the same Section of the *Audiencia Nacional*. This inconsistency was subsequently acknowledged by the Supreme Court, which expressly declared a miscarriage of justice in respect of the applicant's case.

57. Turning to the applicant's complaint concerning the lack of reasoning, the Court reiterates that, according to its case-law, parties to judicial proceedings are entitled to receive a specific and explicit reply to the arguments that are decisive for the outcome of those proceedings (see *Melgarejo Martínez de Abellanos*, cited above, §§ 41-43). In the present case, the *Audiencia Nacional* failed to address the applicant's central submission concerning the validity of payments to "Omissis", which was potentially determinative of the scope of his liability. This omission prevents the Court from verifying whether the argument was examined and dismissed or simply ignored.

58. In view of the foregoing, the Court concludes that the domestic proceedings were vitiated both by a breach of the principle of legal certainty arising from contradictory judgments delivered by the same Chamber in identical cases (see *Inmovilizados y Gestiones S.L.*, loc. cit.), and by a failure to

give sufficient reasons in response to a decisive argument. These deficiencies, taken together, impaired the fairness of the proceedings.

59. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

61. In respect of pecuniary damage, the applicant claimed the sum of EUR 1,396,970.32 which corresponded to the tax debt (EUR 1,106,342.84 principal) and delay interest (EUR 290,627.48) that he had been obliged to pay as a result of the *Audiencia Nacional* judgment of 21 October 2019. He further claimed EUR 9,600 in respect of non-pecuniary damage.

62. The Government argued that compensation could only cover the difference between the sum paid by the applicant (EUR 1,396,970.32) and the amount which would have been payable had the *Audiencia Nacional* treated him in the same way as the other insolvency administrator who had been required to pay EUR 1,388,056.78. Any greater award would, in their view, lead to unjust enrichment and inconsistent treatment. The Government submitted that the claim for non-pecuniary damage was unsubstantiated.

63. As regards pecuniary damage, the Court observes, firstly, that the parties appear to disagree on the extent to which the applicant's liability was treated differently from that of the other co-administrators. Given the joint and several nature of the liability, it is also possible that other co-administrators have already made payments to the tax authorities and that questions of contribution between co-debtors may arise. The Court further notes that any eventual outcome of the applicant's pending claim for State liability before the Ministry of Justice is also directly relevant to the assessment of the quantum of damages in the present case. In view of the uncertainties inherent in quantifying the pecuniary damage, the Court finds that the question of the application of Article 41 in respect of pecuniary damage is not ready for decision. That question must therefore be reserved, with the procedure to be determined at a later stage having regard to any agreement that may be reached between the parties (Rule 75 §§ 1 and 4 of the Rules of Court).

64. In any event, the Court notes that its finding of a violation may serve as grounds for the reopening of the domestic proceedings under Article 102 § 2 of the Administrative Court Proceedings Act (see paragraph 29 above) which would constitute an appropriate means of addressing the violation found, including its pecuniary consequences (see *Melgarejo Martinez de Abellanos*, cited above, § 48). Such a course would allow the *Audiencia Nacional* to reassess the applicant's arguments in the light of the reasoning it adopted in comparable cases and to determine afresh the scope of his liability. This would place the applicant in the position in which

he would have been had his right to a fair hearing not been infringed (see *Atutxa Mendiola and Others v. Spain*, no. 41427/14, §§ 51-52, 13 June 2017).

65. That said, the Court considers that the applicant must have sustained non-pecuniary damage, such as distress resulting from the inconsistency in the judicial process, which is not sufficiently compensated by the finding of a violation. Accordingly, the Court awards him EUR 9,600 under this head, plus any tax that may be chargeable.

B. Costs and expenses

66. The applicant also claimed EUR 209,554.66 for legal costs incurred in the domestic proceedings and before the Court. This sum included, firstly, a total of EUR 48,010.60 in court fees, including EUR 1,000 for the fee before the Supreme Court and EUR 47,010.60 assessed by the *Audiencia Nacional*, and, secondly, EUR 161,544.06 for professional fees of counsel and the judicial representative (*procurador*). He submitted that those costs were a direct consequence of the violation recognised by the Supreme Court. The applicant submitted invoices and noted that he remained legally bound to pay certain items which had not yet been paid.

67. The Government rejected the claim as excessive and unsupported. They noted that the costs imposed by the *Audiencia Nacional* had never been paid, since the creditor was the State itself, and therefore no loss had been suffered. They further argued that much of the professional fees claimed related to legal advice and proceedings that were unconnected to the miscarriage of justice recognised by the Supreme Court and that certain invoices lacked adequate detail. Moreover, the value-added tax included in the invoices was deductible by the applicant in his professional capacity.

68. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 8,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that the question of the application of Article 41 of the Convention in respect of pecuniary damage is not ready for decision and accordingly,

(a) reserves the said question;

(b) invites the Government and the applicant to submit, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, their written observations on the amount to be awarded to the applicant in respect of pecuniary damage and, in particular, to notify the Court of any agreement that they may reach;

(c) reserves the further procedure and delegates to the President of the Chamber the power to fix the same if need be;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 9,600 (nine thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 December 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar

Kateřina Šimáčková President