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

F. Javier Leon Diaz
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THIRD SECTION

ECHR-LE11.1R
CMG/GCP/ngr

03 AVR. 2012

BY FAX AND BY POST

Application no. 30141/09
Gutierrez Dorado and Dorado Ortiz v. Spain

Dear Sir,

I write to inform you that the European Court of Human Rights decided on 27 March 2012, after having deliberated, that the above application was inadmissible. A copy of the decision is enclosed.

This decision is drawn up in one of the official languages of the Court (English or French). It is **final and not subject to any appeal to either the Court or any other body**. You will therefore appreciate that the Registry will be unable to provide any further details about the Chamber's deliberations or to conduct further correspondence relating to its decision in this case. A translation of the decision into another language is not available.

The present communication is made pursuant to Rule 56 § 2 of the Rules of Court.

Yours faithfully,

Santiago Quesada
Section Registrar

Enc: Decision

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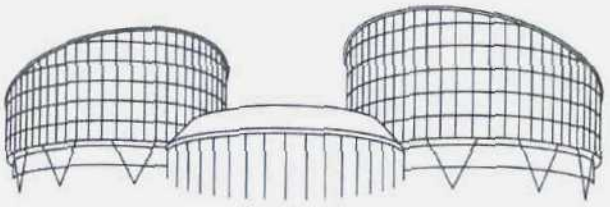

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 30141/09
Antonio GUTIERREZ DORADO and Carmen DORADO ORTIZ
against Spain

The European Court of Human Rights (Third Section), sitting on 27 March 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Mihai Poalelungi, *judges,*
and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 1 June 2009,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Antonio Gutiérrez Dorado and Ms Carmen Dorado Ortiz, are Spanish nationals who were born in 1952 and 1927 respectively and lived in Malaga. They were represented before the Court by Mr F.J. Leon Diaz, a lawyer practising in Sarajevo, and Mr P. Troop, barrister in London.

2. On 27 August 2010, the second applicant died. On 5 October 2010, the first applicant informed the Court that he wished to pursue the

application both on his behalf and on behalf of his late mother, the second applicant.

3. The facts of the case, as submitted by the applicants, may be summarised as follows.

A. Background to the case

4. In July 1936, Mr Dorado Luque, who was the grandfather of the first applicant and the father of the second applicant and a Member of the Spanish Parliament belonging to the socialist party ("PSOE"), was forcibly taken away by military forces in circumstances that have not yet been fully established. On 18 July 1936, he was travelling on a train from Madrid to Malaga. Armed forces took him away with two other persons (another Member of Parliament and the British consul in Malaga). They were transferred to the garrison of "San Rafael" in Cordoba. The British Consul was immediately released. Mr Dorado Luque and the other man were detained until at least 28 July 1936 because Mr Dorado Luque's signature appears as a witness on the death certificate of another detainee who apparently died in the garrison (Joaquín Garcia-Hidalgo Villanueva, a journalist and ex-Socialist Member of Parliament).

5. The applicants have no reliable information as to their relative's fate after 28 July 1936.

6. In early August 1936 a dead body was discovered which had documents with Mr Dorado Luque's name in the pockets. The autopsy stated that he died "as a result of firearm injuries with serious wounds in the brain and liver". The dead body was registered in the obituary book as Mr Dorado Luque. On 5 August 1936, the civil registry judge decided that there was insufficient evidence to conclude that the corpse was that of Mr Dorado Luque and made an entry in the civil registry of Cordoba that the body was that of an "unknown man".

7. On 15 October 1977, after the death of Francisco Franco, an Amnesty Law was passed by the newly established Spanish Parliament which granted immunity from prosecution to everyone who had committed any offence for political reasons prior to 15 December 1976.

8. In 1979, the applicants assisted Mr Dorado Luque's wife, Josefa Ortiz Lara (their mother and grandmother respectively) in the proceedings to obtain official confirmation of Mr Dorado Luque's disappearance, a necessary procedural step before Mrs Josefa Ortiz Lara could obtain her widow's pension in accordance with the applicable law. Spanish authorities dismissed her request for widow's pension arguing that she could not be entitled to widow's benefits as there was no evidence of her husband's death in the civil registry books.

9. In 1981, Mrs Josefa Ortiz initiated a procedure for voluntary declaration of death before the courts of Malaga. The procedure lasted until

1993. On 10 March 1993 the first instance court no. 1 of Malaga, after confirming that Mr Dorado Luque had disappeared and that his fate and whereabouts were unknown, ordered that his death be recorded in the civil registry books. The judge established 30 July 1936 as the date of death. Mrs Josefa Ortiz was finally entitled to perceive her widow's pension.

B. Criminal complaint brought by the second applicant for the abduction and possible murder of her father

10. On 22 May 2006, the second applicant brought a criminal complaint before the *Juzgado de Instrucción no. 2* of Cordoba (investigating Judge). She complained about the abduction and possible murder of Mr Dorado Luque in 1936 amounting to war crimes for which there were no statute of limitations. On 11 August 2006, the investigating Judge ruled against the applicant stating that the facts complained of amounted to a "hypothetical simple murder" which was subject to a statute of limitations of 20 years under the Criminal Code. As to the possibility that war crimes or crimes against humanity could not be time-barred, the Judge said that this could only apply after 2003 when the criminal code was amended in that sense and that the new rule could not be retrospectively applied to crimes which had already been time-barred by then.

11. The second applicant appealed to the *Audiencia Provincial* of Cordoba. On 16 October 2006, the *Audiencia Provincial* dismissed the appeal and confirmed the decision of the investigating Judge. The appellate court stated that the current constitutional regime prevented the prosecution of crimes committed during the Civil War since such claims would be contrary to the conciliatory nature of the Spanish constitutional framework and would only serve at "reviving old wounds or remove the embers of civil confrontation".

12. The second applicant filed an *amparo* appeal against this decision before the Constitutional Court. On 14 April 2008, the Constitutional Court declared the appeal inadmissible for being devoid of constitutional content.

13. The second applicant, on 14 December 2006, together with several victims' associations, filed a complaint before the *Audiencia Nacional* in Madrid. They complained that their relatives had suffered systematic enforced disappearances as well as possible systematic killings as part of a deliberate and calculated plan to eliminate a sector of the population. On 28 August 2008, the *Audiencia Nacional's* Investigating Judge no. 5, in a preliminary investigation, ordered several public and private institutions to submit information on individuals disappeared after 17 July 1936 as a result of the Civil War and the subsequent Franco regime.

14. On 16 October 2008, the Investigating Judge issued a ruling accepting jurisdiction, in so far as the crimes had been committed against high-level national institutions and the form of Government (military

rebellion of 1936 and the subsequent enforced disappearances). The ruling stated that all the facts complained of were not to be considered in isolation but rather within the wider context of the planned, massive repression by the Franco regime which began on 18 July 1936 against political opponents, carried out in a systematic manner which could amount to crimes against humanity as provided by the Spanish Criminal Code (Article 607 bis of the Criminal Code in force). The Investigating Judge further pointed out that the practice of enforced disappearances was used systematically to make it impossible to identify the victims and therefore prevent any judicial action against the perpetrators. He further noted that the whereabouts and fate of thousands of people that had been detained by the authorities were still unknown. These were continuous crimes because no information had been given to the families of the disappeared. The distress and anguish suffered by the relatives of the victims who still did not know the whereabouts and fate of their beloved ones amounted to a violation of Article 3 of the Convention (with reference to *Cyprus v. Turkey* [GC], no. 25781/94, ECHR 2001-IV).

15. The Public Prosecutor appealed against the Investigating Judge's decision, requesting the closure of the proceedings.

16. On 7 November 2008, the plenary of the *Audiencia Nacional* (criminal division) ordered all proceedings related to exhumations of mass graves to be suspended until final decision.

17. On 18 November 2008, the Investigating Judge no. 5 issued a decision relinquishing jurisdiction and advising the complainants to pursue their complaints before provincial courts. After receiving evidence that all the officials suspected (including Francisco Franco) had died, he declared their criminal responsibility extinguished. Complaints for the same facts alleged against other possible suspects would fall within the jurisdiction of the territorial courts competent in respect of the different mass graves (among which the territorial courts of Cordoba). In its decision, the Investigative Judge reiterated that these crimes should be prosecuted as the continuing crime of enforced disappearance and that there could be no application of the statute of limitations. He pointed out that the lack of official *ex officio* investigation for many years coupled with the numerous obstacles introduced by the Public Prosecutor to the opening of an investigation was in conflict with the ECHR and the PACE resolution 1463 of 3 October 2005 on enforced disappearances.

18. On 2 December 2008, the plenary of the *Audiencia Nacional* (criminal division) declared its lack of jurisdiction to investigate these crimes. The *Audiencia Nacional* noted that the crime of military rebellion had never fallen within its jurisdiction.

C. Other proceedings initiated by the applicants

19. The family of Mr Dorado Luque initiated several parallel initiatives to the judicial procedures to clarify his disappearance. On 7 June 2006, the second applicant sent a petition to the competent military tribunal requesting information about the detention and whereabouts of Mr Dorado Luque. On 4 July 2006, the military tribunal responded stating that they had no information about him.

20. On 8 August 2007, the Cordoba Municipal Council dismissed the applicants' petition to permit the exhumation of the body of Mr Dorado Luque from a mass grave identified in a pit of the cemetery in Cordoba. The local authorities argued that there were 39 tombstones above the mass grave and they had no authorization to remove them from the next of kin of the individuals buried there.

21. On 12 September 2007, pursuant to a petition by the applicants, the prison authorities of Cordoba issued a certificate confirming that Mr Dorado Luque had been detained there from 19 to 26 July 1936. The certificate stated that the reasons for the detention were "unknown" and that he was released upon orders from the military commander of Cordoba and surrendered to the *Guardia Civil* on 26 July 1936.

22. On 3 October 2008, the first applicant privately hired the services of forensic experts. In accordance with the Historical Memory Law (Law enacted in 2007), the first applicant was granted public funds (EUR 19,686. 40) by the Ministry of the Presidency to assist in the process of searching and recovering the remains of his grandfather. The forensic experts located a mass grave in the cemetery of "La Salud" in Cordoba where allegedly the corpse of Mr Dorado Luque might be buried according to the 1936 inscription in the cemetery obituary book. Although the *Audiencia Nacional's* Investigative Judge no. 5 had issued a specific order to the courts in Cordoba stating that the forensic works regarding the exhumation of Mr Dorado Luque were authorized, the Municipal Council of Cordoba issued an order to suspend all works. The forensic works have been suspended since then.

23. On 30 November 2009, the Ministry of the Presidency issued a decision denying the granting of further funds for the exhumation of the remains of Mr Dorado Luque.

24. It is submitted by the applicants that provincial courts, including the courts in Cordoba, are dismissing complaints by individuals disregarding the arguments of the *Audiencia Nacional's* Investigating Judge no. 5 in its decision on relinquishment.

COMPLAINTS

25. The applicants alleged that their father and grandfather Mr Dorado Luque had disappeared after being apprehended by armed forces on 18 July 1936. They invoke Articles 2, 3, 5, 8 and 13 of the Convention.

26. Under Article 2 of the Convention, the applicants submitted that the State must be held responsible for Mr Dorado Luque's death itself, either since the circumstances disclose a real likelihood that death has resulted from the unacknowledged detention or since there is sufficient circumstantial evidence to conclude that he is dead. Although the civil registry judge refused to register the body discovered in July 1936 and that his death was only registered in 1993, it is likely that Mr Dorado Luque was killed in the night of the 29 to 30 July 1936 and buried in the cemetery of "la Salud" in Cordoba. They contended that although the death might have taken place before the Convention entered into force in respect of Spain, procedural obligations arising under Article 2 may come into play in respect of deaths which occurred prior to the entry into force of the Convention (*Šilih v. Slovenia* [GC], no. 71463/01, 9 April 2009). In this regard, the applicants emphasized that it was not possible for them to bring a complaint in the period of Franco's regime and that the 1977 Amnesty Law barred them from having any prospect of requesting the authorities to open an investigation after 1977. Therefore, all the procedural steps required by Article 2 occurred after the entry into force of the Convention and fall within the Court's jurisdiction *ratione temporis*.

27. The applicants complained under Article 3 of the Convention that the disappearance of Mr Dorado Luque and the absence of official information as to his fate caused them continued and prolonged anguish that amounts to inhuman and degrading treatment. They further complained that the inaction by the authorities and the numerous obstacles to the exhumation process of their relative's remains have prevented them from being able to give a proper funeral to their relative, in contravention of Article 8.

28. The applicants complained under Article 5 of the Convention that the authorities have failed to provide a credible and substantiated explanation of what happened to Mr Dorado Luque after he was apprehended by military forces and detained.

29. Finally, the applicants complained under Article 13 that they have been left without effective remedies. During the criminal proceedings, public prosecutors at all levels repeatedly attempted to block the investigation. According to the final decisions of 18 November 2008 and 2 December 2008, they would have to pursue their complaints before the provincial courts in Cordoba. However, these courts have already ruled against the applicants' complaints. The applicants submitted that the relevant shortcomings are both systematic and systemic.

30. The applicants contended that the violations of the Convention are of a continuing nature and that as long as the situation persists, the six-month rule is not applicable.

THE LAW

31. The Court notes firstly that the first applicant was not party to the criminal proceedings initiated by his mother, the second applicant, in respect of the killing/disappearance of Mr Dorado Luque. The Court does not however consider it necessary to rule on whether the first applicant can validly introduce the application on his own behalf since, in any event, he may pursue the application introduced by his late mother, who died on 27 August 2010 (see, for instance, *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, §§ 9-12, ECHR 2009).

32. The Court emphasises that the provisions of the Convention do not bind a Contracting Party in relation to any act or omission which took place or any situation which ceased to exist before the date of the entry into force of the Convention with respect to that Party ("the critical date" – see *Blečić v. Croatia* [GC], no. 59532/00, § 70, ECHR 2006-III; *Šilih v. Slovenia* [GC], no. 71463/01, § 140, 9 April 2009; and *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 130, ECHR 2009-...). The Court may, however, have some regard to facts which occurred prior to the critical date because of their causal connection with subsequent facts which form the sole basis of the complaint and of the Court's examination (see *Šilih*, cited above, § 141).

33. The Court will begin its analysis on the basis of the hypothesis that the killing of Mr Dorado Luque took place in July 1936, having regard to the applicants' own argument that he was probably killed and buried at that time. In this regard, the Court notes that on 10 March 1993, the civil courts declared that Mr Dorado Luque was dead as of 30 July 1936.

34. The Convention entered into force in respect of Spain only on 4 October 1979, more than forty-three years after the events. It is not for the Court to establish what occurred in 1936 and such events are outside the Court's temporal jurisdiction (see, for instance, *Cakir and Others v. Cyprus* (dec.), no. 7864/06, 29 April 2010). As far as the complaint under Article 2 concerns the alleged ineffectiveness of the investigation into the applicants' relative's death, it is clear from the Court's case-law that the procedural obligation to carry out an effective investigation under Article 2 constitutes a separate and autonomous duty on Contracting States. It can therefore be considered an independent obligation arising out of Article 2, capable of

binding the State even when the death took place before the critical date (see, *inter alia*, *Šilih*, cited above, § 159; *Varnava and Others*, cited above, § 147; and *Velcea and Mazăre v. Romania*, no. 64301/01, § 81, 1 December 2009). As the Court has previously observed, the procedural obligation under Article 2 binds the State throughout the period in which the authorities can reasonably be expected to take measures with an aim to elucidate the circumstances of death and establish responsibility for it (see *Šilih*, cited above, § 157). In this context, it should be noted that there is little ground to be overly prescriptive as regards the possibility of an obligation to investigate unlawful killings arising many years after the events since the public interest in obtaining the prosecution and conviction of perpetrators is firmly recognised, particularly in the context of war crimes and crimes against humanity (*Brecknell v. the United Kingdom*, no. 32457/04, § 69, 27 November 2007; see, with regard to Article 7, *Kononov v. Latvia* [GC], no. 36376/04, ECHR 2010).

35. However, having regard to the principle of legal certainty, the Court's temporal jurisdiction as regards compliance with procedural obligations in respect of events that occur before the critical date is not open-ended. As the Court explained in *Šilih* (cited above, §§ 161-163), where the death occurred before the critical date, only procedural acts or omissions which occur after that date fall within the Court's temporal jurisdiction. Further, there must exist a genuine connection between the death and the entry into force of the Convention in respect of the respondent State for the procedural obligations imposed by Article 2 to come into effect (see *Šilih*, §§ 163 and 165, where the death of the applicants' son occurred only a little more than a year before the entry into force of the Convention in respect of Slovenia). In practice, this means that a significant proportion of the procedural steps required by this provision have been, or should have been, carried out after the critical date (see *Association 21 December 1989 and Others v. Romania*, nos. 33810/07 and 18817/08, § 116, 24 May 2011). However, the Court does not exclude that in certain circumstances the connection could also be based on the need to ensure that the guarantees and the underlying values of the Convention are protected in a real and effective manner (see also *Velcea and Mazăre*, cited above, §§ 83-85; *Tuna v. Turkey*, no. 22339/03, §§ 58-60, 19 January 2010; and *Agache and Others v. Romania*, no. 2712/02, § 69, 20 October 2009).

36. In the present case, the applicants' procedural complaint is related to an event which preceded the adoption of the Convention on 4 November 1950 by fourteen years and its ratification by Spain on 4 October 1979 by forty-three years (contrast *Šilih* and *Association 21 December 1989 and Others v. Romania*, cited above, where the lapse of time between the deaths and the entry into force of the Convention was much shorter, a little more than a year and four years and six months, respectively). In these circumstances, it is difficult to conclude that there is a genuine connection

between the death of the applicants' relative (1936) and the entry into force of the Convention in respect of Spain (1979).

37. However, even assuming that the applicants' case is a disappearance case and that the alleged violation is of a continuing nature (in the light of *Varnava and Others*, cited above, §§ 130-149), the applicants' complaint is in any event inadmissible for the following reasons. The Court has already held that applicants cannot wait indefinitely before bringing an application before it (see *Varnava and Others*, cited above, § 161). Indeed, with the lapse of time, memories of witnesses fade, witnesses may die or become untraceable, evidence deteriorates or ceases to exist, and the prospects that any effective investigation can be undertaken will increasingly diminish; and the Court's own examination and judgment may be deprived of meaningfulness and effectiveness. Applicants must therefore make proof of a certain amount of diligence and initiative and introduce their complaints without undue delay. The following passages from the *Varnava and Others* judgment (§§ 165-166) indicates what this involves:

> "165. Nonetheless, the Court considers that applications can be rejected as out of time in disappearance cases where there has been excessive or unexplained delay on the part of applicants once they have, or should have, become aware that no investigation has been instigated or that the investigation has lapsed into inaction or become ineffective and, in any of those eventualities, there is no immediate, realistic prospect of an effective investigation being provided in the future. Where there are initiatives being pursued in regard to a disappearance situation, applicants may reasonably await developments which could resolve crucial factual or legal issues. Indeed, as long as there is some meaningful contact between families and authorities concerning complaints and requests for information, or some indication, or realistic possibility, of progress in investigative measures, considerations of undue delay will not generally arise. However, where there has been a considerable lapse of time, and there have been significant delays and lulls in investigative activity, there will come a moment when the relatives must realise that no effective investigation has been, or will be provided. When this stage is reached will depend, unavoidably, on the circumstances of the particular case.
>
> 166. In a complex disappearance situation such as the present, arising in a situation of international conflict, where it is alleged that there is a complete absence of any investigation or meaningful contact with the authorities, it may be expected that the relatives bring the case within, at most, several years of the incident. If there is an investigation of sorts, even if sporadic and plagued by problems, the relatives may reasonably wait some years longer until hope of progress being made has effectively evaporated. Where more than ten years has elapsed, the applicants would generally have to show convincingly that there was some ongoing, and concrete, advance being achieved to justify further delay in coming to Strasbourg. Stricter expectations would apply in cases where the applicants have direct domestic access to the investigative authorities."

38. In that case, the Court went on to conclude that by the end of 1990 it must have become apparent that the mechanisms set up to deal with disappearances in Cyprus no longer offered any realistic hope of progress in either finding bodies or accounting for the fate of the missing persons in the

near future (see *Varnava and Others*, cited above, § 170). It has since rejected as out of time a number of cases because there was no evidence of any activity post-1990 which could have provided to the applicants some indication, or realistic possibility, of progress in investigative measures in relation to the disappearance of their relatives (see *Orphanou and Others v. Turkey* (dec.), nos. 43422/04 *et al.*, 1 December 2009; *Karefyllides and Others v. Turkey* (dec.), no. 45503/99, 1 December 2009; and *Charalambous and Others v. Turkey* (dec.), nos. 46744/07 *et al.*, 1 June 2010). In all these cases, the applicants applied to the Court more than thirty years after the disappearance of their relatives. In *Açış v. Turkey* (no. 7050/05, §§ 41-42, 1 February 2011), the Court also rejected as out of time an Article 2 complaint which had been introduced more than twelve years after the kidnapping and disappearance of the applicants' relative, since they had not shown that there was some concrete advance being achieved in the investigation to justify a delay of more than ten years before coming to Strasbourg.

39. In the present case, the Court notes that the disappearance occurred during an internal conflict. Although the Court is aware of the difficulties for the applicants to bring their complaints before the domestic courts even after the end of the Franco regime, having regard to the Amnesty Law of 1977, this did not discharge them from the duty to display due diligence and to bring their case before the Court without undue delay. The Court observes that the right of individual petition became applicable to Spain on 1st July 1981. Having regard to the fact that in the following years there were no official investigations concerning the circumstances of the disappeared person, it must have been apparent to the applicants that there was not any realistic hope of progress in either finding the body or accounting for the fate of their missing relative in the near future. However, the second applicant brought a criminal complaint before the domestic courts concerning the abduction and possible murder of her father, Mr Dorado Luque, only in 2006, that is, twenty-five years after the availability of the right of individual petition before the Court; and the application to this Court has not been introduced until the 1st of June 2009, that is, almost twenty-eight years after that date and seventy-three years after the disappearance. Therefore, it must be concluded that the applicants did not display the diligence required to comply with the requisites derived from the Convention and the case-law of the Court concerning disappearances.

40. The fact that in 2008 the *Audiencia Nacional's* Investigating Judge no. 5 opened an investigation on the disappearances which took place during and after the Civil War, including that of the applicants' relative, does not bring those proceedings into the temporal limits of supervision carried out by the Court (see, as regards the object of the six-month time-limit under Article 35 § 1, *Varnava and Others*, § 156, and *Walker v. the*

United Kingdom (dec.), no. 34979/97, ECHR 2000-I). Furthermore, this investigation was immediately suspended, following the Investigating Judge's own decision on relinquishment of 18 November 2008 and the decision of 2 December 2008 of the plenary of the *Audiencia Nacional*, declaring its lack of jurisdiction to investigate these crimes.

41. While the Court's case-law indicates that where new evidence or information arises concerning an unlawful killing (and, impliedly, a life-threatening disappearance) fresh obligations may arise for the authorities to take further investigative measures (*Brecknell v. the United Kingdom*, no. 32457/04, § 71, 27 November 2007, and *Karefyllides and Others*, cited above), it is not apparent that this assists the applicants' case as regards the six-month rule. It is not evident that any of the information obtained by the applicants between 2006 and 2008 gave them any prospect of obtaining any new investigative measures, or constituted a new plausible allegation, piece of evidence or item of information relevant to the identification, and eventual prosecution or punishment of the alleged perpetrators (see, *mutatis mutandis*, *Karefyllides and Others*, cited above; see *a contrario*, as regards an Article 3 complaint, *Stanimirović v. Serbia*, no. 26088/06, §§ 29 and 33, 18 October 2011).

42. In the light of these considerations, the Court concludes that the applicants' complaint under Article 2 was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

43. To the extent that any continuing procedural obligation to account for the applicants' relative's fate in detention could arise under Article 5 of the Convention, it falls subject to the same requirements of expedition and due diligence as do the complaints about the disappearance itself (see *Karefyllides and Others*, cited above).

44. The same must equally apply to the complaints raised under Articles 3 and 8 related to the effects of the disappearance and the lack of effective investigation (see, as regards an Article 3 complaint, *Papayianni and Others v. Turkey* (dec.), nos. 479/07, 4607/10 and 10715/10, 6 July 2010, and *Ioannou Iacovou and Others v. Turkey* (dec.), nos. 24506/08, 24730/08, 60758/08, 5 October 2010).

45. Therefore, the above complaints were also introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

46. Finally, as regards the applicants' complaint under Article 13, the Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy where there is an "arguable claim" of a violation of a substantive Convention provision (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The Court has found above that the applicants' complaints under Articles 2, 5, 3 and 8 are inadmissible as they were introduced out of time. In these circumstances, the Court cannot examine whether the applicants had an "arguable claim". It

follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court by a majority

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President