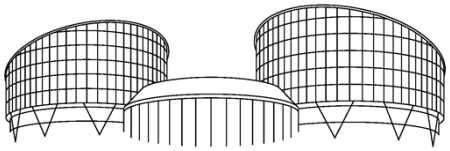

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF TORANZO GOMEZ v. SPAIN

(Application no. 26922/14)

JUDGMENT

STRASBOURG

20 November 2018

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 Toranzo Gomez v. Spain,

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

Vincent A. De Gaetano, *President,*
Branko Lubarda,
Helen Keller,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides,
María Elósegui, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 23 October 2018,

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

PROCEDURE

1. The case originated in an application (no. 26922/14) 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 Agustin Toranzo Gomez ("the applicant"), on 26 March 2014.

2. The applicant was represented by Mr L.M. de Los Santos Castillo, a lawyer practising in Seville. The Spanish Government ("the Government") were represented by their Agent, Mr R.A. León Cavero, State Attorney.

3. The applicant argued that the domestic courts' decision finding him guilty of defamation had amounted to an undue interference with his right to freedom of expression as protected by Article 10 of the Convention.

4. On 12 November 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in Seville.

6. The applicant was a member of an activist group which occupied the Casas Viejas Social Centre in Seville.

7. The owners of the building initiated judicial proceedings before the Seville First Instance Court no. 24 (hereinafter the "First-Instance Court") to recover possession of their property. The First-Instance Court ultimately

ordered the eviction of all the occupants and set 29 November 2007 as the date for their removal.

8. On that date, the applicant, along with other occupiers, participated in a protest against their eviction from the building.

9. Once the Judicial Committee of the Notices and Seizures Department (*Comisión Judicial del Servicio Común de Notificaciones y Embargos*), together with the legal representative of the building owners and the police, entered into the building, they discovered that the occupants had dug an underground tunnel of about 4.5 m deep which ended in a small space. They had placed some rudimentary reinforcing in order to prevent the collapse of the structure. Furthermore the occupants had positioned several "PVC" and iron tubes in the walls and the floor of the small room.

10. As part of the protest against the eviction, the applicant and another protester, R.D.P., claimed that they had attached themselves to the floor of the room in such a way that they were not able to release themselves. Indeed they had introduced one of their arms inside one of the tubes and enchained their wrist to an iron stick which was fixed inside the tube. Since the fixation system was not visible it was impossible for the authorities to know whether this was true or not.

11. Negotiations were held throughout the whole day, yet they were unsuccessful. The police, together with the fire service, considered digging them out. This idea was dismissed as there was risk of collapse.

12. In order to verify whether the applicant and R.D.P. were attached to the floor, the police officers fixed a rope to their waist and wrist, respectively, and tried to pull them out of the tube to which they were fixed, to no avail. The fire service informed the applicant and R.D.P. that the building might collapse if heavy machinery were used to release them.

13. On 30 November 2007, in view of the time which had elapsed and the applicant's threat to kick down some unstable wooden posts that had been installed by the fire fighters as a preventive measure, two police officers immobilised them with ropes.

14. At around 7 p.m. on 30 November 2007, owing to the severe suffering caused by the fixation technique, R.D.P. informed the police officers and fire fighters of his intention to voluntarily release himself and asked them to untie him. At around 8.30 p.m. the applicant also decided to end his protest.

15. The applicant and R.D.P. were immediately arrested and brought before a judge. They were also taken to a public health centre where they underwent a forensic examination. As regards the applicant, the forensic report stated the following:

> "**Patient history and examination**
>
> He refers to having had his right hand tied, reporting local pain, local redness. Joint movement. No vascular disorders.

X rays: 01

Presumptive diagnosis:

Contusion of the right wrist.

Treatment:

Avoid strain.

[illegible drug name] 1/d if pain"

16. That same report also stated the following:

"Visual inspection, palpation and manipulation of limbs and other body areas rule out the possibility of physical injuries compatible with trauma or exogenous violence.

No haematomata, abrasions or injuries on different explored areas. He reports discomfort in both wrists but no visible haematological signs are at present detectable.

Interview and patient history rule out any decrease of his cognitive or volitional abilities, [patient thus] fit to give statement at this very moment."

17. On 1 December 2007 the applicant participated in a press conference during which he commented on the eviction and the techniques the police and fire fighters had used during the confinement. He referred to the events in the following terms:

"The torture was physical and psychological. The physical torture was undertaken only by national police officers and was insanely observed by the fire fighters. That is to say, fire fighters, whose specific names I am going to give because they treated us very badly – the most senior fireman was L., and [there was also] firemen M. and J – were taking photographs while we were tortured, taking photographs next to us as if we were their prizes, mocking. The physical torture that I am going to describe ... was very subtle so that it did not leave marks, but it caused intense pain ... and the other torture, well, it left marks ... above all the first one on my colleague ...

The first act of torture was carried out by national police officers, as I say, as soon as they came ... they grabbed my colleague's arm, the free one, and they fixed a rope to his wrist quite tightly and they took the rope out of the tunnel and three national police officers ... pulled him to try to get him out ... with the purpose of causing him pain, frightening him, you know. The wrist inside the tube started to swell ... he was not able to open the padlock for a full day ...

[T]o me, instead of fixing the rope to my free wrist, they fixed it to my waist and they repeated what they had done to R.D.P.: they took the rope out of the tunnel and three national police officers ... pulled me with the same purpose ... the second act of torture was already physical and was perpetrated by national police officers. It was conducted at the end of the protest action, that is to say, the physical torture forced us to [release ourselves] from the tubes ... [T]he blood supply was cut off at the top, we could not move our fingers since the pain was very intense, we were like this for an hour, that is when fire fighters took the photograph because they did nothing else to us.

This act of torture was also undertaken by two national police officers who appeared in some press pictures in 'Emasesa' white overalls: I am not sure that if [people] have

1. This means that the X-ray photograph did not show any pathological findings.

realised that both police officers with the 'Emasesa' overalls appear [in the press pictures], well, these are the ones who carried out the torture[;] then they finished tying us up and left the place and right away some fire fighters arrived and then the firemen J., M. and L. took photographs as a prize ... at this point, and owing to suffering and the pain in his wrist, R.D.P. ... decided to leave the protest action and release himself ... I said to them as a proposal: 'Look, I am not going to release myself, but I will cooperate with everything that is necessary to allow the underpinning of the structure ... [T]hey then tied me in the same position and, well, that is then when I decided to put an end to the protest action. Well this was physical torture ...

Psychological torture was repeated eh, well it was continuous ... psychological torture was repeated several times and it was mainly perpetrated by fire fighters and consisted of brief psychological mistreatment ... they told us that it was impossible to take us out alive ..., that we would be killed by rubble because there was a bulldozer working right above us, [and] we were listening to the bulldozer ... [T]hey used the famous 'oxygen measuring device' which indicated that we were about to pass out ... They told us that the police were going to inject us with a sleep serum ... [T]hey told us that the police were going to introduce gas through the ventilation system, they did not specify which type of gas ... [T]hey also told us that they would release rats inside the tunnel ..."

18. A female journalist asked the applicant whether the medical report had revealed any kind of physical or psychological damage, to which the applicant answered "not psychological" yet "physical". The applicant further stated that he had already said that "physical torture [was] very subtle and undertaken by elite police officers, that hardly left marks but ... caused intense pain".

19. As a result of the statements, on 21 December 2007 the delegation of the Government of Andalusia lodged a complaint with the public prosecutor, requesting the initiation of a criminal investigation before the Seville investigating judge no. 17. This judge ordered the opening of an investigation, as a result of which the applicant was charged with slander and defamation.

20. On 6 July 2011 Seville criminal judge no. 13 (hereinafter "the criminal judge") convicted the applicant of slander, sentencing him to twenty month fine with a daily amount of 10 euros (EUR). In addition, he was ordered to pay compensation to the two police officers for damage in a total amount of EUR 1,200, with one day's imprisonment for every two day fines unpaid in default. Furthermore, the applicant was ordered to publish the judgment in the media which had participated in the press conference at his own expense.

21. The criminal judge stated that authorities had acted in a proportionate manner. The criminal judge considered that the first action carried out by the police (that is to say fixing a rope to their waist and wrist, respectively, and using force in an attempt to pull them out) had been a proportionate technique with the purpose of verifying whether the applicant and R.D.P. were in fact attached to the concrete floor. He further observed

that the methods used by the police, such as threatening them with the use of gas or with prosecution for committing a crime against a person in authority, had just been measures aimed at pressuring the applicant and R.D.P. to release themselves. According to the criminal judge the fire fighters also intimidated the applicant and R.D.P. by telling them that the walls could collapse if the authorities opted to use machinery to release them. The purpose behind this was to make them release themselves voluntarily. Additionally, the criminal judge observed that the authorities had then taken the decision to tie the applicant's right hand to his ankle in order to immobilise him, in view of the risk of the walls collapsing and the applicant's threat to kick down the unstable wooden posts that had been installed by the fire fighters as a preventive measure.

22. In view of the statement of facts as determined by the judge, it was considered that the applicant's remarks constituted a direct accusation of the commission of a crime – namely torture – which was untrue.

23. The criminal judge then considered that the right to freedom of speech was "a fundamental right but it [was] not unlimited either in its abstract concept or in its practical execution" since it had to be "respectful of other people and one [could not] avail oneself of it in order to use abusive or offensive words". In this case "the applicant [had] exceeded the bounds of his right to freedom of speech ... by violating other people's rights."

24. The criminal judge noted that the behaviour of the police officers did not disclose all the elements under the legal classification of torture within the meaning of Article 174 of the Spanish Criminal Code, which clearly defined torture as follows:

> "Torture is committed by a public authority or official who, in abuse of office, and in order to obtain a confession or information from a person, or to punish him or her for any act he or she may have committed, or is suspected of having committed, or for any reason based on any kind of discrimination, subjects that person to conditions or procedures that, owing to their nature, duration or other circumstances, cause him or her physical or mental suffering, suppression of or decrease in his or her powers of cognisance, discernment or decision-making, or that in any other way attack his or her honour".

25. The criminal judge thus considered that the applicant's declaration included a specific accusation of torture, which meant that a police officer or official had specific intent to obtain a confession or information from a person, or to punish them for an act they may have committed, or were suspected of having committed.

26. The judge additionally found that the descriptions given by the applicant, in combination with the pictures that had been published by the press, could lead to the identification of the police officers in question. They would then be linked to accusations of torture, which, according to the criminal judge, had not taken place.

27. In reply to the argument that the word "torture" had been used colloquially, the judge considered the following:

> "[T]he applicant's repetition of the word torture reveals that it was not an occasional and exceptional use of such word in place, but it was exposed and expressed in full awareness and repeatedly in order to get the message across to listeners, i.e., that the applicant had been subject to torture by police officers and fire fighters."

28. The applicant lodged an appeal with the Seville *Audiencia Provincial*, which on 28 June 2013 partially ruled in favour of the applicant and ordered the fine to be reduced to twelve month fine with a daily amount of EUR 10. The *Audiencia Provincial* upheld the remaining elements of the first-instance judgment. In particular, the Seville *Audiencia Provincial* indicated that the remarks made by the applicant had constituted a direct accusation of the crime of torture and that the applicant's statements were a "deliberate way to personally and professionally discredit the police officers". According to the *Audiencia Provincial*, the applicant was aware of the fact that what he was publicly saying was false. Additionally, it stated that the applicant's statement could not be described as an act of public criticism of the intervention carried out by the police, nor had the applicant's intent been to provide the public with information. On the contrary, the applicant had "simply claimed that he [had been] tortured by two police officers ..., something that [had been] false ... with the sole intent of attacking the honour of the police officers by maintaining that they had committed a crime". The applicant's statements had been a "conscious, disproportionate, unnecessary and unjustified act of accusing someone of having committed a crime which [had gone] beyond the legitimate criticism of a police action ...".

29. On 29 July 2013 the applicant lodged an *amparo* appeal with the Constitutional Court. In particular, the applicant relied on paragraphs a) and d) of Article 20 of the Spanish Constitution. The applicant stated that the narrated facts at the press conference had been true, as had been recognised by the domestic courts in the framework of the criminal proceedings, yet the only thing that had differed had been the intention attributable to the police officers. The applicant had used the term "torture" in a colloquial manner. This type of expression could not be limited by strict criminal-legal definitions. The applicant further stated that the term "torture" contained several meanings apart from the strictly criminal one. According to the Royal Academy of the Spanish Language (*Real Academia Española* - hereinafter "the Academy"), the word torture meant "serious physical or psychological pain inflicted on somebody, with various methods and tools, with the purpose of obtaining a confession or as a means to punish". However, according to this same institution, the word torture also meant "serious pain or suffering, or the thing that produces it". The applicant further stressed that the word "torture" was in daily used to refer to any kind of mistreatment. Ultimately, the applicant argued that restricting the use of

the word "torture" to those scenarios where all the criminal elements of the crime were present was an excessive restriction on the right to freedom of expression and, in particular, on a social debate which concerns the methods used by public powers in order to pursue a legitimate aim.

30. On 21 October 2013 the Constitutional Court declared the *amparo* appeal inadmissible on the grounds that the applicant had not complied with the obligation to prove that his appeal was one of "special constitutional relevance".

II. RELEVANT DOMESTIC LAW

31. The relevant provisions of the Spanish Constitution read as follows:

Article 18

"1. The right to respect for honour, for personal and family life and for an individual's own image is guaranteed.

..."

Article 20

"1. The following rights shall be recognised and protected:

(a) The right to freely express and disseminate thoughts, ideas and opinions orally, in writing or by any other means of reproduction;

...

2. The exercise of these rights may not be restricted by any form of prior censorship.

...

4. The said freedoms shall be limited by respect for the rights recognised in the present Title, by the laws implementing the same, and in particular by the right to respect for honour, private life and an individual's image and to the protection of youth and childhood..

...".

32. The relevant provisions of the Spanish Criminal Code read as follows:

Article 174

"1. Torture is committed by a public authority or official who, in abuse of office, and in order to obtain a confession or information from a person, or to punish him or her for any act he or she may have committed, or is suspected of having committed, or for any reason based on any kind of discrimination, subjects that person to conditions or procedures that, owing to their nature, duration or other circumstances, cause him or her physical or mental suffering, suppression of or decrease in his or her powers of cognisance, discernment or decision-making, or that in any other way attack his or her honour. Those found guilty of torture shall be punished with a sentence of imprisonment of from two to six yea rs if the offence is serious, and of imprisonment

of from one to three years if it is not. In addition to the penalties stated, in all cases the punishment of absolute disqualification from office shall be imposed, for from eight to twelve years.

2. The same penalties shall be incurred, respectively, by the authority or officer of a penal institution or correctional or protection centre for minors who has committed the acts referred to in the preceding paragraph in relation to the detainees, ... or prisoners".

Article 205

"Slander involves accusing another person of a felony while knowing it is false or recklessly disregarding the truth".

Article 206

"Slander shall be punished with imprisonment of six months to two years or day fines of twelve to twenty-four months, if propagated with publicity and, in other cases, by day fines of from six to twelve months".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

33. The applicant complains under Article 10 of the Convention that the domestic courts' decision finding him guilty of slander had amounted to an undue interference with his right to freedom of expression. Article 10 of the Convention reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

34. The Government contested that argument.

A. Admissibility

35. The Government asserted that the application should be declared inadmissible as manifestly ill-founded on the grounds, among others, that the Spanish courts had acted in order to protect the rights of the two police

officers established by Article 8 of the Convention, as well as citizens' right to receive accurate information, as laid down in Article 10 of the Convention.

36. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

37. The applicant argued that the right to freedom of expression played a fundamental role in the protection of the Articles contained in the Convention and its Protocols. The applicant stressed that his statements had been based on facts that had been established by the domestic courts. These facts had had an impact on the applicant's bodily and mental integrity and could be colloquially described as "torture".

38. Requiring the applicant to prove his claim of torture to the criminal standard had been an illegitimate curtailment of his right to freedom of expression. According to the applicant, the domestic courts had erroneously centred the legal debate on whether the actions had qualified as torture in the sense of the Spanish Criminal Code, instead of determining whether his assertions had been true or not. The applicant noted that the Academy had two definitions for the word "torture", specifically "serious physical or psychological pain inflicted on somebody, with various methods and tools, with the purpose of obtaining a confession or as a means to punish", as well as "serious pain or suffering, or the thing that produces it". The applicant stressed that the word torture was used in the everyday language to make a reference to any kind of ill-treatment.

39. Lastly, the applicant argued that the limits of permissible criticism were wider with regard to individuals exercising public power than in relation to private citizens. Restraining the applicant's right to freedom of expression could lead to the restriction of the right to publicly criticise actions.

(b) The Government

40. The Government argued that the exercise of the right of freedom of expression demanded from the user some duties and responsibilities, which could be subject to restrictions and penalties as were prescribed by law and necessary in a democratic society in the interests of – with respect to the present case – public safety, for the prevention of disorder or crime, for the protection of the reputation or rights of others or for maintaining the

authority of the judiciary. The statements made by the applicant were broadly reported by the mass media to whom he gave a press conference.

41. The Government submitted that the present case was similar to the case of *Cumpănă and Mazăre v. Romania* ([GC], no. 33348/96), which had concerned the compatibility with the Convention of criminal proceedings followed against two journalists who had published an article accusing a former deputy mayor and a judge of committing a series of offences. Additionally, the Government stressed the fact that in the present case the applicant was not a journalist.

42. The Government further averred that the domestic courts had assessed several pieces of evidence in order to determine what had really happened, specifically hidden recordings taken by the illegal recording system installed by the illegal occupants, medical reports of both confined people which had been taken without delay after they had been detained, as well as the witness statements made by the police officers and fire officers involved, concluding that the applicant's statements had been false.

43. The Government stated that the immobilisation technique used by the police had not caused any injury to the applicant or R.D.P. In particular, the Spanish courts had considered that the applicant had been temporarily immobilised for legitimate purposes, and that "there [had been] no evidence of torture whatsoever".

44. As regards the colloquial use of the word "torture", the Government submitted that the transcription of the applicant's statement had "ma[d]e it quite clear that" the applicant had accused specific police officers of committing torture. Not only once, but several times, including when reading a previously-prepared written statement, had the applicant referred to the technique used by the police as torture. Additionally, the applicant had specifically made an individual reference and identified the two police officers and fire fighters that had been present during the confinement. The domestic courts had found that the allegations about the claimant's conduct had not been confirmed by the evidence taken during the proceedings. As a result, the personal, and family reputation and honour of the police officers had been seriously damaged as they could be identified by friends and family and could be seen as linked to torture.

45. The Government concluded that the interference with the applicant's right to freedom of speech had been prescribed by law and had been necessary in a democratic society for the purpose of protecting the police officers' and fire fighters' reputation and honour.

2. The Court's assessment

(a) Whether there was an interference

46. It is common ground between the parties that the impugned domestic decisions constituted an "interference by [a] public authority" with the

applicant's right to freedom of expression as guaranteed under the first paragraph of Article 10.

(b) Whether it was prescribed by law and pursued a legitimate aim

47. It is not in dispute that the impugned measure had a basis in Articles 205 and 206 of the Spanish Criminal Code. The Court furthermore observes that the interference pursued the legitimate aim of protecting "the reputation or rights of others".

(c) Whether the interference was necessary in a democratic society

(i) General principles

(α) Application of the requirement in Article 10 § 2 of the Convention that an interference be "necessary in a democratic society"

48. The general principles for assessing whether an interference with the exercise of the right to freedom of expression is "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention are well-settled in the Court's case-law. As noted by the Grand Chamber in *Perinçek v. Switzerland* ([GC], no. 27510/08), these principles were recently restated in *Mouvement raëlien suisse v. Switzerland* ([GC], no. 16354/06, § 48, ECHR 2012) and *Animal Defenders International v. the United Kingdom* ([GC], no. 48876/08, § 100, ECHR 2013), and can be summarised in this way:

(i) Freedom of expression is one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to Article 10 § 2, it applies not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, this freedom is subject to exceptions, but these must be construed strictly, and the need for any restrictions must be established convincingly.

(ii) The adjective "necessary" in Article 10 § 2 implies the existence of a pressing social need. The High Contracting Parties have a margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the law and the decisions that apply it, even those given by independent courts. The Court is therefore empowered to give the final ruling on whether a "restriction" can be reconciled with freedom of expression.

(iii) The Court's task is not to take the place of the competent national authorities but to review the decisions that they made under Article 10. This does not mean that the Court's supervision is limited to ascertaining whether these authorities exercised their discretion

reasonably, carefully and in good faith. The Court must rather examine the interference in the light of the case as a whole and determine whether it was proportionate to the legitimate aim pursued and whether the reasons adduced by the national authorities to justify it were relevant and sufficient. In doing so, the Court has to satisfy itself that these authorities applied standards which were in conformity with the principles embodied in Article 10 and relied on an acceptable assessment of the relevant facts.

49. Another principle that has been consistently emphasised in the Court's case-law is that there is little scope under Article 10 § 2 of the Convention for restrictions on political expression or on debate on questions of public interest (see, among many other authorities, *Wingrove v. the United Kingdom*, 25 November 1996, § 58, *Reports of Judgments and Decisions* 1996-V; *Ceylan v. Turkey* [GC], no. 23556/94, § 34, ECHR 1999-IV; and *Animal Defenders International*, cited above, § 102).

(β) Balancing of Article 10 and Article 8 of the Convention

50. The general principles applicable to cases in which the right to freedom of expression under Article 10 of the Convention has to be balanced against the right to respect for private life under Article 8 of the Convention were summarised by the Court's Grand Chamber in *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], (no 17224/11, § 77, 27 June 2017) and *Perinçek* (cited above) § 198, ECHR 2015 (extracts)), which overviewed the Court's case-law established in *Von Hannover v. Germany* (no. 2) ([GC], nos. 40660/08 and 60641/08, §§ 104-07, ECHR 2012) and *Axel Springer AG v. Germany* ([GC], no. 39954/08, §§ 85-88, 7 February 2012). They can be listed as follows:

(i) In such cases, the outcome should not vary depending on whether the application was brought under Article 8 by the person who was the subject of the statement or under Article 10 by the person who has made it, because in principle the rights under these Articles deserve equal respect.

(ii) The choice of the means to secure compliance with Article 8 in the sphere of the relations of individuals between themselves is in principle a matter that falls within the High Contracting Party's margin of appreciation, whether the obligations on it are positive or negative. There are different ways of ensuring respect for private life and the nature of the obligation will depend on the particular aspect of private life that is at issue.

(iii) Likewise, under Article 10 of the Convention, the High Contracting Parties have a margin of appreciation in assessing whether and to what extent an interference with the right to freedom of expression is necessary.

(iv) The margin of appreciation, however, goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by independent courts. In exercising its supervisory function, the Court does not have to take the place of the national courts but to review, in the light of the case as a whole, whether their decisions were compatible with the provisions of the Convention relied on.

(v) If the balancing exercise has been carried out by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for theirs.

51. Moreover, the Court has also established that, in order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and be carried out in a manner causing prejudice to personal enjoyment of the right to respect for private life (see, *Bédat v. Switzerland* [GC], no. 56925/08, § 72, 29 March 2016 and *Axel Springer AG*, cited above, § 83). More specifically, the Court considered that reputation had been deemed to be an independent right mostly when the factual allegations were of such a seriously offensive nature that their publication had an inevitable direct effect on the applicant's private life (see *Karakó v. Hungary*, no. 39311/05, § 23, 28 April 2009, and *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 40, 21 September 2010).

52. Finally, the Court has also held that Article 8 could not be relied on in order to complain of a loss of reputation which was the foreseeable consequence of one's own actions such as, for example, the commission of a criminal offence (see *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 49, ECHR 2004-VIII).

(ii) Application of the above principles to the present case

53. In the present case the Court is faced with the need to strike a balance between two Convention rights: the right to freedom of expression under Article 10 of the Convention and the right to respect for private life under Article 8 of the Convention; it will therefore take into account the principles set out in its case-law in relation to that balancing exercise and more recently summarised in *Perinçek* (cited above).

(α) Nature of the applicant's statements

54. The Court is not required to determine whether the applicant was subject to torture or not. The relevant question is rather whether the applicant's statements belonged to a type of expression entitled to protection under Article 10 of the Convention, which is ultimately for the Court to decide, while having regard to the findings of the Spanish courts in this connection.

55. To assess the weight of the applicant's interest in the exercise of his right to freedom of expression, the Court must first examine the nature of the applicant's statements, in which he accused two police officers of using torture techniques which had caused him severe psychological and physical suffering. The Court firstly observes that, according to the judments issued by the Criminal Court and the *Audiencia Provincial,* the methods used by the police not only consisted of negotiations, but also of tying the applicant's waist with a rope and attempting to persuasively pull him out, threatening him with the use of gas and warning him with the imminent collapse of the whole structure, as well as tying his hand to his ankle for a long period of time in a painful position (see paragraphs 21 and 28 above).

56. In the Court's view, even if it were to admit that the applicant used a style which may have involved a certain degree of exageration, the Court observes that the applicant was complaining about the treatment given by the authorities during his confinement, which, regardless of the fact that the applicant had put himself in that situation, must have caused him a certain feeling of distress, fear and mental as well as physical suffering.

β) The context of the interference and the method employed by the Spanish courts to justify the applicant's conviction

57. Additionally, the Court notes that the applicant's statements must be seen in context. It observes that in the present case his statements did not refer to an aspect of the police officers' private life as such but rather to their behaviour as a public authority. There is no doubt that the behaviour of agents in the exercise of their public authority and the possible consequences on the applicant and third parties, are matters of public interest (see *Bédat v. Switzerland* [GC], no. 56925/08, § 49, ECHR 2016, and *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 144, ECHR 2016 (extracts).

58. After the applicant was released from detention he gave a press conference with the purpose of giving his opinion on the methods used by the police and the behaviour of the fire fighters. The Court observes that the applicant carefully described the methods used by the police and fire fighters, which correspond to what was also proven before the domestic court in the framework of the criminal proceedings. Additionally, the Court notes that the applicant, by thoroughly describing these methods, left no room for public opinion to picture something different from what had happened. Indeed, the Court considers that there is nothing in the case to suggest that the applicant's allegations were made otherwise than in good faith and in pursuit of the legitimate aim of debating a matter of public interest (see, *mutatis mutandis*, *Ghiulfer Predescu v. Romania*, no. 29751/09, § 59, 27 June 2017, and *Feldek v. Slovakia*, no. 29032/95, § 84, ECHR 2001-VIII).

59. The only point of discord, thus, is in the characterisation of those facts.The Court finds that the expression "torture" used by the applicant cannot but be interpreted as a value judgment, the veracity of which is not susceptible of proof. Such value judgments may be excessive in the absence of any factual basis but, in the light of the aforementioned elements, that does not appear to have been the case here. Indeed, the factual basis at issue is to be found in the judgments issued by the Criminal Court and the *Audiencia Provincial*, which clearly described the police methods. The depiction of facts as found by the domestic correspond in substance with the applicant's description. The Court considers that the applicant used the word "torture" in a colloquial manner with the purpose of denouncing the police methods and what he considered to be an excessive and disproportionate use of force by the police and the mistreatment he considers to have received at the hands of the police and the fire fighters.

(γ) Extent to which the individual policemen and the firemen were affected

60. The Court also finds that no account was taken concerning whether the statements advocated the use of violence, or whether other means were available for replying to the allegations before resorting to criminal proceedings, which the Court has considered essential elements to be taken in consideration (see, *Perinçek*, cited above, §§ 204-08; *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, §§ 61, ECHR 1999-IV; and *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236). Indeed, there is no reference either in the domestic courts' decision or in the Government's observations as to whether the applicant's statements had actual negative consequences for the police officers.

61. Additionally, the Court does not share the Government's view that the present case shares a similar background with the case of *Cumpănă and Mazăre* (cited above). Indeed, in that case the Court observed that the applicants' statements about a third person could in fact have led the public to believe that the "fraud" of which she and another person had been accused and the bribes they had allegedly accepted "were established and uncontroversial facts". In the present case, the domestic courts did not contest the truthfulness of the applicant's allegations (only the legal qualification of the police methods), whereas the domestic courts in *Cumpănă and Mazăre* established that "the applicants' allegations ... had presented a distorted view of reality and had not been based on actual facts" (*Cumpănă and Mazăre,* cited above*,* §103).

(η) Severity of the interference

62. As regards the penalty imposed, while it is perfectly legitimate for the institutions of the State, as guarantors of institutional public order, to be protected by the competent authorities, the dominant position occupied by those institutions requires the authorities to display restraint in resorting to

criminal proceedings (see *Otegi Mondragon v. Spain*, no. 2034/07, § 58, ECHR 2011, and, *mutatis mutandis*, *Castells*, cited above, § 46). The Court observes in that regard that the nature and severity of the penalties imposed are also factors to be taken into consideration in assessing the "proportionality" of the interference.

63. The Court notes that the domestic courts ordered the applicant to pay a twelve month fine with a daily amount of EUR 10 EUR, as well as compensation of a total amount of EUR 1,200. Additionally, should the applicant not voluntarily pay the imposed fine, he would be subject to one day's imprisonment for every two day fines unpaid. Furthermore, the applicant was also ordered to publish at his own expense the judgment in the media which had covered the press conference.

64. In the Court's view, the above sanction may have had a "chilling effect" on the exercise of the applicant's freedom of expression as it may have discouraged him from criticising the actions of public officials (see, *mutatis mutandis*, *Lewandowska-Malec v. Poland*, no. 39660/07, § 70, 18 September 2012).

θ) Balancing the applicant's right to freedom of expression against the policemen's right to respect for their private life

65. Lastly, the Court notes that restricting the applicant's right to criticise the actions of public powers by imposing an obligation to accurately respect the legal definition of torture set in the Spanish Criminal Code would be imposing a heavy burden on the applicant (as well as on an average citizen), disproportionally undermining his right to freedom of expression and to publicly express criticism on what he considered was a disproportionate action on the part of the police and mistreatment by the fire fighters.

66. In the light of the factors set out above, the Court takes the view that the sanction imposed on the applicant lacked appropriate justification and that the standards applied by the domestic courts failed to ensure a fair balance between the relevant rights and related interests.

67. Accordingly, the interference complained of was not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention.

68. There has therefore been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

1. Pecuniary damage

70. In respect of pecuniary damage, the applicant sought just satisfaction in the amount of 1,200 euros (EUR), corresponding to the amount of compensation he had had to pay to the police officers (see paragraph 20 above).

71. The Government submitted that there was no causal link between the alleged violation and the compensation for pecuniary damage sought, since the fine had been paid to the injured parties as compensation for the damage suffered as a result of the applicant's own actions.

72. The Court is satisfied that there is a sufficient causal link between the alleged pecuniary damage suffered and the violation found. The compensation imposed on the applicant and paid by him should be reimbursed in its entirety.

2. Non pecuniary damage

73. The applicant further claimed EUR 20,000 in respect of the non-pecuniary damage he had suffered as a result of the violation of the Convention. The matter had caused the applicant psychological pain and suffering. The applicant further stated that he had had to undergo a course of psychological treatment as a result of the stress caused by the proceedings against him.

74. The Government disputed the above claim, considering that a finding of violation by the Court would constitute adequate just satisfaction.

75. The Court accepts that the applicant suffered distress and frustration as a result of the violation of the Convention which cannot be adequately compensated by the findings in this respect. Making an assessment on an equitable basis, the Court awards the applicant EUR 4,000 under this head.

B. Costs and expenses

76. The applicant also claimed EUR 3,025 for the costs and expenses incurred before the Court.

77. The Government argued that the applicant had not submitted any documents to show that he had actually incurred these costs.

78. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 3,025 for the proceedings before the Court.

C. Default interest

79. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *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:
      (i) EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 3,025 (three thousand and twenty-five euros), plus any tax that may be chargeable, 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;

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

Done in English, and notified in writing on 20 November 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Vincent A. De Gaetano
Deputy Registrar	President