

## **Benitez Moriana and Iñigo Fernández vs. Spain, App no 36537/15 and 36539/15 (ECtHR 9 March 2021)**

### Member State

 Spain

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### Topic

Right to freedom of expression – Critics to the judiciary - right to honour of judges and citizens trust in the judiciary

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### Sector

Freedom of Expression and Association

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### Deciding Court Original Language

European Court of Human Right

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### Deciding Court English translation

European Court of Human Right

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### Registration N

App no 36537/15 and 36539/15

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### Date Decision

9 March 2021

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### ECLI (if available)

ECLI:CE:ECHR:2021:0309JUD003653715

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### National Follow Up Of (when relevant)

N/A

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### EU legal sources and CJEU jurisprudence

N/A

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### ECtHR Jurisprudence

## Article 10.1 of the Convention (freedom of expression)

Regarding article 10 ECHR: *Perinçek v. Switzerland* [GC], no. 27510/08, § 196 ECHR 2015 (extracts); *Peruzzi v. Italy*, no. 39294/09, § 45, 30 June 2015; *Morice v. France* [GC], no. 29369/10, §§ 124 et seq., ECHR 2015; *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* ([GC], no. 17224/11, § 77, 27 June 2017; *Miljević v. Croatia*, no. 68317/13, § 53, 25 June 2020)

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### Subject Matter

Right of freedom of expression – the degree of critics to the judiciary – the right to honour of judges

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### Legal issue(s)

The applicants were convicted by the national criminal courts as perpetrators of a defamation offense for publicly criticizing a judge. Specifically, both applicants had accused a judge of being neither impartial nor competent. The case note will address whether such expressions are or are not protected by the freedom of expression under Article 10 of the ECHR.

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### Request for expedited/PPU procedures

NO

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### Interim Relief

No interim relief

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### National Law Sources

N/A

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### Facts of the case

The case stands as a paradigmatic example of the degree of criticism that judges are obliged to tolerate, at least in those instances where the criticism is voiced by the public. The applicants, members of a local NGO, promoting sustainable development and conservation of environment, publicly criticized, in a provincial newspaper, a judgment issued by the Administrative Court No 1 of Teruel concerning a case with significant environmental impact. Specifically, the judge from Teruel Court No 1 annulled a decision by the Aguilar del Alfambra city council and ruled that a mining exploitation license in favour of the company WBB should be approved.

The applicants publicly criticized the judge for not being impartial or competent. Both accused the judge of basing the judgment on evidence from an expert favourable to the company's interests. After the Public Prosecutor's Office reported the appellants, the Criminal Court No. 1 of Teruel convicted them of the crime of defamation and agreed to impose a daily fine with a substitute prison sentence. The appellants filed an appeal before the Provincial Court and a constitutional appeal before the Constitutional Court, but both were rejected. To dismiss the constitutional

appeal, the Spanish Constitutional Court, among other reasons, referred to the doctrine of the *Belpietro v. Italy* case (Application No 43612/10) where the Strasbourg Court warned that excessive or unfounded criticisms against judges could damage public confidence in the judiciary.

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### Reasoning (role of the Charter or other EU, ECHR related legal basis)

To solve the case, the European Court of Human Rights (ECtHR) examines three elements: i) whether the interference with the right to freedom of expression is prescribed by law; ii) if it serves a legitimate purpose, and iii) if it is necessary for a democratic society. Regarding the first two issues, the Court has no doubts. Firstly, it is emphasized that the Spanish penal code punishes the crime of defamation, and secondly, it is stated that protecting the authority and impartiality of the judicial power is a legitimate goal that allows affecting the right to a freedom of expression. In contrast, concerning the third element, the court considers that the interference is not necessary for a democratic society.

The ECtHR acknowledges that States have a certain margin of appreciation to assess when it is necessary for a democratic society to limit the right to freedom of expression, but this is not unlimited discretion. The Strasbourg court reserves the power to control whether the reasons given by State are “relevant” and “sufficient”, and whether the measure is proportional. Regarding criticism directed against judges, the judgment includes two reflections. On the one hand, baseless criticisms that undermine public trust in justice are not allowed. On the other hand, criticism made against the functioning of the judicial system that are of public interest should be tolerated and do not justify restricting the right to freedom of expression. In this second case, the ECtHR considers that the criticism made by the applicants fall within the latter category.

The Court, to declare the disproportionality of the measures taken by national courts, considers that the applicants are not legally trained individuals, were not part of the proceedings, and expressed personal opinions rather than facts on a matter of public interest linked to the functioning of justice. Therefore, the criticisms directed against the judge are protected by the right to freedom of expression [article 10(1) ECHR]. Additionally, the ECtHR considers that the imposed penalty [daily fine with a substitute prison sentence] was clearly disproportionate and had a chilling effect on future criticism.

In contrast to the majority vote, Judges Elosegui and Serguides issued a joint dissenting opinion. Both judges believe that the criticisms and value judgments made by the appellants lacked a sufficient factual basis and, in any case, should have been made during the legal process rather than after its conclusion. In opposition to the majority, they consider the criticisms directed at the trial judge to be serious and unfounded, and consequently not protected by the right to freedom of expression. In their reasoning, among other issues, the dissenting judges assert that formulating criticisms without a factual basis undermines public trust in the administration of justice, thereby compromising one of the essential elements of the Rule of Law and the separation of powers.

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### Relation of the case to the EU Charter

N/A

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### Relation between the EU Charter and ECHR

N/A

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Use of Judicial Interaction technique(s)  
consistent interpretation

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Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

N/A

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Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

N/A

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Strategic use of judicial interaction technique (purpose aimed by the national court)

N/A

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Impact on Legislation / Policy

N/A

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Notes on the national implementation of the preliminary ruling by the referring court

N/A

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Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

N/A

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Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

N/A

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Did the national court take into account national case law on fundamental rights?

N/A

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If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

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Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

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Impact on national case law from the same Member State or other Member States

N/A

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Connected national caselaw / templates

N/A

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Other

N/A

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(Link to) full text

[https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-208412%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-208412%22]})

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