

## M.D. and Others vs. Spain, App no 36584/17 (ECtHR 28 June 2022)

### Member State

 Spain

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### Topic

Political speech of judges and the right to private life and freedom of expression.

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### Sector

Freedom of Expression and private life

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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 36584/17

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### Date Decision

28 June 2022

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### ECLI (if available)

ECLI:CE:ECHR:2022:0628JUD003658417

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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 8.1 of the Convention (private life)

Article 10.1 of the Convention (freedom of expression)

Regarding article 10 ECHR: *Y?lmaz and K?l?ç v. Turkey*, no. 68514/01, § 58, 17 July 2008; *Baka*

v. Hungary [GC], no. 20261/12, § 140, 23 June 2016; Schweizerische Radio- und Fernsehgesellschaft and Others v. Switzerland, (dec.), no. 68995/13, § 72, 12 November 2019).

Regarding article 8 ECHR: M.M. v. the Netherlands, no. 39339/98, § 46, 8 April 2003; S. and Marper v. the United Kingdom [GC], nos. 30562/04 and 30566/04, § 67; Libert v. France, no. 588/13, §§ 40 and 42, 22 February 2018; ECHR 2008, Catt v. the United Kingdom, no. 43514/15, § 112, 24 January 2019).

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### Subject Matter

Right to private life – data protection – non violation of freedom of expression

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### Legal issue(s)

The appellants signed a political manifesto in favour of the referendum on self-determination in Catalonia and saw their personal data (collected by the police), published in the press. Therefore, the case revolves around two fundamental rights of the judge (the right to privacy and the right to freedom of expression).

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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

No

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### Facts of the case

The facts of the case must be placed in the context of the political conflict that pitted Catalan pro-independence supporters against the state institutions. In that context, a group of judges signed a manifesto in February 2014 supporting the constitutionality of a self-determination referendum. The manifesto, along with the name and photograph of the signatory judges was published in a national newspaper of national circulation and conservative tendency, "La Razón". In view of these facts, the "Manos Limpias" Union denounced the signatories for having violated the dignity of the profession, but the General Council of the Judiciary dismissed the complaint and considered that the signing of a manifesto did not constitute a disciplinary offense.

For their part, the undersigned judges also brought criminal actions. The judges argued that the data appearing in the newspaper were extracted from a national police file and, therefore, their publication required that a police officer had committed a crime of disclosure of secrets (article 197 of the Penal Code) and of infidelity in custody of documents (articles 413, 415 and 147 of the Penal Code). In the first judicial instance, the 15th Court of Instruction of Madrid rejected the case, but the judges appealed to the Provincial Court of Madrid, and in the second instance, the appeal was upheld, and the case had to be reopened. The Provincial Court considered that in the

preliminary investigation phase insufficient evidence had been gathered to clarify the facts.

In the new investigation, the 15th Court of Instruction took statements from several policemen, but not from the Superior Chief of Police of Barcelona. The latter was not interrogated despite the fact that the Provincial Court had qualified his testimony as relevant to the investigation. The case was again closed. Although the judges again appealed the closure, this time, the Provincial Court first, and then the Constitutional Court dismissed the appeals. On the other hand, the Data Protection Agency also dismissed the appeals filed by the undersigned judges, considering that the Directorate General of Police complied with all the security measures set out in the data protection regulations.

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

The applicants allege a violation of Article 8(1) ECHR (right to privacy) on two grounds. Firstly, because the police made a report without a legal basis, and secondly, because the police facilitated the leak of the report to the press. The Strasbourg Court ruled that there has been a violation of Article 8(1) ECHR on the two grounds alleged by the applicants. First, because there was no legal basis to produce the report in the first place. According to the Court, the domestic law clearly states that the police can only draw up a report to investigate criminal acts, but the signing of a manifesto is not a crime. The Court also found a violation of Article 8.1 ECHR because the domestic courts did not conduct an effective investigation to establish the circumstances of the facts. The reasoning of the judgment states that the Spanish authorities did not collect evidence that would have been useful to clarify the facts and remedy the interference with the applicants' rights. In particular, the Court highlighted the fact that the Chief of Police of Barcelona was not called to testify. In that sense, the Chief of Police of Barcelona was not only the head of the Unit, but the person to whom the report was addressed.

On the contrary, the Court declared that there was no violation of ECHR 10.1, the right to freedom of expression of judges. The applicants argued that the mere initiation of disciplinary proceedings for having signed a manifesto produced a chilling effect on freedom of expression. But the court denies this on two grounds. First, on the grounds of the body that triggered the disciplinary complaint against the appellants. In that sense, the General Council of the Judiciary did not act ex officio, nor at the request of a government authority, but at the request of a trade union. And, secondly, it rejects the appellants' claim, because the General Council of the Judiciary recognised signing of a manifesto was an exercise of freedom of expression of the judges concerned and closed the file in a short time-period. Furthermore, the Court added that the professional career of the judges was not harmed and that they even enjoyed promotions.

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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

Regarding article 10 ECHR: see *Schweizerische Radio- und Fernsehgesellschaft and Others v. Switzerland*, (dec.), no. [68995/13](#), § 72, 12 November 2019; *Baka v. Hungary* [GC], no. [20261/12](#), § 140, 23 June 2016).

Regarding article 8 ECHR: *Khadija Ismayilova v. Azerbaijan*, nos. [65286/13](#) and [57270/14](#), § 115, 10 January 2019; *Alkovi? v. Montenegro*, no. [66895/10](#), § 65, 5 December 2017

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### Other

N/A

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### (Link to) full text

[https://hudoc.echr.coe.int/fre#{%22tabview%22:\[%22document%22\],%22itemid%22:\[%22001-218034%22\]}](https://hudoc.echr.coe.int/fre#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-218034%22]})

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### Author

David Mier Galera, Pompeu Fabra University

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