

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

February 16, 2024

Index: EUR 41/7720/2024

# SPAIN: EUROPEAN COURT OF HUMAN RIGHTS RULING ON PABLO HASÉL'S CASE A BLOW TO FREEDOM OF EXPRESSION

## SPAIN MUST UNDERTAKE A REFORM OF THE CRIMINAL CODE TO REPEAL PROVISIONS THAT DISPROPORTIONATELY RESTRICT FREEDOM OF EXPRESSION.

In November 2023, the European Court of Human Rights (ECtHR) declared inadmissible the application filed by the Spanish rapper Pablo Rivadulla Duró (known as Pablo Hasél).<sup>1</sup> He filed the application against his conviction in Spain for the crimes of “glorifying” terrorism and slander to the Crown and State Institutions based on his song lyrics and tweets. Hasél argued before the ECtHR that the convictions violated his freedom of expression as protected under Article 10 of the European Convention on Human Rights. The ECtHR rejected the Hasél application finding that it was “manifestly unfounded” because national courts had taken into account ECtHR case law and balanced the interests involved, including his right to freedom of expression. The court held that the sentences imposed upon Hasél were not disproportionate.

Amnesty International had previously highlighted the case of Pablo Hasél in a 2018 report on Spain and concluded then that his right to freedom of expression had been violated.<sup>2</sup> In February 2021, days before his arrest, the organization stated that his imprisonment would be a disproportionate restriction on his freedom of expression.<sup>3</sup> Amnesty International considers the criminal prosecution and conviction of Pablo Hasél as an unlawful restriction on his right to freedom of expression, which should require Spain to provide a remedy for this violation of his rights. It is regrettable that the ECtHR found otherwise.

Pablo Hasél was convicted to nine months and one day imprisonment and to a fine of 5,040€ for allegedly glorifying terrorism.<sup>4</sup> He was also convicted and required to pay fines for slander against the Crown (10,800€) and state institutions (13,500€). In total, he faced a fine of almost 30,000 euros. Due to Hasél's refusal to pay these fines, his prison sentence was increased by 13 and a half months. Thus, he served a prison sentence from 16 February 2021 to 17 March 2023 for acts Amnesty International consider to be connected with the legitimate exercise of his freedom of expression, although he remains in prison for other convictions not connected to the exercise of his freedom of expression.

## KEY ELEMENTS OF THE FLAWED EUROPEAN COURT DECISION

In its decision of 9 November 2023, the ECtHR declared inadmissible as manifestly ill-founded the application by Pablo Hasél, finding that the convictions against him were not disproportionate, and upholding the concerning reasoning and assessment of the Spanish courts (Audiencia Nacional and Tribunal Supremo).

Amnesty International considers of fundamental importance that courts recognise that laws that criminalize slander to the Crown and public officials are an unlawful restriction of the right to freedom of expression. The organization has also

<sup>1</sup> European Court of Human Rights, Pablo Rivadulla Duró v. Spain, Application no. 27925/21.

<sup>2</sup> See: <https://www.amnesty.org/en/documents/eur41/7924/2018/en/>

<sup>3</sup> See: <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/amnistia-internacional-es-injusto-y-desproporcionado-que-pablo-hasel-entre-en-la-carcel/>

<sup>4</sup> Pablo Hasél was initially convicted to 2 years and 1 day of imprisonment and to a fine of 13,500€, but the penalties were reduced in appeal.

expressed concern that the catch-all categories of “glorifying” terrorism or “apology” of terrorism set out in vaguely worded counter-terrorism laws across Europe, including in Spain, violate international standards on freedom of expression.<sup>5</sup>

## STATES MUST REPEAL UNLAWFUL 'GLORIFICATION' LAWS

Under international human rights standards, expression should only lead to criminal prosecution where it genuinely amounts to direct incitement, that is, encouraging others to commit recognizable criminal acts with the intent to incite them to commit such acts, with a reasonable likelihood that they would commit such acts, and with a clear and direct causative link between the statement/expression and the criminal act.<sup>6</sup>

Arrests and prosecutions on the basis of such vaguely defined offences as “glorification of terrorism” risk violating people’s right to freedom of expression and creating a chilling effect. Any restrictions on freedom of expression must be enshrined in law and strictly necessary and proportionate to achieve a legitimate objective in accordance with international human rights law. Vague offences such as “glorification” or “apology” of terrorism should be repealed.<sup>7</sup> They give states the power to criminalize a wide range of expression that does not meet the high threshold of direct incitement to a serious criminal offence with the intent that such an offence will be committed, and with a clear causal link between the speech and the likelihood of the commission of such an offence.

With regard to the crime under the Spanish Criminal Code of glorifying terrorism, the European Court did not question the assessment of the Spanish courts and considers Hasél lyrics and tweets to be far beyond what could be perceived as protest messages and beyond the acceptable limits of criticism. Amnesty International has considered the statements made by Hasél and regard them as political. In the past, the ECtHR declared the burning of the former Spanish King’s photograph as protected by freedom of expression.<sup>8</sup> However, in the present case, the ECtHR considered that Hasél’s statements cannot be inserted within the framework of a political debate and therefore fall outside such protection.

In Amnesty International’s opinion, the Spanish Authorities did not adequately examine several factors crucial to decide whether a speech act could be considered direct incitement to violence. These factors include whether Pablo Hasél made the statements with the deliberate intention of encouraging others to commit a criminal act, if there was a reasonable likelihood that this act would be carried out, if those who heard the speech acts had the actual capacity to engage in criminal conduct, and if there was a clear link between the declarations and a potential violent act. The Spanish Courts did not assess the potential for harm or risk of violence on a message-by-message basis, nor did the ECtHR, which expressly relies on and upholds the assessment made by the national authorities.<sup>9</sup>

In a particular worrying turn, the ECtHR upholds the reasoning of the Spanish Courts, which assessed the risk of incitement of violence in a vague and general way, presuming that Hasél’s messages may have led to a general risk that third persons might perpetrate actual violence,<sup>10</sup> but without any analysis whatsoever of the specific risk of which particular messages

---

<sup>5</sup> Amnesty International, *Dangerously Disproportionate: The ever-expanding national security state in Europe*, EUR 01/5342/2017, 17 January 2017, <https://www.amnesty.org/en/documents/eur01/5342/2017/en/> pp. 37-43; Amnesty International, *Spain: Tweet...if You Dare – How counter-terrorism laws restrict freedom of expression in Spain*, EUR 41/7924/2018, 13 March 2018, <https://www.amnesty.org/en/documents/eur41/7924/2018/en/>

<sup>6</sup> UN Human Rights Council, “Report of the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism”, A/HRC/31/65, 22 February 2016, [<sup>7</sup> Amnesty International, \*Dangerously Disproportionate: The ever-expanding national security state in Europe\*, EUR 01/5342/2017, 17 January 2017, <https://www.amnesty.org/en/documents/eur01/5342/2017/en/> pp. 38](http://webcache.googleusercontent.com/search?q=cache:_BZX_IKEIJg; Annual Report of the UN High Commissioner of Human Rights, Rabat Plan of Action, A/HRC/22/17/Add. 4, 11 January 2013, https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf; Report of the Secretary-General, “The protection of human rights and fundamental freedoms while countering terrorism”, A/63/337, 28 August 2008, para 62, and “Special Rapporteurs warn against restrictions on freedom of speech in conflicts,” 4 May 2015, https://www.article19.org/resources.php/resource/37952/en/special-rapporteurs-warn-against-restrictions-on-freedom-of-speech-in-conflicts</a></p></div><div data-bbox=)

<sup>8</sup> See the ECHR judgement on *Stern Taulats y Roura Capellera v. Spain*.

<sup>9</sup> ECHR *Rivadulla Duró V. Spain* §38 and §38.

<sup>10</sup> ECHR *Rivadulla Duró V. Spain* §33.

could lead to violent acts, and with what likelihood. The ECtHR also considered that Pablo Hasél's messages were easily and freely available online and thus had the potential to reach a large number of people, including those of a young age.<sup>11</sup>

The reasoning of the Spanish Courts and the ECtHR also do not address the argument made in the dissenting opinions of the judges of the Audiencia Nacional and the Supreme Court. They noted that the expressions made by Pablo Hasél were deliberately kept in an ambit of lack of specificity, without being sufficiently concrete. The dissenting judges expressed that these statements were not "incitements to violence" and that they did not create a risk of criminal action. They also noted that the statements recall events that took place over a quarter of a century ago.<sup>12</sup>

### **SLANDER AGAINST THE CROWN AND STATE INSTITUTIONS.**

UN Experts reasserted in February 2021 that "lèse-majesté laws have no place in a democratic country" and that "under international human rights law, public figures, including those exercising the highest political authority, such as heads of State, are legitimately subject to criticism. The fact that some forms of expression may be considered offensive or shocking to a public figure is not sufficient to justify the imposition of such severe penalties".<sup>13</sup> The ECtHR similarly has repeatedly held in other cases that "conferring special status on heads of states, shielding them from criticism solely on account of their function or status, irrespective of whether the criticism is warranted" inhibits freedom of expression without meeting any "pressing social need" and that "such a privilege exceeds what is necessary for that objective to be attained".<sup>14</sup> Amnesty International considers that the use of defamation laws with the purpose or effect of inhibiting legitimate criticism of government or public officials violates the right to freedom of expression and the organization opposes laws prohibiting insult or disrespect of heads of state or public figures, the military or other public institutions or flags or symbols (such as lèse majesté and "desacato" laws), and calls for the repeal of such laws.

In the present case, however, on the crime of slander against the Crown, the ECtHR considered that many of the tweets constituted serious allegations of offences without any evidence beyond Hasél's own opinion.<sup>15</sup> It is noteworthy that those allegations were actually facts under criminal investigation at the time the tweets and songs were published. According to the ECtHR, Hasél accused members of the police in general of crimes of torture or murder, without providing any evidence for his assertions. It is noteworthy that the event denounced by Hasél was the Tarajal massacre. Amnesty International has expressed serious concerns regarding the excessive use of force by the Spanish Security Forces and the lack of an adequate investigation in the Tarajal massacre,<sup>16</sup> as have other groups.<sup>17</sup> After ten years, there is currently pending an appeal of amparo before the Constitutional Court on this issue that has been declared admissible.

Also, in other instances, the ECtHR itself has repeatedly condemned Spain for the lack of proper investigations of torture allegations. By the time Pablo Hasél made these statements, the ECtHR had already found the Spanish state was in breach of the European Convention of Human Rights for lack of an adequate investigation on allegations of torture on eight occasions.<sup>18</sup> This concern is on-going. In June 2022, at least 37 asylum seekers and migrants died at the Spanish border

---

11 ECHR Rivadulla Duró V. Spain §33.

12 "In none of the 62 tweets that have been brought to this trial is it possible to identify a call for violence, and it does not appear that they are likely to create a situation of risk for any person. Therefore, they cannot be considered as constituting the offence of glorification of terrorism", dissenting opinion of the Audiencia Nacional Magistrate Manuela Fernando de Prado, 2 March 2018. "None of these messages, some of which also support the conviction by application of Article 578, contain incitement to violence, nor are they capable of generating a minimally assessable risk in relation to it", dissenting opinion of Supreme Court Magistrates Miguel Colmenero and Ana María Ferrer, 7 May 2020.

13 See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26727&LangID=E>

14 See the ECHR judgements on cases Colombani and others v. France §68; Otegi Mondragon v. Spain, § 55; Pakdemirli v. Turkey, § 52; Artun and Güvener v. Turkey, § 31; Ömür Çağdaş Ersoy c. Turquie, § 58.

15 ECHR Rivadulla Duró V. Spain §47.

16 See <https://www.amnesty.org/en/latest/campaigns/2015/02/spain-morocco-a-tragedy-at-the-border/>

17 See: <https://www.cear.es/caso-tarajal/>

18 See: <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/ocho-condenas-del-tribunal-europeo-de-derechos-humanos-evidencian-que-la-investigacion-de-torturas-e/>

due to the unlawful use of force by Moroccan and Spanish Authorities, which Amnesty International concluded had amounted to torture and other ill-treatment.<sup>19</sup>

Thus, the Court should have also taken into account that the content of these statements was of a political nature and as such, were part of a political debate on a matter of general and public concern. In this regard, the ECtHR has stated that the authorities of a democratic state must tolerate criticism of acts committed by the official authorities, especially as in this case the statements related to the right to life protected by Article 2 of the Convention.<sup>20</sup>

In addition to this, on previous occasions the ECtHR has stated that the fact that a statement is provocative and voiced as an insult against the state are not sufficient grounds on their own to criminalise speech.<sup>21</sup>

The misuse of terrorism related offences in this way further undermines freedom of expression and has a notable chilling effect.

## CONCLUSION

Spain must undertake a reform of the Criminal Code to bring it in line with international human rights standards and repeal provisions that disproportionately restrict freedom of expression by conferring special protection from criticism to the Crown and other public figures. The authorities must ensure that any restrictions on the freedom of expression are limited and consistent with international human rights law. Such restrictions should only affect expression that amounts to direct incitement, that is, encourages others to commit a recognizable criminal act with the intent to incite them to commit such an act and with a reasonable likelihood that they would carry it out, and where there is a clear causal link between the statement and the criminal act.

Amnesty International specifically calls on Spain to repeal the crimes of “glorifying terrorism” and slander against the Crown (“insults to the Crown”) and “insults to State Institutions” from the Criminal Code.

---

19 See: <https://www.amnesty.org/en/petition/justice-for-dead-and-missing-at-melilla/>

20 ECHR judgement in the case of Yavuz and Yaylalı v. Turkey , § 54.

21 ECHR judgement in the case of Özgür Gündem v. Turkey, no. § 60