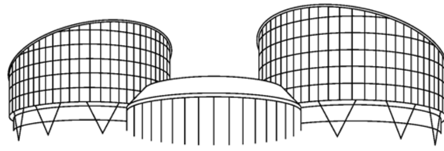

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF COUSO PERMUY v. SPAIN

(Application no. 2327/20)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Discontinuation of criminal proceedings investigating the killing of the applicant's brother, a journalist of Spanish nationality, in Iraq for lack of jurisdiction following a legislative reform restricting the Spanish courts' universal jurisdiction for offences committed extraterritorially • Art 6 applicable under its civil limb • Right under Spanish law for the applicant to participate as a private accusing party in the criminal proceedings and to obtain civil compensation from the perpetrators if a criminal offence was established and a conviction secured • Mandatory jurisdiction under the 1949 Fourth Geneva Convention did not extend to an obligation on a State to search for war criminals outside its territory and to claim jurisdiction to prosecute and try them, when there were no connecting factors to that State • No obligation flowing from international law or the Convention for Contracting States to acquire universal civil jurisdiction • Not unreasonable for a State to make the exercise of universal jurisdiction conditional on the existence of certain connecting factors or jurisdictional links with that State • Applicant able to bring his complaints before the Spanish courts • Effective exercise of jurisdiction by the Spanish authorities for more than twelve years prior to discontinuation • No indication of arbitrariness or manifest unreasonableness in Spanish courts' conclusion as to a lack of jurisdiction • Finding not disproportionate to the aims pursued • Domestic courts' interpretation corresponded to the purpose of the new law aiming to limit litigation based on universal jurisdiction to cases where a sufficient link to Spain existed and fell within the State's margin of appreciation • Proceedings discontinued temporarily without ruling out the possibility of reopening if defendants came under Spanish territory

Prepared by the Registry. Does not bind the Court.

STRASBOURG

25 July 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Couso Permuy v. Spain,

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

Mattias Guyomar, *President*,
Carlo Ranzoni,
Mārtiņš Mits,
María Elósegui,
Kateřina Šimáčková,
Mykola Gnatovskyy,
Stéphane Pisani, *judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 2327/20) 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 David Couso Permuy (“the applicant”), on 23 December 2019;

the decision to give notice of the application to the Spanish Government (“the Government”);

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Government of the United Kingdom and Rights International Spain, a non-governmental organisation based in Spain, who were granted leave to intervene by the President of the Section;

the observations submitted by the respondent Government and the applicant in reply to the comments submitted by the Government of the United Kingdom:

Having deliberated in private on 25 June 2024,

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

INTRODUCTION

1. The applicant is the brother of a journalist, Mr José Manuel Couso Permuy (hereinafter “the victim”), who was killed on 8 April 2003 by the US military in Iraq while he was on a working mission. Criminal proceedings were opened in Spain in this regard but a legislative reform that restricted the Spanish courts’ jurisdiction in respect of such cases led to the proceedings’ discontinuation in 2016. The applicant complained, under Articles 6 and 13 of the Convention, mainly of his lack of access to a court.

THE FACTS

2. The applicant was born in 1979 and lives in Valencia. He was represented by Mr E. Gómez Cuadrado, a lawyer practising in Madrid.

3. The Government were represented by Mr A. Brezmes Martínez de Villareal, Government Agent.

4. The facts of the case may be summarised as follows.

I. THE APPLICANT'S BROTHER'S KILLING IN IRAQ

5. Starting on 20 March 2003, a coalition of countries conducted a military invasion of Iraq. The applicant's brother, the victim, a Spanish camera operator, was in Iraq covering the events for the Spanish TV channel *Telecinco*, together with many other international journalists working for different media outlets.

6. In the early hours of 8 April 2003, the tanks of the 4th Battalion of the 64th Armoured Regiment of the 3rd Infantry Division of the US Army began approaching the centre of the city of Baghdad, Iraq. They fired on the headquarters of the Arab television channel Al-Jazeera, killing a reporter and wounding a camera operator. Soon afterwards, they also fired on the press centre of the Abu Dhabi TV, wounding twenty two journalists employed by that channel. Subsequently, the 3rd Infantry Division headed towards the Palestine Hotel, where most of the international press (around 300 journalists) – especially those of European origin – were staying. Among them was the applicant's brother.

7. From a distance of 1,700 metres from the Palestine Hotel, standing on the Al-Yumhuria Bridge, a US battle tank (equipped with a 120 mm cannon and an optometric visor affording the user to see for 4 kilometres) fired on the hotel, hitting the fifteenth floor. The applicant's brother was severely wounded, and died a few hours later in a hospital in Baghdad.

II. THE DOMESTIC PROCEEDINGS BEFORE MARCH 2014

A. Initiation and first discontinuation of the proceedings

8. Since mid-March 2003, several *denuncias* ("criminal reports", which can be made by any person who learns of the commission of a crime) were lodged by different organisations and individuals with the Spanish courts concerning different actions taken during the military invasion of Iraq by, among others, the Spanish armed forces – mainly concerning the decision of the Spanish Prime Minister and Minister of Foreign Affairs to take part in the military coalition in Iraq and the alleged perpetration of crimes against humanity there. One of the *denuncias*, lodged on 9 April 2003, concerned the assault on the Palestine Hotel that had killed the applicant's brother.

9. On 22 April 2003, central investigating court no. 6 of the *Audiencia Nacional* issued a decision dismissing the criminal complaint concerning the shot that led to the death of the applicant's brother on the grounds that the Spanish courts lacked jurisdiction to examine the case because (i) the victim's

killing had allegedly been perpetrated by non-Spanish nationals (that is, members of the US military) and (ii) “it could not be considered to constitute genocide”. The remaining complaints concerning the military invasion of Iraq were sent to central investigating court no. 1 of the *Audiencia Nacional*, which was the court dealing with *denuncias* concerning the war in Iraq.

10. On 27 May 2003, the victim’s mother and three siblings (including the applicant) lodged a criminal complaint (*querella*) with the *Audiencia Nacional* to investigate the events leading to the victim’s death. The complaint was lodged against three US servicemen. According to the plaintiffs, the Pentagon (the United States military command) had been notified of the location of Al-Jazeera’s headquarters, and large flags bearing the word “TV” had been on display. Allegedly, hundreds of journalists from international press outlets had been for the most part staying at the Palestine Hotel, which was situated 500 meters away from the Al-Jazeera headquarters, pursuant to instructions from the Pentagon. According to the complaint, the US Army had been aware of the fact that the building was not a military target. However, the plaintiffs asserted that the US military had had the premeditated intention of preventing international press and Al-Jazeera from continuing to depict the reality of the invasion, which was inflicting death or injury on many Iraqi civilians. The complaint stated that the above-described events had amounted, in principle, to a war crime, as defined by the Geneva Conventions of 1949 (see paragraph 80 below) and the Rome Statute (see paragraph 81 below), as well as under the Spanish Criminal Code (see paragraph 84 below).

11. The victim’s family also lodged an appeal against the decision of central investigating court no. 6 of the *Audiencia Nacional* of 22 April 2003 (see paragraph 9 above), asserting that the Spanish courts did indeed have jurisdiction to investigate the case in question. On 2 June 2003, central investigating court no. 6 partially upheld the appeal, declaring void the dismissal of the criminal complaint, and sending that complaint for examination to central investigating court no. 1 of the *Audiencia Nacional* (hereinafter, “the investigating court” or “the investigating judge”) for it to decide whether Spanish courts had jurisdiction over such cases or not. On 17 June 2003, the Public Prosecutor’s Office submitted a report requesting that the complaint lodged by the applicant and his relatives be dismissed on the grounds that Spanish courts lacked jurisdiction to examine the events in question.

12. Several civic organisations (namely, Politeya, Reporters Sans Frontières, Asociación Libre de Abogados, Asociación de Camarógrafos de Televisión y Vídeo and Asociación de la Prensa de Madrid) were granted leave to become a party to the proceedings (*acusación popular*).

13. On 17 October 2003, the investigating judge ordered that three witnesses (journalists who had been present at the Palestine Hotel in Baghdad

at the time of the shooting) be heard by the investigating court; those journalists were heard on 23 October 2003.

14. On 27 October 2003, the victim's family requested that the court hear other journalists who had been present at the time of the events in question as witnesses, and that the court also view a video recording of some television footage of the tank opening fire on the Palestine Hotel. Those witnesses were heard on 7 December 2003. The investigating court, of its own motion, requested the Spanish Ministry of Defence to submit to it all documents in its possession relating to investigations conducted by the Spanish authorities or any other investigation carried out by US military forces concerning the events of 8 April 2003 in Baghdad. The Ministry of Defence replied that it did not possess any such documents and that it was for the Ministry of Foreign Affairs to submit any such documents.

15. On 13 and 17 November 2003, the victim's widow, sister and uncle also lodged a request to be admitted as private accusing parties to the proceedings. They also asked the investigating court to request the Spanish Ministry of Foreign Affairs for all the documents in its possession, and the court lodged that request. They also submitted a report from the Committee to Protect Journalists concerning the attack that had caused the victim's death.

16. On 30 December 2003, the Public Prosecutor's Office lodged an appeal against the investigating judge's decision to allow the above-mentioned request for investigative measures lodged by the victim's family (see paragraph 15 above), on the grounds that the investigating judge still had to decide on his own court's jurisdiction to investigate the events in question, and that no investigative measures should be undertaken before the question of jurisdiction was settled. The Public Prosecutor's Office reiterated that its position was that the Spanish courts held no jurisdiction in respect of the instant case, and that the proceedings should therefore be discontinued.

17. On 21 January 2004, the criminal chamber of the Supreme Court declared inadmissible the 11,691 criminal reports (*denuncias*) that had been received concerning Spain's participation in the war in Iraq against the Spanish President and Minister of Foreign Affairs, as well as the United Kingdom's Prime Minister, because there was no evidence that the Spanish armed forces that had participated in the Coalition which had intervened in Iraq had committed any criminal offences.

18. On 30 January 2004, the Ministry of Foreign Affairs submitted the correspondence exchanged between the US authorities and that Ministry – including a letter by which the former had informed the Spanish authorities of the results of the inquiry carried out by the US authorities into the victim's death. The letter indicated that the victim's death had occurred in a war zone during an ongoing battle and that, according to a U.S. military review of the incident, the US forces had responded to hostile fire that had appeared to come from a location which they later identified as the Palestine Hotel. It furthermore held that the US military had not targeted civilians or

civilian structures, but that their forces nevertheless had to defend themselves when threatened or under fire. The letter stated that according to the findings of the above-mentioned inquiry, the media had been repeatedly cautioned that Baghdad would be an extremely dangerous location from which to file journalistic reports, and that news agencies had been specifically advised that the US Department of Defence could provide no guarantee of safety or any sort of specific warning of danger while journalists were working in Baghdad. The letter stated that 8 April had been a day of very intense fighting and that the US forces had been met with heavy direct and indirect enemy fire. Only after US forces had fired towards what they had identified as an enemy observation post had they became aware of the fact that the building they had fired on was the Palestine Hotel and that journalists at the hotel had been killed or injured as a result. The letter stated that they had fired in self-defence and in accordance with the US military's rules of engagement. In the light of the above-mentioned factors, the letter concluded, the US authorities' review of the events that had been conducted on 8 April 2003 had indicated that the use of force had been proportionate to the threat posed to US forces. The Spanish Ministry of Foreign Affairs also stated that no further investigation had been carried out by the Ministry itself because at the time of the events in question, the diplomatic staff of the Embassy of Spain in Baghdad had been evacuated to Amman, Jordan.

19. The victim's family asked the investigating court to lodge a request – with, *inter alia*, the Spanish Centre of National Intelligence ("the Spanish CNI"), the US Justice Department, the US Department of Defence and the US State Department, and the Greek government (since that State had held the European Union (EU) Presidency at the time of the events in question) – that further evidence be gathered in order to clarify whether there were ongoing any investigations into the events in question and that any relevant documents concerning those events be submitted.

20. On 23 February 2004, the Public Prosecutor's Office lodged a complaint against the investigating judge's failure to respond to its earlier requests that the case be discontinued on the grounds that the Spanish courts lacked the necessary jurisdiction. On 8 March 2004, the investigating judge dismissed the Public Prosecutor's Office's request that the case be discontinued on the grounds that the Spanish courts lacked the necessary jurisdiction. The investigating judge's decision explained that he had a duty to duly investigate the events in question, prior to determining whether the proceedings should be dismissed or discontinued, or proceed to the trial stage. The Public Prosecutor's Office lodged an appeal against that decision, which was dismissed by the criminal chamber of the *Audiencia Nacional* on 19 November 2004.

21. On 20 April 2004, the investigating court – pursuant to the request lodged by the victim's family (see paragraph 19 above) – requested the above-mentioned relevant documents and information from the Spanish CNI,

the Greek government and (on the basis of the Treaty of Mutual Legal Assistance in Criminal Matters of 20 of September 1990 between the United States and the Kingdom of Spain) from the US Department of Justice, the US Department of Defence and the US State Department.

22. On 4 May 2004, the Spanish CNI replied that it did not have any documents or information concerning the events investigated in the proceedings, and that it had not had any personnel deployed in Iraq at the time of the events in question.

23. On 1 October 2004, the investigating judge requested the International Judicial Cooperation Directorate of the Ministry of Justice to inform him of the status of the requests for further evidence lodged with the above-mentioned US authorities (see paragraph 21 above).

24. On 8 November 2004, the investigating judge held that he had found out through different media outlets of the existence of a report prepared by the US Department of Defence on an investigation carried out by them that had been sent to the Committee for the Protection of Journalists. That report had allegedly concluded that there had been no fault or negligence on the part of the US military. The investigating judge requested the US embassy in Madrid to submit a copy of that report (translated into Spanish).

25. Since the US authorities had not responded, on 30 May 2005 the victim’s family requested the investigating court to lodge the request again, and to issue a judicial assistance request asking for the investigating judge to be allowed to hear the three US servicemen allegedly responsible as persons under investigation. The investigating court granted both requests on the following day (31 May 2005).

26. On 2 June 2005, the Ministry of Justice replied that a request for information and documents had been lodged with the US authorities on 21 May 2004 and lodged again on 5 October 2004, but that no answer had been received; it stated that yet another request had been lodged on that same date (that is, 2 June 2005).

27. On 5 June 2005, the investigating judge informed the US Attorney’s Office that in the light of the events being investigated, the three US servicemen had been charged by the investigating court (i) under sections 611 § 1 and 608 § 3 of the Spanish Criminal Code with an offence against the international community for having targeted civilians, and (ii) under section 139(1) of the Spanish Criminal Code with murder. He requested either authorisation from the US authorities to travel to the United States with a judicial commission (*comisión judicial*) in order to hear the statements of the three persons under investigation, or authorisation for the accused men to travel to Spain to be heard by the *Audiencia Nacional*, under the supervision and coordination of the US embassy in Madrid.

28. On 19 October 2005, in the light of the seriousness of the events in question (as described by the witnesses) and the lack of any response from

the US authorities, the investigating court ordered that the three persons under investigation be sought and arrested, with a view to their extradition to Spain.

29. The Public Prosecutor's Office appealed against the above-mentioned decision, arguing that the investigating court had no jurisdiction to investigate the events in question and that, pending an explicit decision regarding the question of jurisdiction, the criminal complaint could not even be considered to have been duly admitted; therefore, the three above-mentioned US military personnel could not be technically considered to be under investigation. It furthermore requested that the search-and-arrest order be suspended until the appeal had been decided. The victim's family opposed the appeal lodged by the Public Prosecutor's Office, arguing that the Spanish courts did indeed have jurisdiction in respect of the matter of the victim's killing and that it was therefore the duty of those courts to search for and prosecute those responsible for it. The civic organisations (acting as parties to the proceedings) opposed the appeal as well.

30. On 27 October 2005, the investigating judge requested Interpol to provide the personal details of the persons under investigation in order that he might be able to issue international arrest warrants in respect of them.

31. On 28 October 2015, the investigating judge dismissed the appeal lodged by the Public Prosecutor's Office and upheld the search-and-arrest order issued on 19 October 2005. He emphasised the need to carry out investigative measures in order to ascertain whether the proceedings should be discontinued or should proceed to the trial stage. Moreover, the decision expressly stated that the Spanish courts did have international criminal jurisdiction on the basis of (i) section 23(4)(g) of the Institutional Law on the Judiciary, as worded at the time in question (see paragraph 86 below), to hear the events in question, and (ii) an international treaty requiring Spain to prosecute war crimes – namely, the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 ("the Fourth Geneva Convention") and its Additional Protocol I (see paragraphs 80-81 below). The Public Prosecutor's Office lodged an appeal with the criminal chamber of the *Audiencia Nacional* against the investigating court's decision.

32. On 7 November 2005, the investigating court issued a judicial decision whereby it officially declared admissible the criminal complaint lodged by the victim's mother and three siblings on 27 May 2003 (see paragraph 10 above). The Public Prosecutor's Office lodged two appeals against that decision, insisting that the domestic courts did not have jurisdiction in respect of the events in question; however, the investigating court dismissed them on 23 November and 2 December 2005 respectively.

33. On 2 February 2006 the investigating judge received a response from the US Department of Justice (see paragraph 21 above) stating that it had already carried out an exhaustive and thorough investigation into the events in question in accordance with the procedure established by their domestic law. That investigation had concluded that the three US servicemen had acted

in legitimate self-defence and in accordance with the rules of war. It had accordingly found no evidence of any crime or wrongdoing, concluding that the use of force by the US military had been proportionate to the threat posed to them. As a result, the US authorities informed the Spanish courts that no criminal investigation would be conducted and that the Department of Justice would not assist the Spanish courts by making the three US soldiers available for prosecution.

34. The victim's family lodged a claim arguing that their request for judicial cooperation had not been properly satisfied by the US authorities, and that that request should be lodged again. On 15 February 2006, the investigating judge lodged a new request for judicial cooperation with the US authorities; the judge observed that the US authorities had not cited any of the reasons listed as valid by the bilateral Treaty of Criminal Assistance between the US and Spain for declining to cooperate, and asked for details of any inquiries (and the conclusions thereof) conducted by the US authorities within the context of their investigation.

35. The investigating judge also issued a reminder to Interpol regarding his request to be provided with the personal information of the three US soldiers in order that he might be able to issue international arrest warrants in respect of them (see paragraph 30 above). Interpol informed the investigating judge that the US authorities had replied that they could not provide them with any information in the light of the Department of Justice's decision not to authorise the prosecution of the three soldiers.

36. On 8 March 2006, the criminal chamber of the *Audiencia Nacional* upheld the Public Prosecutor's Office's appeal and concluded that the Spanish courts did not have jurisdiction to investigate the killing of the victim. The court considered that in the light of the findings of the investigation so far, it was apparent that the targeting of the Palestine Hotel by the US military had not been aimed at killing any civilians or journalists, but had rather been an act of war against a wrongfully identified enemy. Thus, it could not be considered to constitute a war crime. As a result, – and in the light of the fact that the persons under investigation were not Spanish nationals and that the events had not taken place on Spanish territory – the Spanish courts did not have jurisdiction. Therefore, the court held that the search-and-arrest orders in respect of the persons under investigation should be revoked and the proceedings terminated. The criminal chamber of the *Audiencia Nacional* stated that it would be desirable for the Spanish legislature to restrict the domestic courts' jurisdiction in respect of crimes such as war crimes or genocide by stipulating that some link to the Spanish courts (that is to say some link between the commission of such crimes and Spain) should exist in order for those courts to be able to exercise jurisdiction in respect of such crimes (as was the case in several other European States at the time in question).

37. On 10 March 2006, the investigating judge revoked the search-and-arrest orders that had been issued in respect of the three US soldiers and ordered the discontinuation of the criminal proceedings.

B. Resumption and conclusion of the investigation stage

38. The victim's family and the civic organisations lodged appeals on points of law with the Supreme Court against the decision to discontinue the proceedings.

39. On 11 December 2006, the criminal chamber of the Supreme Court upheld the appeals, holding that Spain had jurisdiction to investigate and conduct a trial in respect of the events in question, in view of the fact that section 23(4) of Institutional Law 6/1985 had established the unrestricted extraterritorial jurisdiction of the Spanish courts based on the principle of universality ("universal jurisdiction") without any restriction other than that of *res judicata*. Moreover, in the present case, there was a link with the Spanish courts – namely, the Spanish nationality of the victim. In any event, further investigation of the events in question was necessary in order to establish the nature of the offence (if any offence at all had indeed been committed). Moreover, the Supreme Court held that, by declaring – without even hearing the three US servicemen – that there had been no intention on the part of those servicemen to kill the victim or other civilians when firing on the Palestine Hotel, the criminal chamber of the *Audiencia Nacional* had violated the claimants' right to effective legal protection and to fair proceedings. The Supreme Court accordingly overturned the 8 March 2006 decision of the criminal chamber of the *Audiencia Nacional*.

40. On 16 January 2007, the investigating judge reissued the international search-and-arrest orders of the persons under investigation. He requested Interpol, the Spanish police and the *Guardia Civil*, as well as the US embassy in Madrid to provide him with personal information in respect of the three persons under investigation in order that Interpol could proceed to arrest them. The US embassy did not provide any response, and the investigating court reiterated the request.

41. On 24 April 2007, the investigating judge initiated formal proceedings (*incoación del sumario*) aimed at investigating the alleged commission of (i) crimes against the international community and (ii) murder.

42. On 27 April 2007, the investigating judge charged the three US servicemen with a war crime; specifically, launching an indiscriminate attack against the civil population – a crime prohibited by the Fourth Geneva Convention of 12 August 1949 and its Additional Protocol I of 8 June 1977, as well as by sections 608(3) and 611(1) of the Spanish Criminal Code. The judge deemed that the investigation had been concluded and the trial stage had begun (he issued a decision called *auto de procesamiento*). The Public Prosecutor's Office lodged an appeal with the investigating court against the

investigating judge's decision of 27 April 2007 to charge the military officers; however, the investigating judge confirmed that decision on 24 May 2007.

C. Reopening of the investigation stage and second discontinuation of the proceedings

43. On 13 May 2008, following an appeal by the Public Prosecutor's Office against the conclusion of the investigation and the decision to proceed to the trial stage, the criminal chamber of the Audiencia Nacional overturned the above-noted decision of 24 May 2007 (upholding the decision of the investigating judge of 27 April 2007 to charge the servicemen and to proceed to the trial stage). It held that some of the factual elements (*elementos fácticos*) needed to support the charges – in particular, the subjective element (*elemento subjetivo* – that is, the intention to kill the victim) – had not been sufficiently proved. It reopened the investigation and ordered the investigating judge to gather further evidence to clarify the facts of the case.

44. On 20 May 2008, the investigating court ordered that several new pieces of evidence be gathered by means of, *inter alia*: hearing new witnesses (namely, (i) journalists who had been present at the events in question and (ii) the former Spanish Ministers of Foreign Affairs and Defence); commissioning an armaments report from a military expert, and requesting the Iraqi judicial authorities to authorise a field visit from a judiciary commission to the site of the events in question.

45. On 14 November 2008, the investigating judge sent a reminder to the Iraqi authorities of his previous request for judicial cooperation, to which he had received no reply. On 15 March 2009, the Iraqi Ministry of Foreign Affairs informed the investigating court that it was looking into the details of the victim's death and would provide further information as soon as it had any.

46. Over the following months, and after several reminders sent to them by the investigating judge, the former Ministers of Foreign Affairs and Defence gave written statements, which were added to the case file. An expert report was also submitted. An account of the events in question given on a television programme by a former US military-intelligence sergeant was also added to the case file. Those journalists who had already given witness statements were again questioned. Two expert witness reports on armaments commissioned by the Ministry of Defence were also submitted. The investigating judge also gathered aerial photographs and a detailed plan of the scene of the events in order to be able to fully understand the terrain. He also asked (to no avail) whether there were any representatives from Al-Jazeera or Abu Dhabi TV in Spain who could provide a witness statement; moreover, he requested the Iraqi authorities for authorisation to travel to Iraq in order to personally survey the scene of the events with a judicial commission; that request was refused.

47. On 21 May 2009, in the light of the above-described evidence, the investigating judge adopted a new decision to charge the same US members of the military with (i) launching an indiscriminate attack against the civilian population and/or committing (or threatening to commit) acts of violence, as defined by international and national criminal law and (ii) the offence of homicide under the Spanish criminal code (see paragraph 84 below).

48. The Public Prosecutor's Office lodged an appeal, which was dismissed by the same court on 1 June 2009. The Public Prosecutor's Office lodged another appeal.

49. On 14 July 2009, the criminal chamber of the *Audiencia Nacional* upheld the appeal lodged by the Public Prosecutor's Office and revoked the decision to charge the three persons under investigation. This time it did not order the undertaking of fresh investigative measures, but rather the discontinuation of the case. It deemed that the new pieces of evidence gathered were inconclusive and that those elements of the crime that had not been proved sufficiently at the time of its decision of 14 May 2008 to reopen the proceedings had not been resolved after the investigation had been resumed – despite the fresh investigative measures carried out since that resumption. The criminal chamber held that, there being reasonable doubts as to whether the actions of the persons under investigation could be considered to constitute an offence (in the light of the evidence gathered), the benefit of that doubt had to be given to the persons charged; therefore, the proceedings could not proceed to the trial stage.

50. As a consequence, on 16 July 2009 the investigating judge ordered that the proceedings be discontinued and declared the search-and-arrest orders null and void. The decision was appealed against by the victim's family (including the applicant) and by the civic organisations that were parties to the proceedings. On 23 October 2009, the criminal chamber of the *Audiencia Nacional* upheld the investigating judge's decision and declared the unconditional discontinuation (*sobreseimiento libre*) of the case. The same parties lodged an appeal on points of law.

D. Resumption of the investigation stage of the proceedings

51. On 13 July 2010, the criminal chamber of the Supreme Court partially upheld the appeals, revoked the discontinuation of the case, and ordered the investigating judge to carry out all investigative measures that had been planned, as well as any other measures necessary to clarify the facts of the case. It considered that the commission of the offences by the three members of the US military could not be ruled out and that the applicant's right of access to a court and to a proper investigation into the death of his brother had been violated by the dismissal of the case.

52. The investigation stage was resumed. On 29 July 2010, the investigating judge asked the police to locate any witnesses that they could

find from Al-Jazeera and Abu Dhabi TV. The judge also lodged for the second time a request with the Iraqi authorities for cooperation. He also again requested the US authorities to submit any and all documents concerning the events of the case; the investigating judge also asked the US government for permission to hear the three members of the US military as persons under investigation. Repeating their assertion of 2006 (see paragraph 33 above), the US authorities informed the investigating judge in March 2011 that they would not assist the Spanish courts any further.

53. A search, arrest and imprisonment order was issued by the investigating judge against the three persons under investigation in order to effect their extradition to Spain.

54. In October 2010, Interpol submitted that it had decided not to accept the request by the investigating court, since it found the matter in question to constitute an offence of military nature, and the US was a third-party State. The investigating judge asked Interpol to provide a more extensive explanation for its decision, and Interpol replied that its Statute strictly forbade any activity or intervention in respect of issues of a political, military, religious or racial nature. On the basis of the statement of facts that was submitted to it, it considered that the military nature of the crimes under investigation prevented Interpol from providing any assistance. The investigating judge then requested from each individual Interpol member State a different type of cooperation that would allow Interpol's member States to arrest the persons under investigation if they were found, but without Interpol's assistance.

55. A journalistic report from October 2003 was added to the case-file material. Some journalists from Al-Jazeera were heard as witnesses in January 2011. Another witness (a journalist) was heard on 5 July 2012.

56. In October 2010, the investigating judge and the lawyers of the parties to the proceedings travelled to Baghdad in order to visit and inspect the scene of the shooting. The Public Prosecutor's Office alleged that the planned visit to Iraq did not comply with the relevant international legal requirements and that it would not send any representative to take part in the visit. The judicial commission gathered some photographs and videos of the view from the Al-Yumhuria Bridge. The investigating judge ordered an expert report comparing those images to the view that the above-mentioned battle tank (that had fired on the Palestine Hotel) would have had from the Al-Yumhuria Bridge. The investigating judge ordered further expert report from academic physicists, and further photographs and witness statements were added to the case file.

57. On 7 December 2010, the victim's relatives asked the investigating judge to request a report from the Public Prosecutor's Office, in the light of information revealed by WikiLeaks according to which there had been ongoing conversations between the Public Prosecutor's Office and the US authorities aimed at ensuring that all judicial decisions taken in Spain

concerning the investigation into the events of the instant case and the charges against US citizens would be systematically subject to appeal, and to push for the dismissal of the case.

58. On 5 May 2011, the investigating judge requested Interpol and Eurojust to submit further personal information in respect of the three US members of the military under investigation. Both entities responded in 2013 that they could not grant that information.

59. On 4 October 2011, for the third time, the investigating judge charged the three members of the military with an offence against the international community and with the offence of homicide (under Articles 611 § 1, 608 § 3, and Article 138 of the Spanish Criminal Code – see paragraph 84 below). The new decision incorporated a detailed account of the events in question, which included an aerial photograph of the terrain and conclusions obtained after the above-mentioned visual inspection in Baghdad. It also ordered that statements be taken from the charged persons' two hierarchically superior officers. The decision was translated and sent to the US authorities.

60. On 17 November 2011, the Directorate-General for International Legal Cooperation and Human Rights (*Dirección General de Cooperación Jurídica Internacional*) received, and submitted to the judicial proceedings, the results of the investigation carried out by the US authorities (that is, the administrative authorities – criminal proceedings were never conducted) concerning the tank fire aimed at the Palestine Hotel in Baghdad on 8 April 2003; the report – whose contents amounted essentially to the same as the information that had been obtained in 2004 via correspondence between the US authorities and the Spanish Ministry of Justice (see paragraph 18 above) – explained the investigating procedure followed and the conclusion reached (which was that the above-mentioned actions of the members of the US military had been justified). Further documents and information were attached to the report – including sworn statements given by members of the US military, and a memorandum concerning the inquiry carried out into the events in question by the Department of the Army; that memorandum also concluded that the US military's Rules of Engagement had been observed and that the firing directed at the Palestine Hotel had constituted a proportionate and justifiable measured response in the light of the perceived threat coming from the premises.

61. On 21 January 2013, the investigating judge asked the parties to state whether they considered that the proceedings should be dismissed, or if there was any other statement that they wished to make at that stage. The Public Prosecutor's Office requested that the case be dismissed. The victim's family members requested that a witness statement be taken from a former US military-intelligence sergeant (whose statement had previously been requested but had not been taken – see paragraph 46 above), to which the investigating judge agreed. On 2 October 2013, in the absence of any response to his earlier requests, the investigating judge reiterated his request

for cooperation from the US authorities. On 6 November 2013 the US authorities responded that, for the same reasons given in 2011 (see paragraph 60 above), they could not grant authorisation for the military intelligence sergeant to give a statement.

62. On 3 January 2014, the investigating judge refused a request lodged by the victim's family for the proceedings to be extended to encompass an investigation against the persons allegedly responsible (within Interpol and the US Department of Justice and Department of State) – on the basis of their lack of cooperation with the Spanish judicial authorities – for the alleged cover-up of the war crimes allegedly committed by the three members of the US military. The victim's family members lodged several appeals against that decision, but those appeals were all dismissed.

III. THE DOMESTIC PROCEEDINGS FROM MARCH 2014

63. On 15 March 2014, Institutional Law no. 1/2014 of 13 March 2014 entered into force. This Law introduced an amendment to Institutional Law no. 6/1985 of 1 July 1985 on the Judiciary, which placed restrictions on the extraterritorial jurisdiction of the Spanish courts (see paragraphs 86-88 below). A transitory provision of the new Law established that pending cases, at the time of the entry into effect of the new Law, would be provisionally discontinued (*sobreseído provisionalmente*) until the new requirements established in the Law were met (see paragraph 89 below).

64. On 17 March 2014 the investigating judge issued a decision stating that he did not consider that the provisions of Law 1/2014 (or the transitory provision thereof) applied to the investigation in respect of the present case, because while the said Law provided that Spanish courts could only prosecute a non-Spanish person for war crimes committed extraterritorially if he or she was on Spanish territory, that provision conflicted with Article 146 of the Fourth Geneva Convention (see paragraph 80 below), which provided the obligation to prosecute the crimes set out therein without any limitation. Moreover, there were no ongoing criminal proceedings pending in respect of the same alleged offences in the US. Therefore, the investigating judge considered that Spanish law could not be allowed to contravene an international treaty, as that would conflict with both the Vienna Convention on the Law of Treaties and the Spanish Constitution. As a result, the investigating judge concluded that the Spanish judicial authorities had an obligation to prosecute the offences set out in the Fourth Geneva Convention without any limitation other than that established therein, that the transitory provision of the new Spanish Law on the Judiciary was not applicable, and that the case should remain under its jurisdiction.

65. The Public Prosecutor's Office lodged an appeal against that decision, which was dismissed by the investigating judge on 27 March 2014. On 23 June 2014, the plenary of the criminal chamber of the *Audiencia Nacional*

dismissed another appeal lodged by the Public Prosecutor's Office. Another appeal against that decision was lodged by the Public Prosecutor's Office with the Supreme Court.

66. On 10 June 2014, the investigating judge sent a letter of request to the Ukrainian authorities enquiring whether any criminal proceedings had been initiated there, since in the same accident, a Ukrainian journalist had also been killed. The Ukrainian authorities replied on 22 August 2014 that no criminal proceedings had been initiated in Ukraine in respect of those events.

67. On 25 July 2014, the Public Prosecutor's Office requested the investigating judge to conclude the investigation stage, but that request was refused by the investigating court on the grounds that, *inter alia*, there was still pending evidence to be gathered, and then confirmed by the criminal chamber of the *Audiencia Nacional*.

68. On 10 February 2015, the investigating judge requested the parties to either propose new investigative measures or to request the conclusion of the investigation stage.

69. On 6 May 2015, in respect of another case (the "Tibet case" – see paragraph 92 below), the plenary of the criminal chamber of the Supreme Court – following an amendment to the Law on the Judiciary – adopted judgment no. 296/2015 concerning the lack of jurisdiction of the Spanish courts to prosecute crimes committed outside its territory. The Supreme Court held that according to the reform implemented by Institutional Law 1/2014, Spanish courts lacked jurisdiction to investigate and try offences when those offences were committed within the context of armed conflict in foreign countries – save in instances where the proceedings in question were aimed against a Spanish national, or a foreign national habitually residing in Spain, or a foreign national who found him or herself in Spain and whose extradition had been sought by another State but refused by the Spanish authorities. It further established that that jurisdiction could not be extended, in the absence of the above-mentioned requirements, on the basis of the nationality of the victim or any other circumstance.

70. The investigating judge heard the parties' allegations regarding the Supreme Court's judgment no. 296/2015; in the light of that judgment and of those allegations, on 9 June 2015, the investigating judge observed that – notwithstanding the obligations provided by the Geneva Conventions – the interpretation given to the new Law on the Judiciary prevented the Spanish courts from having jurisdiction in respect of alleged war crimes committed outside the Spanish territory by non-Spanish nationals unless the alleged perpetrators travelled to Spain. As a consequence, the investigating judge decided to conclude the investigation stage and to send the case to the criminal chamber of the *Audiencia Nacional* for trial or dismissal.

71. The victim's relatives and the organisations that were parties to the proceedings lodged several appeals. They requested that the decision to end

the investigation stage be declared null and void; in the alternative, they requested that a question of unconstitutionality (*cuestión de inconstitucionalidad*) be lodged with the Constitutional Court in respect of both the newly reformed provisions of section 23(4) of the Law on the Judiciary, as amended by Institutional Law 1/2014, and the transitory provision thereof.

72. On 25 November 2015, the criminal chamber of the *Audiencia Nacional* decided to refuse the request for the lodging of a question of unconstitutionality with the Constitutional Court. The criminal chamber ordered the discontinuation of the case. The decision held that, under the restrictive model of universal jurisdiction established by Institutional Law 1/2014, it was clear that Spanish jurisdiction in respect of the events under investigation was excluded because, in the absence of the relevant legal requirements (namely, the perpetrators were not on Spanish territory), the transitory provision was to be applied.

73. The applicant and other relatives of the victim lodged an appeal on points of law, complaining of a violation of their right to effective judicial protection (in the form of access to a court and effective remedies), and citing Articles 6 and 13 of the Convention. The Supreme Court dismissed the appeal by a judgment of 25 October 2016, which confirmed the previous findings.

74. The victim's relatives (including the applicant) and the above-mentioned civic organisations lodged *amparo* appeals with the Constitutional Court. They complained that their fundamental right of access to a court and their right to fair proceedings, to legal certainty, and to effective remedies, had been violated. A decision on the *amparo* appeal was postponed until the Constitutional Court decided on an appeal challenging the constitutionality of Institutional Law 1/2014 that had been lodged by a group of Spanish MPs. Following the delivery of judgment no. 140/2018 of 20 December 2018 (see paragraph 91 below), which confirmed the constitutionality of the impugned law, the *amparo* appeals lodged by the applicant and other relatives of the victim were assessed jointly, and then dismissed by a judgment of 17 June 2019, and served on the applicant on 24 June 2019. The Constitutional Court held that there was no obligation to establish unlimited jurisdiction under the Geneva Conventions or the domestic law, and that the introduction of requirements to establish a link (between the events in question and Spain) in order to be able to deem that the jurisdiction of Spanish courts to investigate and prosecute certain crimes (despite their having been committed outside Spanish territory) constituted an acceptable legislative choice (*opción legislativa*). While that choice had undoubtedly introduced a limitation in respect of the possibility for victims of certain crimes to secure reparation, it had not amounted to an interference with the right of access to a court. Moreover, the court observed that the said restrictive choice (namely, the need for the alleged authors of crimes committed abroad to be physically on the territory of the State in question in

order for that State's jurisdiction in respect of such crimes to be recognised) corresponded with the aim of ensuring the effectiveness of criminal proceedings; it did not arise from any political motivations or reflect any disloyalty to the spirit of international treaties such as the Geneva Conventions. The Constitutional Court emphasised that the right to proceedings (*ius ut procedatur*) of victims of certain crimes was not absolute, and that there was no right for anyone to demand the initiation of criminal proceedings against another person – still less to demand that a trial take place. The Constitutional Court added that the proceedings complained of had been conducted without arbitrariness, and had been concluded by a well- reasoned judicial decision, in application of a constitutionally valid law. There had been no violation of the victim's relatives' right of access to a court, or to fair proceedings, legal certainty or effective remedies.

IV. ADMINISTRATIVE CLAIM LODGED BY THE VICTIM'S WIDOW SEEKING THAT THE STATE PAY COMPENSATION

75. Shortly after the victim's death, the victim's widow and her two minor children (not the applicant) lodged an administrative request for State liability against the Spanish administrative authorities; they sought for the State to pay compensation to the victim's family because the Spanish authorities had not exerted sufficient efforts to persuade the US authorities to cooperate with the investigation. They complained not about the criminal offence that had led to the death of the victim, but of the Spanish authorities' lack of sufficient means by which to exert diplomatic pressure on the US authorities in order that a criminal investigation in respect of the offence could be carried out. The administrative request lodged by the victim's family (seeking that the State pay compensation to the victim's family) received no response, so they lodged a judicial complaint on 1 September 2005.

76. On 4 September 2008, the judicial proceedings being conducted under administrative jurisdiction were suspended (see paragraph 72 above), pending the resolution of the judicial proceedings that were being conducted under criminal jurisdiction. On 19 July 2019, following the discontinuation of the criminal proceedings, the suspension was lifted.

77. On 11 December 2019, the judicial request of 1 September 2005 was partially upheld by the contentious-administrative chamber of the *Audiencia Nacional*. That chamber held that it could be accepted that an international offence had been committed against the victim, given the facts already established at that point by the investigating judge in the course of the criminal proceedings (see paragraphs 8-70 above). The contentious-administrative chamber further held that the Spanish authorities had merely received the US authorities' responses to their requests for information or cooperation; the Spanish authorities had not actively sought, through diplomatic channels, any cooperation or compensation for the

victim's death from the US authorities or the perpetrators of the offence. It awarded the three claimants the amount of EUR 182,290. The State agents lodged an appeal against that decision.

78. On 9 July 2021, the contentious-administrative chamber of the Supreme Court dismissed the appeal, and confirmed the judgment of 11 December 2019.

V. OTHER FORMS OF REPARATION PAID TO THE VICTIM'S WIDOW

79. On 5 November 2004, Royal Decree-law 8/2004 on compensation to participants in international peace and security operations awarded the victim's widow and children just compensation in the amount of EUR 140,000 from the State's authorities in damages in respect of the victim's death. The applicant did not qualify for such compensation under that Decree.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. INTERNATIONAL LEGAL MATERIAL

80. The relevant provisions of the Fourth Geneva Convention of 1949, relative to the Protection of Civilian Persons in Time of War, state as follows:

Article 146

"The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article. Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case. Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article. In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949."

Article 147

"Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention:

wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation

or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”

81. The relevant provisions of Additional Protocol to the Fourth Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, state as follows:

Article 51 - Protection of the civilian population

“1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

...

4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:

(a) those which are not directed at a specific military objective;

...

5. Among others, the following types of attacks are to be considered as indiscriminate:

...

(b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”

Article 79 - Measures of protection for journalists

“1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.

2. They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4A (4) of the Third Convention.

3. They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist.”

Article 85 – Repression of breaches of this Protocol

“3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of

the relevant provisions of this Protocol, and causing death or serious injury to body or health:

a) making the civilian population or individual civilians the object of attack;

b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a) (iii);

c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a) (iii);

...”

Article 86 - Failure to act

“1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.

2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.”

82. The relevant provisions of the Rome Statute of the International Criminal Court of 17 July 1998, in force since 1 July 2002, state as follows:

Preamble

“... Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions, ...”

Article 1 The Court

“An International Criminal Court (“the Court”) is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.”

Article 17 Issues of admissibility

“1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

d) The case is not of sufficient gravity to justify further action by the Court.

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;

b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings."

Article 8
War crimes

"... 2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

...

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

...

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives; ..."

II. SPANISH LAW AND PRACTICE

A. Constitutional and other provisions

83. The relevant provisions of the Spanish Constitution state as follows:

Article 9

"3. The Constitution guarantees the principle of legality, the hierarchy [that is, order of precedence] of [the various kind of] legal provisions, the publicness of legal enactments, the non-retroactivity of punitive measures that are unfavourable to or restrict individual rights, the certainty that the rule of law will prevail, the accountability of the public authorities, and the prohibition against arbitrary action on the part of the latter."

Article 10

"2. The principles relating to the fundamental rights and liberties recognised by the Constitution shall be interpreted in [a manner that is] in conformity with the Universal Declaration of Human Rights and the international treaties and agreements [governing] those matters [that is, relating to fundamental rights and liberties] ratified by Spain."

Article 24

"1. Every person has the right to secure the effective protection of the judges and the courts in the exercise of his or her legitimate rights and interests, and in no event may [any person] go undefended."

Article 96

"1. Validly concluded international treaties, once officially published in Spain, shall form part of the internal legal order. Their provisions may only be repealed, amended or suspended in the manner provided by the treaties themselves or in accordance with the general rules of international law."

84. The relevant provisions of the Spanish Criminal Code state as follows:

Article 138

"1. Whoever kills another [person] shall be convicted of manslaughter, punishable with a prison sentence of between ten and fifteen years."

Article 139

"1. Whoever kills another [person] when any of the following circumstances apply shall be convicted of murder and punished with a prison sentence of between fifteen and twenty-five years:

1. With premeditation; ..."

Section 608

"For the purposes of this Chapter, the following are deemed to be protected persons: ...

3. The civilian population, and individual civilians protected by the Fourth Geneva Convention dated 12 August 1948 and by the Additional Protocol I dated 8 June 1977."

Section 611

"Whoever commits the following acts during an armed conflict shall be punished with a sentence of imprisonment of between ten and fifteen years, without prejudice to the relevant punishment for the results caused [by those acts]:

1. Conduct or orders, indiscriminate or excessive attacks, or rendering the civilian population the target of attacks, retaliation or acts or threats of violence, the main purpose of which is to strike fear thereby;"

85. The accused person must be present at trial under the Spanish Code on Criminal Procedure, as approved by a royal decree of 14 September 1882, which provides as follows:

Article 786.

"1. The holding of the oral trial requires the attendance of the accused and defence counsel."

86. Institutional Law no. 6/1985 on the Judiciary, in its original wording, provided in its section 23(4) a model of absolute universal jurisdiction, that is, extraterritorial jurisdiction based on the principle of universality, in respect of certain crimes, the only restriction being that an offender could not be released, pardoned or convicted if he or she was abroad– without any restrictions in terms of procedural requirements – exclusively based on the particular nature of the crimes under prosecution, in the following terms:

Section 23(4)

"Likewise, Spanish jurisdiction will be extended to [encompass] acts committed by Spaniards or foreigners outside the national territory that can be classified, according to Spanish law, as one of the following crimes:

a) Genocide and crimes against humanity.

b) Terrorism.

...

g) And any other [crime] that, under international treaties or conventions, must be prosecuted in Spain."

87. A reform to section 23(4) of Institutional Law 6/1985 was implemented by Institutional Law 1/2009, of 3 November 2009, in force since 5 November 2009. Under the reformed provision, a link between Spain and the crimes in question had to be established to allow the Spanish courts to have jurisdiction over them; such a link could be established if the victim had Spanish nationality. The wording of the relevant provision of the Institutional Law on the Judiciary from 5 November 2009 (prior to the reform implemented by Institutional Law 1/2014) stated as follows:

Section 23(4)

“Likewise, the Spanish jurisdiction will have authority to investigate the acts committed by Spaniards or foreigners outside the national territory that can be classified, according to Spanish law, as one of the following crimes:

a) Genocide and crimes against humanity.

b) Terrorism.

...

h) Any other offence that, under international treaties and conventions – in particular the conventions on international humanitarian law and the protection of human rights – must be prosecuted in Spain.

Without prejudice to the provisions of international treaties and conventions signed by Spain, in order for the Spanish courts to be able to hear the above-mentioned [types of] crime, it must be proved that the alleged perpetrators are in Spain or that there are victims of Spanish nationality, or that there is some relevant connection with Spain and, in any case, that in another country with jurisdiction or within an international court, no proceedings have been initiated that involve the investigation and effective prosecution, where appropriate, of such punishable acts.

Criminal proceedings initiated before the Spanish jurisdiction will be provisionally discontinued when there is evidence of the initiation of other proceedings in respect of the same [events] in the country or by the court referred to in the previous paragraph.”

88. Institutional Law 1/2014, of 13 March, operated another reform of Institutional Law 6/1985 on the Judiciary, which was aimed at introducing further limits on universal jurisdiction. It implemented an amendment to section 23(4) concerning the Spanish courts’ jurisdiction over international offences committed outside Spanish territory. For certain crimes committed outside the national territory, such as war crimes, the fact that a victim had Spanish nationality no longer sufficed to establish the jurisdiction of Spanish courts. The relevant provision of the Institutional Law on the Judiciary, as amended by Institutional Law 1/2014 (in force from 14 March 2014) states as follows:

Section 23(4)

The Spanish courts shall also have jurisdiction over acts committed by Spanish nationals or foreigners outside the national territory, where those acts are categorised as one of the following offences under Spanish law, subject to the stated conditions:

a) Genocide, crimes against humanity or crimes against protected persons or property in situations of armed conflict, where proceedings are brought against a Spanish national, a foreign national who habitually resides in Spain or a foreign national present in Spain whose extradition [to another State] has been turned down by the Spanish authorities;

...

p) Any other crime whose prosecution is mandatory under a treaty in force for Spain or under other regulatory acts issued by an international organisation of which Spain is a member, in the cases and under the conditions determined therein.

Likewise, Spanish jurisdiction will also encompass the above-mentioned crimes [that are] committed outside the national territory by foreign citizens who are in Spain and whose extradition [to another State] has been turned down by the Spanish authorities, provided that this is imposed by a treaty that applies to Spain."

89. The transitory provision of Institutional Law 1/2014, amending Institutional Law 6/1985 on the judiciary in respect of universal jurisdiction, states as follows:

> "Proceedings relating to the offences referred to in this Law that are in progress at the time of its entry into force shall be discontinued until compliance with the requirements established therein is proved."

90. The explanatory memorandum to Institutional Law 1/2014 states as follows:

> "... The extension of national jurisdiction beyond the State's own borders ... into the sphere of sovereignty of another State, must be limited to those areas that, as provided by International Law, must be assumed by Spain, in compliance with its international commitments: the extension of Spanish jurisdiction beyond Spanish territorial limits must be legitimised and justified by the existence of an international treaty that prescribes or authorises [such an extension], and by the consensus of the international community. At the same time, the regulation of the matter must match the commitments arising from Spain's ratification on 19 October 2000 of the Rome Statute of the International Criminal Court, as an essential instrument in the fight for a fairer international order based on the protection of human rights.
>
> Along the same lines (that is, in order to comply with the obligations imposed by the international treaties that Spain has ratified), it is necessary to extend the list of crimes committed outside the national territory that may be prosecuted under Spanish jurisdiction. ...
>
> This is the sense behind the reform that is now being carried out: to clearly establish – with the full application of the principle of legality, and reinforcing legal certainty – the cases in which Spanish bodies acting under Spanish jurisdiction may investigate and examine crimes committed outside the territory in which Spain exercises its sovereignty.
>
> To this end, the positive and negative limits of the possible extension of Spanish jurisdiction are specified: it is necessary for the legislature to establish, in accordance with international treaties, which crimes committed abroad may be prosecuted by Spanish justice – and in which cases and under what conditions. The prosecution of crimes committed outside Spain is also of an exceptional nature, which justifies the opening of proceedings being conditional on the lodging of a complaint by the Public Prosecutor's Office or the person aggrieved by the crime [in question].
>
> The jurisdiction of Spanish courts is also established in a negative manner [by this legal reform]. The principle of subsidiarity is clearly defined. In this sense, the jurisdiction of Spanish courts is excluded when proceedings have already been initiated in an international court or in the jurisdiction of [i] the country in which they were committed or [ii] the nationality of the person accused of committing them – in the latter two cases provided that the person accused of committing them is not in Spain or, if that person is in Spain, is going to be extradited to another country or transferred to an international court, under the terms and conditions established [by Institutional Law 1/2014].

In any case, Spanish courts may continue to exercise their jurisdiction in another State, if [that State] is not willing to carry out an investigation [in respect of a case] or cannot really do so. The assessment of these circumstances, which owing to its importance, is entrusted to the criminal chamber of the Supreme Court, will be carried out in accordance with the criteria provided by the Rome Statute of the International Criminal Court.

The regulation introduces limits to Spanish jurisdiction that must be applied to cases currently pending, since the Spanish courts cannot continue proceedings over which they already lack jurisdiction."

B. Relevant case-law

91. Following the entry into force of Institutional Law no. 1/2014, an unconstitutionality appeal was lodged against by a group of members of parliament (*Diputados*). The appeal was dismissed by judgment no. 140/2018 of 20 December 2018 by the Constitutional Court. The relevant passages of the judgment concerning, in particular, the reform of section 23(4) of the Law on the Judiciary, state as follows:

"The power given to the legislature to define the conditions of access to jurisdiction [*acceso a la jurisdicción* – that is, access to a court] also includes the definition of the content of universal jurisdiction. However, in so far as this Court has pointed out that the legislature is not entirely free to configure the regulatory options (but must respect the limits described [above]), the question to be clarified is whether or not a restricted definition of the principle of universal jurisdiction such as that set out in Institutional Law 1/2014 is compatible with the right of access to jurisdiction under Article 24 § 1 of the Spanish Constitution, interpreted in the light of the human rights treaties signed by Spain ...

As regards the aforementioned treaties ..., a reading of them leads to the conclusion that they do not establish a single and universally valid model for the application of the principle of universality of jurisdiction. ... [S]uch a model does not exist, [owing to the] wide diversity of opinions expressed by [different] States regarding the scope and application of the [principle of] the universality of jurisdiction ... . [C]ustomary international law gives States the power to confer unrestricted universal jurisdiction on their judges and magistrates, but does not impose an obligation to do so; the exercise of [that jurisdiction] depends on the importance that each State attaches to the relationship between the exercise of sovereignty within the framework of international relations and the guarantee of the universal rule of human rights – as manifested in the fight against impunity for the most serious crimes against those rights. This power of States is given clear expression through the signing of international treaties in which unrestricted universal jurisdiction may be a principle of compulsory application, through the appropriate domestic legislation. A separate issue is the determination of the possible relationship between the provisions [contained in such] treaties and those [contained] in domestic legislation ...

Nor does the Council of Europe's human rights guarantee system, which is expressed mainly through the case-law of the European Court of Human Rights, define a single model for the universal extension of jurisdiction.

... With regard to unrestricted universal jurisdiction, there is no ruling by the Strasbourg Court that generally validates one or another model of universal jurisdiction in the light of Article 6 § 1 of the ECHR, although, *mutatis mutandis*, some of the

considerations [assessed in] *Al-Adsani* [*v. the United Kingdom* [GC], no. 35763/97, ECHR 2001-XI] can be extended to the assessment of this instrument of extraterritorial extension of jurisdiction.

The judgment of 8 April 2004 (*Assanidze v. Georgia* [[GC], no. 71503/01, ECHR 2004-II] provides the application of the principle of unrestricted universal jurisdiction in cases of particularly serious international crimes as an exception to the general principle of the territoriality of jurisdiction under Article 1 of the ECHR. This ruling also recognises that the notion of jurisdiction must reflect the understanding of this notion in international law – a notion that is primarily or essentially territorial ([ibid.] § 137). Following this line of argument, the ECtHR denies the mandatory nature of unrestricted universal jurisdiction in cases involving the application of Article 4 of the ECHR ... or Article 2 of the ECHR in order to ensure universal prosecution in cases involving the death of a citizen of a member State ... That denial of the mandatory nature of the absolute principle of universal jurisdiction is based ... on considerations linked to the conception of the principle in international law, within the framework defined by the applicable international treaties ...

In short, it cannot be inferred from the pronouncements of the United Nations General Assembly, the International Court of Justice or the European Court of Human Rights that there is an absolute and general principle of unrestricted universal jurisdiction that is obligatory for the signatory States to the treaties included in these systems. In this respect, it cannot be said that Article 24 § 1 of the Spanish Constitution, in terms of access to a court – interpreted in the light of the human rights treaties ratified by Spain on the reading of those treaties by its supervisory bodies – enunciates a principle of absolute unrestricted universal jurisdiction such as that defined in section 23(4) of Institutional Law 6/1985, in its original version, which cannot be altered by the legislature. It must therefore be understood that the right of access to jurisdiction (as interpreted by the European Court of Human Rights), since it is not absolute, may be subject, in its application, to implicitly admitted limitations – especially with regard to the admissibility requirements of an appeal. Among those limitations, it is possible to note the introduction of procedural requirements in cases involving the extension of jurisdiction.

Therefore, Institutional Law 1/2014 is not, taken as a whole, contrary to Article 10 § 2 of the Spanish Constitution taken together with Article 24 § 1 of the Spanish Constitution as it defines the principle of universal jurisdiction in a restrictive manner. This is because it cannot be deduced from international human rights law (which is a parameter of interpretation that is binding on this Court) an absolute and binding concept of universality of jurisdiction such as that defended by the appellants. The appeal must be dismissed on this point.

... Therefore, the option assumed by the legislature is reasonable: the law cannot exclude the principle of absolute universality if there is an international treaty ratified by Spain that provides for it ... but neither is it obliged to extend the scope of universal jurisdiction by reason of the victim's nationality – eliminating other criteria connected with the interests of the State – if the legislature does not consider it appropriate for reasons of legislative policy. In short, the fact that access to Spanish jurisdiction by victims of Spanish nationality is not articulated by virtue of this criterion of national origin, but by virtue of the concurrence of other criteria selected by the legislature (which are clearly set out in the provision in question, and which are presumed to be consistent with the system of international law applicable to the prosecution of certain crimes), cannot be regarded as [constituting] anything other than a legislative option that in no way precludes respect for the principle of legal certainty."

92. The Supreme Court ruled on the question of restrictions on universal jurisdiction of Spanish courts with regard to other cases pending in Spain in parallel with the present case. Supreme Court Judgment no. 296/2015, of 6 May 2015, was adopted while the domestic proceedings of the instant case were still ongoing (see paragraph 69 above). The case concerned the investigation of alleged crimes of genocide, torture, terrorism and crimes against humanity by the former President of the People's Republic of China, the former Secretary-General of the Chinese Communist Party and other high-ranking officials of the Chinese Government and Army against the population of Tibet between 1950 and 1979. A criminal complaint was lodged with and declared admissible by the Spanish courts in 2006. Following the entry into force of Institutional Law 1/2014, the proceedings were discontinued, and an appeal on points of law was lodged with the Supreme Court. In its judgment, the Supreme Court ruled for the first time on the question of the restriction of access to a court as a consequence of the above-mentioned legislative reform. The relevant passages stated as follows:

> "TWENTY SEVENTH -...[It] should be noted that the [new] wording of Article 23 § 4 (a) of the Institutional Law on the Judiciary does not appear to violate the [Fourth] Geneva Convention.
>
> Article 146 of the Fourth Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War establishes the principle of universal jurisdiction, which is mandatory for the signatory States in the sense of imposing on them an obligation to try or extradite those responsible for serious breaches of the Convention, wherever in the world the offence was committed, and whatever the nationality of the perpetrator. But this obligation refers only to cases in which the perpetrators are on the territory of the signatory State, since its content and purpose is to prevent any of these perpetrators from being able to find refuge in a country that is a signatory to the [Fourth Geneva] Convention.
>
> This is the understanding of most of the doctrine, which, while agreeing with the position held by the appellants that universal jurisdiction for war crimes is imperative and not optional, nevertheless maintains that this obligation does not extend to [a provision] that each and every one of the signatory countries must investigate each and every ... grave breach of the Geneva Convention, in each and every armed conflict that occurs anywhere in the world, and must demand the surrender and extradition of those responsible; ... rather, [the majority interpretation is that] it is incumbent on each signatory country to seek out, arrest and prosecute in its own courts those responsible [for such a breach] who have taken refuge or hidden in their respective countries.
>
> TWENTY-EIGHTH.-... The [Fourth Geneva] Convention does not expressly provide an obligation to search for any of these perpetrators ... beyond the borders of the signatory countries, anywhere in the world, in the event that those countries have no connection with the armed conflict in which the offence took place.
>
> ... According to a logical interpretation of the rule, it is not acceptable that the obligation [to conduct] a generalised search outside the territory of the signatory countries could be established by the [Fourth Geneva] Convention – firstly because [that] Convention cannot impose obligations on the signatory States that exceed their sovereignty, and secondly because it cannot impose obligations that are impossible to fulfil, since no country can initiate an indefinite number of sets of proceedings in order

to investigate *in absentia* all grave breaches of the Geneva Convention, in any armed conflict taking place anywhere in the world, especially if, as in the current proceedings, the facts [of the case] date back several decades.

And, furthermore, it is an interpretation that leads to the absurdity of understanding that this obligation is imposed simultaneously on the two hundred or so States which have signed the [Fourth Geneva] Convention, and which, in order to comply with the Treaty, would necessarily have to compete with each other in the search for and [in demanding the surrender] of all those who might be responsible, wherever they might be.

What the [Fourth Geneva] Convention establishes, conclusively, is that all signatory States must search for persons accused of having committed, or having ordered to be committed, any serious offence, if these persons have taken refuge or hidden in their country, and must bring them before their own courts, whatever their nationality and wherever they may be.

The rule adds that the signatory State [in question] "may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a 'prima facie' case", which presupposes that the person responsible is on the territory of the signatory State [and is] at its disposal – which is what is required for [that person's] surrender. Therefore, a systematic interpretation, taking into account the context of the rule, leads to the same conclusion.

In short, it is true that the [Fourth] Geneva Convention, unlike other treaties, establishes an imperative system of universal jurisdiction. But ... [t]his imperative jurisdiction does not extend to the obligation [for signatory States] to search for them outside their [respective territories], and to [demand their surrender] in any instance – especially when this obligation to [demand their surrender] cannot be fulfilled and attended to simultaneously by all the countries that are signatories to the Convention. The regime established is one of cooperation between States, not competition.

This is irrespective of the fact that a State may optionally assume, in its internal legislation, the extension of its jurisdiction to cases in which those responsible are not at its disposal. However, this broadness in the exercise of jurisdiction, assumed in the initial version of our Law on the Judiciary, is not necessarily imposed by the Geneva Convention.

...

THIRTIETH - In sum, the answer to the questions raised in the present appeal on points of law is as follows:

Firstly, neither conventional nor customary international law imposes an absolute or *in absentia* model of universal jurisdiction, such as that enshrined in the first version of section 23(4) of Institutional Law 6/1985.

Secondly, the constitutional doctrine referring to the acceptance in our legal system of a model of absolute [unrestricted] and unconditional universal jurisdiction is related to the breadth of the legal principles expressly established by the [Institutional Law on the Judiciary] in its initial wording, but it does not constitute the only constitutionally admissible model of universal jurisdiction, as it is possible to establish regulatory criteria that restrict its scope of application – as long as its essential content is respected as an extraterritorial jurisdiction [that is] based on the nature and gravity of certain crimes affecting the international community.

Thirdly, even though Institutional Law 1/2014 provides a very restrictive model of universal jurisdiction, which contrasts with the previous regulation that turned our country into a pole of attraction [*un polo de atracción*] in this area, it does not violate the provisions of the treaties or international judicial practice, and is in line with the exclusion of universal jurisdiction *in absentia*, which is the most widespread model in our neighbouring countries.

Fourthly, point (p) of section 23(4) of Institutional Law on the Judiciary is not applicable to serious breaches of the Geneva Convention, whether they may be called [*cualquiera que sea su denominación*] war crimes, crimes against protected persons in the event of armed conflict or crimes under international humanitarian law. Only subsection a) [of the said provision] is applicable.

And, fifthly, the Geneva Convention, unlike other treaties, establishes a compulsory system of universal jurisdiction, in the sense that it imposes on any signatory country the burden of locating war criminals who are hiding in [that country], and of bringing them before its courts – [in so doing], assuming extraterritorial jurisdiction to try them, irrespective of the place where the events occurred and irrespective of their nationality. But this imperative [*imperativa*] jurisdiction does not extend to the obligation to initiate investigations *in absentia*, to search for perpetrators outside its territory and to [demand their surrender] them in any instance.

The plea must therefore be dismissed ...”

93. Judgment no. 869/2016 of the Supreme Court of 18 November 2016 – also concerning a different case – referred to the effects of the discontinuation of the case in question on the basis of the lack of jurisdiction of the Spanish courts under the new section 23(4) of Institutional Law on the Judiciary:

“FIRSTLY- ... In fact, it cannot be agreed to definitively discontinue the case, when the law itself establishes that such a discontinuation [*sobreseimiento*] will only be maintained until compliance with the requirements established for the Spanish courts to have jurisdiction is demonstrated – [specifically], in the current case, as long as none of the alleged perpetrators are on Spanish territory. In our Supreme Court Judgment no. 296/2015, of 6 May, we indicated that the discontinuation provided for in the transitory provision of [Institutional Law 1/2014], constitutes a special form of discontinuation established by a regulation categorised as an “Institutional Law”, which does not necessarily have to correspond with the requirements provided by the Criminal Procedure Act concerning the forms of discontinuation established therein. This is an autonomous and specific form of discontinuation which requires certain conditions, which has a specific basis (a lack of jurisdiction), and whose effects are similar to those of a provisional discontinuation, [*sobreseimiento provisional*] since – once the procedure has been stayed – if at any later time it is found that the requirements for the activation of Spanish jurisdiction to prosecute the crime to be prosecuted [in Spain] are met (such as the presence of the accused on Spanish territory), the discontinuation will lose its effect, and the proceedings shall be resumed. Consequently, if [it is possible that] the proceedings [will] be resumed, the discontinuation may not be considered definitive”.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. The parties' submissions

1. The respondent Government

94. The Government submitted that from the moment when Institutional Law 1/2014 had come into force until the moment when the application had been lodged, the domestic courts' actions had been merely aimed at establishing whether they continued to have jurisdiction; once they had established that they did not, they had had to discontinue the proceedings – at least until the new legal requirements were met (namely, until such time as the alleged perpetrators were on Spanish territory).

95. Moreover, the three alleged perpetrators of the victim's killing had been subjected to an investigation carried out by the US authorities, which had concluded that they had were not guilty of any offence. The Government observed that it had been neither the Spanish courts' nor the Court's role to assess the US authorities' investigation into the events in question.

96. On the basis of the above-noted considerations, the Government argued that since March 2014, Spain had lacked jurisdiction *ratione loci, ratione materiae* and *ratione personae* within the meaning of Article 1 of the Convention, and that the application should therefore be declared inadmissible on those grounds.

2. The applicant

97. The applicant contested the allegations that at the time when the application had been lodged with the Court, Spain had not had jurisdiction to prosecute the alleged authors of the death of his brother (the victim). He argued that the seriousness of the crimes under investigation – in particular, crimes against the international community – had amounted to special features (*circunstancias especiales*) that had justified the extension of the Spanish jurisdiction under the Convention beyond Spain's territorial borders – even after the legislative reform introducing restrictions on the extraterritorial jurisdiction based on the principle of universality.

B. The Court's assessment

98. The Court considers it appropriate to clarify at the outset that, for the reasons set out below (see paragraphs 101– 103), it has established that the applicant's complaint is limited to an issue of access to court and falls to be examined solely under Article 6 § 1 of the Convention.

99. In these circumstances, even though the extraterritorial nature of the events at the origin of the applicant's action brought before the Spanish judicial authorities may have an incidence on the merits of his Article 6 complaint, it cannot affect the question whether the respondent State had jurisdiction *ratione loci* and *ratione personae* in respect of the complaint about an unjustified denial of access to a court by the Spanish courts. Once a person brings a civil action in the courts or tribunals of a State, there indisputably exists, without prejudice to the outcome of the proceedings, a "jurisdictional link" for the purposes of Article 1 (see *Markovic and Others v. Italy* [GC], no. 1398/03, § 54, ECHR 2006-XIV; see also *M.M. v. France* (dec.), no. 13303/21, § 63, 16 April 2024).

100. Therefore, the Government's preliminary objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE RIGHT OF ACCESS TO A COURT

101. In his application, the applicant complained that the restriction on the Spanish courts' jurisdiction to investigate and prosecute the killing of his brother had amounted to violations of his rights of access to a court and to an effective remedy under Articles 6 § 1 and 13 of the Convention.

102. The Court, having examined the application and the manner in which the applicant formulated his complaints, observes that their essence is limited to the question whether the impugned legislative reform which led to the discontinuation of the proceedings into his brother's killing violated the applicant's right of access to a court as a civil party to those proceedings.

103. As a consequence, and also noting that the issues raised under Article 13 by the applicant concern aspects of his right of access to court, the Court considers that the applicant's complaints fall to be examined solely under Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

1. The parties' submissions

104. The Government did not raise admissibility objections other than those related to the issue of jurisdiction and dismissed by the Court (see paragraphs 95-100 above).

105. The applicant submitted that the application was admissible.

2. The Court's assessment

106. Concerning the applicability of Article 6 § 1 of the Convention in its civil limb to the present case, the Court points out at the outset that the case concerns the applicant's intervention as a civil party in criminal proceedings brought before the criminal courts.

107. In this regard, the Court reiterates that 6 § 1 in civil matters firstly depends on the existence of a dispute ("contestation" in French). Further, the dispute must relate to "rights and obligations" which, arguably at least, can be said to be recognised under domestic law. Lastly, these "rights and obligations" must be "civil" ones within the meaning of the Convention, although Article 6 does not itself guarantee any particular content for them in the substantive law of the Contracting States (see *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 106, 15 March 2018, and the case-law cited therein).

108. The Court has repeatedly established that it considers that Article 6 § 1 in its civil limb is applicable to a complaint lodged as a civil party within criminal proceedings (see *Perez v. France* [GC], no. 47287/99, §§ 70-75, ECHR 2004-I; *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 188, 25 June 2019; or *Gracia Gonzalez v. Spain*, no. 65107/16, §§ 52-55, 6 October 2020), except where the civil action is brought solely for punitive purposes (paragraph 117 above). The Court already stated in *Gracia Gonzalez*, cited above, §§ 54-55, that under Spanish law, where an alleged victim does not expressly waive their right to obtain civil compensation, that person can expect to be awarded civil compensation derived from the offence within the scope of the criminal proceedings. Article 6 in its civil limb is therefore applicable to criminal proceedings where the plaintiffs have a victim status which could entitle them to civil compensation. The Court reiterates that by acquiring the status of civil party within criminal proceedings, the victim demonstrates the importance he or she attaches not only to the criminal conviction of the accused but also to securing financial reparation for the damage sustained, regardless of whether he or she has made a formal claim for civil compensation (see *Moreira de Azevedo v. Portugal*, 23 October 1990, § 67, Series A no. 189).

109. In the present case, the applicant had the right, recognised under Spanish law, not only to become a private accusing party (*acusación particular*) within the criminal proceedings which investigated his brother's killing, but to obtain civil compensation from the perpetrators should a criminal offence be established and a conviction secured within those proceedings. The above findings apply with equal force whether the Spanish courts' jurisdiction is established based on the commission of a crime inside Spain's territory, or based on the exercise of universal jurisdiction of Spanish criminal courts for crimes committed outside its territory; while this question goes to the substance of the present case, which will be examined below, it is not decisive for the applicability of Article 6 (see *Naït-Liman*, cited above, § 108).

110. The Court has no doubt that there existed a "genuine and serious" dispute, as required by the Court's case-law (see, for example, *Naït-Liman*, cited above, § 107; and *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 71, 29 November 2016). As the Court has already stated, the fact that the respondent State does not actually contest the existence of a right of victims of war crimes to obtain compensation, if such a crime is established to have been committed, but rather its extra-territorial application, is immaterial, given that the dispute may relate not only to the actual existence of a right but also to its scope and the manner of its exercise (see *Naït-Liman*, cited above, § 107; and *Benthem v. the Netherlands*, 23 October 1985, § 32, Series A no. 97). Moreover, it is not in dispute that this right is a civil one.

111. In view of the foregoing, Article 6 § 1 of the Convention is applicable in the present case. Therefore, the Court concludes that the complaint is not inadmissible *ratione materiae*.

112. No other grounds for declaring it inadmissible have been established. The Court therefore declares the complaint admissible.

B. Merits

1. The parties' submissions

(a) The applicant

113. The applicant submitted, firstly, that before the restriction of the universal jurisdiction of the Spanish courts introduced by Institutional Law 1/2014, the Spanish courts had had jurisdiction in respect of the events under investigation, and he acknowledged that the domestic courts had exercised that jurisdiction and had carried out a thorough and extensive investigation.

114. The applicant complained of the alleged violation of the Convention as a consequence of the legislative reform implemented by Institutional Law 1/2014, which had ordered *ex lege* the discontinuation of the investigation that was being carried out into the wrongful death of his brother. He argued that, while member States had a political choice concerning their jurisdiction, the Court needed to assess whether that choice complied with the Convention; he considered that the reformed Spanish legislation restricting universal jurisdiction on war crimes occurred extraterritorially could not be considered to be in compliance with the Convention, since it prevented the victims from defending their legitimate interests before the domestic courts, without any legitimate or proportionate aim justifying that restriction. More specifically, the applicant reiterated that the Spanish State's obligations under the Fourth Geneva Convention included the obligation to search for persons alleged to have committed (or to have ordered to be committed) serious international crimes, and to bring such persons (regardless of their nationality) before its own courts. In the applicant's opinion, the above-noted obligations could not

be disregarded simply because the relevant domestic law had been reformed; Spain was obliged, under treaty law, to investigate and prosecute the war crime committed by foreign soldiers against the victim, and the discontinuation of the proceedings had amounted not only to a violation of the Fourth Geneva Convention, but also of the Vienna Convention on the Law of Treaties, and of Article 6 § 1 of the Convention.

115. In the applicant's submissions, the intervention of the legislature and the influence that that intervention had had on the outcome of the judicial proceedings initiated by him had constituted a disproportionate obstacle to his right of access to a court. He complained that following its enactment the new law had immediately entered into force and that the restriction that it had placed on the jurisdiction of the Spanish courts had affected the outcome of cases which, like his, had been under investigation when the law had entered into force.

116. The applicant submitted that the fact that the legislative reform only allowed the prosecution of foreign nationals who were perpetrators of international crimes for offences committed outside Spanish territory if they were present on Spanish territory prevented even the possibility of lodging a criminal complaint against such perpetrators, and that it also placed the onus of discovering their whereabouts on the families of the victims of such crimes. The applicant argued that this amounted to an unjustifiable restriction of his right of access to a court, which had essentially been impaired.

117. Moreover, the fact that no trial had ever been opened – despite the existence of sufficient evidence against the accused persons – had deprived the applicant and the other relatives of the victim of their right of access to a court and to an effective remedy. The fact that the relevant Spanish legislation precluded the possibility of holding a trial in the absence of the accused could not justify the discontinuation of the proceedings before the accused had been duly subpoenaed to appear at the trial.

118. In addition, the applicant considered that had the Public Prosecutor's Office afforded a greater degree of cooperation, the investigation stage could have been concluded without so much delay, and in that scenario, the trial stage could have been opened before the entry into force of the reform affecting the law regulating universal jurisdiction.

119. Lastly, and in response to the Government's observations, the applicant also submitted that no "abuse" or "overburdening" of national investigative resources had ever occurred in the course of the twenty-four years during which an absolute and unrestricted form of extraterritorial jurisdiction based on the principle of universality had been in force in Spain.

(b) The Government

120. The Government held that, under international law, the Spanish domestic authorities had had no obligation to exercise their jurisdiction to investigate and, where appropriate, prosecute the perpetrators of the killing

of the victim, since it had been perpetrated outside its territory and by agents outside their effective supervision. They observed that the Convention itself does not require States to prosecute each and every crime committed worldwide and that there is no European consensus regarding the question of whether unrestricted universal jurisdiction should exist. They argued that universal jurisdiction is internationally agreed to constitute an exception to the general rule of territoriality, based on the fact that a State could only be held responsible for acts or omissions that it could perform effectively. In particular, according to their submissions, the international custom or practice generally accepted as customary law does not support the recognition of a model of unrestricted universal jurisdiction, such as the one in force in Spain until the legal reform carried out in 2014. Moreover, the Government alleged that the application of absolute and unrestricted universal jurisdiction is often problematic, and can lead to potential abuses of legal proceedings and a risk of overburdening domestic investigative resources – particularly in those cases where it seems very unlikely that a criminal prosecution will ever take place.

121. Under Spanish law, the Government distinguished between the periods before and after the entry into force of the legislative reform introduced by the Institutional Law No. 1/2014 on 15 March 2014. They acknowledged that when, prior to that moment, the victim's family members (including the applicant) had lodged their criminal complaint, the Spanish courts had had the legal obligation to investigate any crime listed in Institutional Law 6/1985, as in force at the time, perpetrated outside its national territory. They argued that during that period the applicant and other relatives of the victim had been able to take part in the proceedings as private accusing parties (*acusación particular*) during the course of the investigation stage. They had been fully able to take part in the proceedings, and in fact, most of the requests for investigative measures that they had lodged had been granted by the investigating judge (indeed, a very large number of those measures had actually been carried out). The victim's family had also been able to lodge subsequent appeals against judicial decisions with which they had disagreed; on two occasions, the Supreme Court had upheld their appeals and ordered the investigation stage to be reopened and resumed. The Government held that during the period in which Spain had had jurisdiction to investigate and (if relevant) to prosecute the case, such jurisdiction had been effectively exercised.

122. In respect of the period subsequent to March 2014, however, the Government rejected the applicant's allegations that the domestic authorities had continued to be bound by an obligation to pursue criminal proceedings in respect of the events in question. The Government considered that section 23(4) of Institutional Law on the Judiciary was a procedural rule and, as such, the *tempus regit actum* doctrine should apply; once it had been legally established that Spanish courts did not have jurisdiction to prosecute or try

allegedly criminal acts that occurred outside Spanish territory, the proceedings could not have continued – especially given the fact that in respect of the restriction of universal jurisdiction, the retroactive nature of the new provision had been specifically provided by Institutional Law 1/2014 (in its transitory provision), and had been beneficial for the accused.

123. The Government pointed out that the Convention does not include a right to obtain the prosecution or conviction of another person, and that the discontinuation of the proceedings had been indicated by the impossibility – for reasons beyond those courts' control – of bringing the three persons under investigation before the Spanish courts.

124. Notwithstanding that fact, the Government also submitted that the transitory provision of Institutional Law 1/2014 had not annulled the investigative steps carried out in the proceedings, and should the persons ever in the future be found on Spanish territory, those proceedings could be resumed. In this regard, the Government stated that the domestic law did not in any way prevent the suspected offenders from being prosecuted again as alleged perpetrators of the killing of the victim, provided that those alleged perpetrators were to be found on Spanish territory, since court investigations had already been terminated and the suspected perpetrators of the crime in question had already been identified.

125. Concerning the alleged delays during the investigation, the Government considered that the investigation stage had been lengthy, but not disproportionately so, in the light of the complexity of the case, and given that – following the occurrence of the events in question – it had been necessary to rely on the cooperation of national and international authorities.

126. Moreover, under the principle of the subsidiarity of Spanish universal jurisdiction, the courts considered under international law to have primary jurisdiction to hear the case had been, firstly, the Iraqi courts, and secondly, the United States' courts. From the moment that the relevant authorities of other countries had decided to exercise their jurisdiction, the Spanish courts' jurisdiction ceased to exist – even under the previous legal framework. And neither before the procedural reform of 2014 nor after it could the Spanish courts have prosecuted conduct related to offences in respect of which the alleged perpetrator had already been acquitted by the authorities of another State. The Government considered that the US authorities had conducted an internal investigation into the events in question, in accordance with the procedure established by their own domestic law, and had not found the military personnel concerned guilty of any offence or wrongdoing.

127. Lastly, the Government observed that the discontinuation of the proceedings would have been inescapable even had the 2014 regulatory reform not occurred, since the Spanish legal system had already prohibited trials *in absentia* (in order to protect the right of accused persons to be heard by the judge responsible for their prosecution). The US authorities'

failure – for whatever reason – to provide assistance in respect of the requests lodged by the investigating judge had rendered it impossible for the Spanish courts to summon and bring before them to stand trial the three US nationals under investigation. Even before the entry into force of Institutional Law 1/2014, the only possible outcome – given that it had not been within the power of the Spanish courts to prosecute the suspected offenders – would have been the discontinuation of the proceedings.

128. In the light of the above-noted considerations, the Government considered that the applicant's right of access to a court had not been violated.

2. The intervening third-party Government

129. The Government of the United Kingdom submitted that the present case did not present exceptional circumstances justifying the exercising of extraterritorial jurisdiction over acts committed outside the territory of the respondent State (in this case, Spain). It alleged that Spain had not exercised effective control over the area of Iraq in which the applicant's brother had been killed; the alleged perpetrators were not Spanish nationals; they were not located within Spanish territory; the proceedings had not been initiated at the initiative of the Spanish authorities (which would have indicated that Spanish jurisdiction was assumed); and, in particular, the death had occurred within the territory of a non-Contracting State and not within the legal space of the Convention. They held that there was no procedural link either: if the mere fact of having instituted an investigation or proceedings into those events was to be considered sufficient to establish a jurisdictional link (irrespective of whether any other grounds for it existed), this would circumvent the existing case-law in respect of the exceptional nature of extraterritorial jurisdiction, and oblige States to perform impossible tasks in order to investigate events that took place outside such States' jurisdiction.

130. With respect to the present case, they also submitted that there were no special features that would exceptionally have justified recognising the jurisdiction of the Spanish courts in respect of the events of the instant case. The only conceivably relevant feature of the instant case was the fact that the victim had been a Spanish national, but the Court had repeatedly made it clear that this was insufficient (they cited *Rantsev v. Cyprus and Russia*, no. 25965/04, § 244, ECHR 2010 (extracts)); moreover, there were no other special features that would support the imposition of a duty on Spain to conduct its own investigation.

3. The third-party intervener

131. Rights International Spain considered it relevant to note that section 23(4) of Institutional Law 6/1985 on the Judiciary (concerning the extraterritorial jurisdiction of Spanish courts) had been amended several times in 2003, 2005, 2007 and 2009 before the amendment implemented by

Institutional Law 1/2014, which was adopted eleven years into the proceedings. None of the previous amendments – whether they had restricted universal jurisdiction or not – had limited the possibility of prosecuting those suspected of causing the death of the victim.

4. *The Court's assessment*

(a) General principles governing the right of access to a court

132. The general principles enunciated with regard to the right of access to a court in civil matters in the case of *Naït-Liman*, cited above, §§ 112-116, are fully applicable to the present case. The Court notes at the outset however that, unlike the case of *Naït-Liman*, which concerned the question of the universal jurisdiction of the civil courts in the context of autonomous civil proceedings, the present case concerns the right of access to a court as a civil party in criminal proceedings brought before the criminal courts on the basis of the principle of universal jurisdiction. This question has already been assessed by the Court in the cases of *Hussein and Others v. Belgium*, no. 45187/12, §§ 59-74, 16 March 2021, and, very recently, in *M.M. v. France* (dec.), cited above, §§ 73-76.

133. The Court notes moreover that, in principle, the legislature is not prohibited from regulating the conduct of civil matters by means of implementing new provisions with retroactive effect. However, interference by the legislature with the administration of justice for the purpose of influencing the judicial outcome of litigation (see *Hussein and Others*, cited above, § 60, and the case-law cited therein) is precluded – save on overriding grounds of public interest – by rights deriving from laws already in force, the principle of the rule of law, and the concept of a fair trial enshrined in Article 6 of the Convention.

(b) Application to the present case

(i) Existence of a restriction to the applicant's right of access to a court

134. The present case involves the application of a law to ongoing judicial proceedings. Namely, the entry into force of Institutional Law 1/2014 (which reformed section 23(4) of Institutional Law on the Judiciary and incorporated a transitory provision applicable to ongoing cases) resulted in the Spanish courts' finding that they did not have authority to continue with the investigation into the applicant's brother's killing and, as a consequence, discontinued the proceedings, including the examination of the applicant's allegations as a civil party.

135. The Court notes that, in the Government's submissions, the proceedings would have been terminated in any event because Spanish law, even before the entry into force of Institutional Law 1/2014, did not allow trials *in absentia* and the alleged perpetrators were not present in Spanish territory(see paragraph 127 above). While this may be relevant with regard to

the seriousness of the prejudice allegedly suffered by the applicant, the Court considers that it does not affect the fact that the legal ground for the discontinuation of the proceedings was the impugned legislative amendment.

136. The Court must therefore examine whether the restriction to the applicant's right of access to a court posed by Institutional Law 1/2014 pursued a legitimate aim and, if so, whether it was reasonably proportionate to the aim pursued.

(ii) Whether the restriction pursued a legitimate aim

137. As to whether the restrictions on the applicant's right of access to a court pursued a legitimate aim, the explanatory memorandum to the new law established that the reform was aimed at clearly establishing – in line with the principle of legality and in order to reinforce legal certainty – the cases in respect of which the Spanish courts had jurisdiction to investigate and examine crimes committed outside the territory in which Spain exercised its sovereignty. In this regard, the Court recognises that extraterritorial jurisdiction is of an exceptional nature (see paragraph 90 above) and needs to be carefully established. In their submissions, the Government also pointed to the risk of overburdening the courts that would have resulted from an abuse of litigation on the basis of an "absolute" model of unrestricted universal jurisdiction regardless of whether or not any connection with Spain exists, as well to the practical difficulties that the Spanish courts would have faced in attempting to adduce evidence. The Spanish Constitutional Court, in its judgment dismissing the applicant's *amparo* appeal, also concluded that the need for the alleged authors of crimes committed abroad to be physically on Spanish territory in order to recognise Spain's jurisdiction in respect of such crimes was aimed at securing the effectiveness of criminal proceedings (see paragraph 74 above). The Spanish Supreme Court's first judgment interpreting the new requirements introduced by Institutional Law 1/2014 deemed that the unrestricted model of universal jurisdiction in force in Spain when the case had first been introduced could be read as imposing "obligations that are impossible to fulfil, since no country can initiate an indefinite number of sets of proceedings in order to investigate *in absentia* all grave breaches of the Geneva Convention, in any armed conflict taking place anywhere in the world, especially if, as in the current proceedings, the facts [of the case] date back several decades. ... And, furthermore, it is an interpretation that leads to the absurdity of understanding that this obligation is imposed simultaneously on the two hundred or so States which have signed the [Fourth Geneva] Convention, and which, in order to comply with the Treaty, would necessarily have to compete with each other in the search for and in [demanding the surrender] of all those who might be responsible, wherever they might be" (see the relevant extracts of the Spanish Supreme Court's judgment no. 196/2015, of 6 May 2015, in paragraph 92 above).

138. The Court has recognised that it is not unreasonable for a State to require the existence of some links to that State in order for its universal civil jurisdiction to prosecute some offences to be recognised (see *Hussein and Others*, cited above, § 65; *Naït-Liman*, cited above, §§ 218-219, and *M.M. v. France* (dec.), cited above, § 75).

139. In the present case, the reasons given by the Government to justify the introduction by the legislature of new criteria to restrict universal jurisdiction (see paragraph 120 above) taken together with the reasons established in the explanatory memorandum to Institutional Law 1/2014 (see paragraph 90 above) and the Spanish Constitutional Court's case-law concerning the reform of section 23(4) of the Institutional Law on the Judiciary (see paragraphs 91 and 92 above) could be regarded as constituting an overriding reason of public interest.

140. The Court must next consider whether the consequences that arose in the applicant's case were proportionate in relation to the aim pursued by the law.

(iii) Whether the restriction can be considered proportionate

141. With regard to the proportionality of the restriction on the right of access to a court, the Court reiterates that the State enjoys a certain margin of appreciation in regulating this right (see *Naït-Liman*, cited above, § 114, and the case-law cited therein). In cases such as the present one, the scope of this margin depends, *inter alia*, on the relevant international law in this area.

142. It is true that States which, like Spain, have conferred upon their courts jurisdiction to hear claims for reparation for war crimes or other international crimes, give effect to the broad consensus in the international community on the existence of the right of victims of the said crimes to appropriate and effective reparation – including when their claims are based on acts committed outside the geographical boundaries of the State in question. Spain, Iraq and the United States are parties to the Fourth Geneva Convention of 1949. This international legal instrument, in its Articles 146 and 147 (see paragraph 80 above), requires States Parties to criminalise certain acts including war crimes. In particular, in its Article 146, it requires all States Parties either to extradite or themselves to prosecute individuals suspected of crimes defined as war crimes (*aut dedere aut judicare*), at least when those individuals are already in their national territory. The Fourth Geneva Convention therefore does establish an imperative model of universal jurisdiction, which imposes on any signatory State the obligation to locate war criminals when they are in their territory, and to bring them before their courts to prosecute and try them based on the nature of the crime, regardless of the place where the events occurred and regardless of the defendants' nationality. This mandatory jurisdiction however does not extend to an obligation for States to search for war criminals outside their territory, and to claim jurisdiction to prosecute and try them, when there are no elements of

connection whatsoever. The Court does not in any way determine how the obligations established in the above-mentioned provisions of the Fourth Geneva Convention shall be enacted in national legislation, or that they should be extended beyond the territorial borders of the States Parties. Nor does it imply that an unrestricted model of universal jurisdiction is the most adequate legal regime to investigate prosecute and try international crimes. While the Court does recognise that the existence of a duty to investigate or hand over to another High Contracting Party for them to do so under international law reflects the gravity of the alleged offence (see *Hanan v. Germany* [GC], no. 4871/16, § 137, 16 February 2021, and *Georgia v. Russia (II)* [GC], no. 38263/08, § 331, 21 January 2021), it also observes that it follows neither from international law nor from the Convention that Contracting States are obliged to acquire universal civil jurisdiction (see *Hussein and Others*, cited above, § 65, and, *mutatis mutandis*, *Naït-Liman*, cited above, § 198).

143. The Court notes that in 2003, when the applicant and other members of the victim's family brought their criminal action (which incorporated a civil action for compensation), Spanish law recognised universal criminal jurisdiction in its absolute form. The legislature then gradually introduced criteria requiring a connection *ratione personae* and *ratione loci* with Spain. After the entry into force of Institutional Law 1/2009, of 3 November 2009, the victim's Spanish nationality was considered a connection sufficient to establish the extraterritorial jurisdiction of the Spanish courts (passive nationality principle) (see paragraph 86). However, when Institutional Law 1/2014 entered into force on 15 March 2014, the proceedings that the applicant had instituted in 2003 did not meet the new criteria justifying the extraterritorial jurisdiction of the Spanish courts, as those criteria no longer recognised the victim's nationality as constituting a sufficient link (see paragraph 88 above). The applicant's case could not therefore be maintained on the basis of the transitory provision of that Law (see paragraph 89 above).

144. However, the investigating judge initially considered that the provisions introduced by Institutional Law 1/2014 had to be disregarded, because they contravened the Fourth Geneva Convention; as a result, the Spanish judicial authorities maintained their jurisdiction (see paragraph 64 above). That decision was later confirmed by the plenary of the criminal chamber of the *Audiencia Nacional*, as well as by the Supreme Court (see paragraph 65 above). The applicant's case therefore remained under investigation for some time after the entry into force of the new legislation, so it cannot be held that the intervention of the legislature – merely because the law applied to pending cases – rendered any continuation of the proceedings futile (see *Hussein and Others*, cited above, § 69; also contrast *Arnolin and Others v. France*, nos. 20127/03 and 24 others, §§ 73-74,

9 January 2007, and *Ducret v. France*, no. 40191/02, §§ 36-37, 12 June 2007).

145. Furthermore, the Court considers that during the period in which Spain had jurisdiction to investigate the case, that jurisdiction was effectively exercised. Between 2003 and 2015 the domestic authorities – more specifically the investigating judge – made significant efforts to establish the facts necessary to charge and prosecute the alleged perpetrators of the victim's killing, or to find out whether that crime was being investigated and could be prosecuted in the United States or in Iraq. In particular, the investigating judge repeatedly requested information from the US authorities about the events in question, noting that an administrative investigation had been conducted there. That investigation had concluded that the US forces involved in the killing of the applicant's brother had acted in self-defence and that there was no evidence of any crime or wrongdoing as the use of force had been proportionate to the threat posed to them. As a result, the Spanish courts were informed that no criminal investigation would be conducted. The domestic courts also requested judicial cooperation from the Iraqi authorities, which did not provide specific information on whether there were ongoing proceedings on the events in question. The Court also observes that even an on-site visit to the scene of the shooting in Baghdad was carried out by a judicial commission in order to gather as much information as possible.

146. The case was only discontinued after the plenary of the criminal chamber of the Supreme Court adopted a judgment, in other proceedings, in which it gave for the first time its interpretation on the effects of the reform implemented by Institutional Law 1/2014 on pending cases initiated under the previous regulation governing access to unrestricted universal jurisdiction (see paragraph 69 above). In the view of the Supreme Court, the new wording of section 23(4) and the transitory provision of Institutional Law 1/2014 meant that the jurisdiction of the Spanish courts could be asserted only if the alleged perpetrators were present in Spain; the nationality of the victim was not sufficient to establish a jurisdictional link, and this applied to pending cases.

147. The Court, being mindful that the interpretation and application of domestic law is primarily a matter for the national courts to resolve and that its role is to verify whether the effects of such an interpretation are compatible with the Convention (see *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 49, 20 October 2011), sees no reason to depart from the domestic court's interpretation of the applicable law in respect of the facts of the present case. It observes that the domestic courts gave a specific and explicit response to the subsequent appeals lodged by the applicant. It does not see anything arbitrary or manifestly unreasonable in the conclusion reached by the domestic courts concerning their lack of jurisdiction with regard to the present proceedings. That interpretation of Institutional Law 1/2014 corresponded to the purpose of that Law, which was to limit litigation

based on universal jurisdiction to only those cases where there was a sufficient link to Spain. This was within the respondent State's margin of appreciation.

(iv) General conclusion

148. The Court attaches particular importance to the following elements in the present case: (i) the applicant was able to bring his complaints before the courts, many pieces of evidence were gathered by the investigating judge at his request and the Spanish judicial authorities conducted a very thorough criminal investigation; (ii) once the investigation stage had concluded, it would not have been possible to proceed to trial in any event because the persons charged with the crime would not be surrendered by the US authorities and Spanish law did not allow trials *in absentia*; (iii) the Spanish courts discontinued the proceedings only temporarily, without ruling out the possibility of reopening them if the defendants came under Spanish territory and therefore Spanish jurisdiction; and (iv) the applicant complained about his right of access to a court from the perspective of a civil party to the criminal proceedings and did not argue that there had been any obstacles which would have prevented him from bringing a separate civil action outside the criminal proceedings.

149. Accordingly, and having regard to all the foregoing considerations, the Court considers that the Spanish courts' finding (following the entry into force of Institutional Law 1/2014) that they had no jurisdiction to hear the civil action that was a part of the criminal action brought by the applicant in 2003 for the purpose of obtaining compensation for the death of his brother (as the result of an alleged serious violation of international humanitarian law and international criminal law) was not disproportionate to the aims pursued. Accordingly, there has been no violation of the right of access to a court within the meaning of Article 6 of the Convention.

150. That being so, it should be reiterated that this conclusion does not call into question the broad consensus within the international community regarding the existence of the right of victims of acts of international crimes (as defined, *inter alia*, in the Geneva Conventions of 1949 and the Rome Statute) to obtain appropriate and effective redress; nor does it call into question the fact that States are encouraged to give effect to this right by endowing their courts with jurisdiction to examine such claims for compensation (including where those claims are based on events that occurred outside their geographical frontiers). In this respect, the efforts by States to render access to a court as effective as possible for those seeking compensation for international crimes are commendable (see, *mutatis mutandis, Naït-Liman*, cited above, § 218).

151. However, it does not seem unreasonable for a State that establishes universal jurisdiction to make its exercise conditional on the existence of certain connecting factors or jurisdictional links with that State (to be

determined by it in compliance with international law and without exceeding the margin of appreciation afforded to that State under the Convention – ibid., § 219).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 25 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Mattias Guyomar President