



## By choosing the criminal-law avenue rather than the civil procedures available to him, Mr Mas Gavarró deprived himself of the possibility of redress

In its decision in the case of [Mas Gavarró v. Spain](#) (application no. 26111/15) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the publication of a number of articles in the daily newspaper *El Mundo* which according to the applicant had damaged his reputation.

As the Government pointed out, the applicant could have brought an action for the publication of a correction in the newspaper within three days, or could have initiated the special procedure for the protection of the right to one's honour in order to obtain redress for the alleged damage to his reputation.

By choosing only to use the criminal-law avenue, the applicant had deprived himself of the possibility of securing redress for the alleged infringement of his rights through the civil procedure available to him. He had thus limited the scope of the examination by the domestic courts, which had been able only to rule on the lack of gravity of the alleged damage for the purposes of the criminal law.

The applicant had thus failed to show that the State had offered him insufficient protection and that there had been an infringement of his right to respect for his reputation.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

### Principal facts

The applicant, Artur Mas Gavarró, is a Spanish national who was born in 1956 and lives in Barcelona. From December 2010 to January 2016 he was President of the Government of the Autonomous Community of Catalonia (*Generalitat de Catalunya*).

On 16 November 2012, during the election campaign for the presidency of the *Generalitat*, the daily newspaper *El Mundo* published an article alleging that Mr Mas, then a candidate for re-election, held bank accounts abroad into which bribes had been paid. The article was based on an alleged draft police report (*borrador*) sent to journalists which revealed the existence of an investigation by the National Police in the context of judicial proceedings. The proceedings, known as the "Palau case", concerned the alleged unlawful financing of Mr Mas's political party, *Convergència i Unió*.

The article included the following wording: "The Central Unit for Economic and Fiscal Crime (UDEFC) denounces in a 'draft report' the existence in Switzerland and Liechtenstein of accounts held by Artur Mas, father and son ..." Inside the newspaper there was a further article referring to the UDEFC report.

On the same day, 16 November 2012, the investigating judge in the "Palau case" reacted to the publication and stated that he did not know of the UDEFC's draft report, affirming that he had not authorised an investigation into Mr Mas in that connection. The judge's statement was published in the same newspaper on 17 November 2012. The Criminal Investigation Division of the Catalan police also reacted and denied some of the assertions made in the articles.

On 19 November 2012 the newspaper published extracts from the report in question.

On 22 November 2012 a representative of the Unified Police Union presented, at a press conference, a copy of a report he claimed to have received anonymously. This seventeen-page document, on UDEF letter-headed paper, was neither dated nor signed. The journalists admitted that they had relied on that document when writing their article.

On the same day, the investigating judge in the Palau case stated that he had spoken to the UDEF chief superintendent and that, according to the latter, since July 2012 his unit had not drawn up any report or draft report on the case. The judge also mentioned that an investigation into the existence of the document was ongoing. On 29 November 2012 the chief superintendent confirmed that the report had not been drawn up by the UDEF or any of its officials.

On 19 November 2012 Mr Mas lodged a criminal complaint for insults and misrepresentation against the journalists who had written the article and against the newspaper's publisher. A judicial investigation was opened by the investigating judge.

On 22 October 2013 the judge made a final decision to discontinue the case. Mr Mas appealed against that decision. On 2 June 2014 the discontinuance was upheld by the Madrid *Audiencia Provincial*.

Relying on Article 18 of the Constitution (right to one's honour), Mr Mas then lodged an *amparo* appeal with the Constitutional Court, which declared the appeal inadmissible on the grounds of a manifest absence of a violation of a fundamental right that fell within the protection of that appeal procedure.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 16 May 2015.

Relying on Article 8 (right to respect for one's private and family life), the applicant complained of the inaction of the police, the prosecution service and the domestic courts in failing to investigate the alleged interference with his right to the protection of his personal reputation as guaranteed by that Article.

The decision was given by a Chamber of seven judges, composed as follows:

Georges **Ravarani** (Luxembourg), *President*,  
Georgios A. **Serghides** (Cyprus),  
María **Elósegui** (Spain),  
Darian **Pavli** (Albania),  
Anja **Seibert-Fohr** (Germany),  
Peeter **Roosma** (Estonia),  
Andreas **Zünd** (Switzerland),

and also Milan **Blaško**, *Section Registrar*.

## Decision of the Court

### Article 8

As regards the remedies used by the applicant, the Court observed that his criminal complaint had been lodged against the two journalists of the daily newspaper *El Mundo* who were responsible for the publication of the offending article and, in the alternative, against the newspaper's publisher. The main aim of the procedure had been to determine whether the journalists' conduct had been serious enough to constitute the offence of insults or misrepresentation. As the proceedings had been discontinued, the Criminal Court had no jurisdiction, in accordance with the legislation, to rule

on the existence of any civil liability resulting from the offence. The same was true of the decision by the Madrid *Audiencia Provincial*, which confirmed the lack of negligence on the part of the journalists on the basis of the material at their disposal when they wrote their article.

The Court noted that the Spanish legislature had chosen to criminalise only certain serious forms of insults or misrepresentation, not all forms of defamation or damage to reputation. There was no evidence to suggest that the applicant had brought civil proceedings claiming that the publications had infringed his right to the protection of his personal reputation. Such proceedings, if successful, could have ensured that his good reputation was restored.

As the Government pointed out, the applicant could have brought an action for publication of a correction or could have initiated the special procedure for the protection of the right to one's honour in order to obtain redress for the possible infringement of his right to the protection of his reputation.

By choosing only to use the criminal-law avenue, the applicant had deprived himself of the possibility of securing redress through the civil procedures available to him. He had thus limited the scope of the examination by the domestic courts, which had been able only to rule on the lack of gravity of the alleged infringement for the purposes of criminal law.

The application was therefore manifestly ill-founded and had to be rejected.

The Court, unanimously, declared the application inadmissible.

*The decision is available only in French.*

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#### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel: +33 3 90 21 42 08

**We would encourage journalists to send their enquiries via email.**

**Denis Lambert (tel.: + 33 3 90 21 41 09)**

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Neil Connolly (tel.: + 33 3 90 21 48 05)

Jane Swift (tel.: + 33 3 88 41 29 04)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.