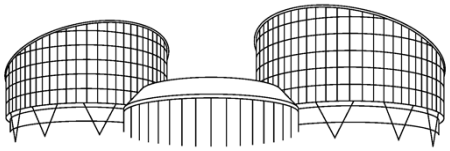

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF TENA ARREGUI v. SPAIN

(Application no. 42541/18)

JUDGMENT

Art 8 • Private life • Correspondence • Positive obligations • Interception and disclosure of applicant's emails and dismissal of his criminal complaint in that regard in the context of a political party monitoring one of its members • Domestic courts' assessment and reasoning not arbitrary or unreasonable • Adequate protection afforded by existing legal framework

Prepared by the Registry. Does not bind the Court.

STRASBOURG

11 January 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.

In the case of Tena Arregui v. Spain,

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

Georges Ravarani*, President*,
Lado Chanturia,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
María Elósegui,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 42541/18) 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 Rodrigo Tena Arregui ("the applicant"), on 30 August 2018;

the decision to give notice to the Spanish Government ("the Government") of the complaint concerning Article 8 and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 3 October and 28 November 2023,

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

INTRODUCTION

1. The application concerns an alleged violation of the applicant's right to respect for his private life and correspondence under Article 8 of the Convention resulting from the interception and disclosure of his emails and the dismissal of a criminal complaint lodged in connection with those events in the context of a political party whose leadership hired a private company to monitor one of its members in order to establish where his loyalties lay.

THE FACTS

2. The applicant was born in 1962 and lives in Madrid. He was represented by Ms B. Iturmendi Alvarez, a lawyer practising in Madrid.

3. The Government were represented by their Agent, Mr F. Sanz Gandásegui, State Attorney.

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

5. The applicant was a member of the Spanish political party Unión, Progreso y Democracia (UPyD) and had been a member of its governing board (*Consejo de Dirección*) until March 2015. At the material time the party was conducting the internal procedure of renewing its leadership. Some

members of the party, including the applicant, advocated for a coalition with a rival party, Ciudadanos/Cs/Ciutadans, while others opposed it.

6. In early April 2015 the UPyD leaders expelled one of its members, Mr P., on suspicion that he had been involved in negotiations with Ciudadanos. Subsequently, the UPyD leaders hired a private company to monitor the email correspondence sent and received by Mr P. at two different email accounts, both belonging to UPyD's domain, during the months immediately prior to his expulsion from the party. The monitoring company examined Mr P.'s emails and identified a few sent by the applicant from his personal email account to Mr P. concerning Mr P.'s plans and those of other dissenting members of UPyD to create a new political party in order to enable the intended coalition to be formed while maintaining an internal faction in charge of advocating for the coalition. Some information about the emails discovered by the monitoring company was leaked to the press and at least two newspapers reported on the monitoring of the emails and on the intention of some members of UPyD to create a new political party, referring to the applicant as one of the persons involved.

7. On 3 June 2015 the organisational manager of UPyD, Mr F., distributed by email a report that reproduced the emails sent from the applicant's personal account to Mr P. The report was delivered to twenty members of the party's governing board and to 150 members of its political council.

8. On 15 June 2015 the applicant complained to the party's Dispute Settlement Body (*Comisión de Garantías*) about the disclosure of the content of his emails. The applicant, together with other members of the party whose emails had also been intercepted, asked the Dispute Settlement Body to initiate disciplinary proceedings against the members of the party's governing board. The Dispute Settlement Body dismissed his complaint on 1 July 2015. It considered that the interception had been necessary, as it had been a reaction to a serious situation for the party just before an election period, and proportionate, as it had only involved the interception of a few emails selected on the basis of key terms. It further stated that the emails had not referred to aspects of the members' private life or family life, but to actions directly related to the party.

9. On 17 July 2015 the applicant lodged a criminal complaint against Mr F. for unlawful disclosure of secrets (Article 197 of the Criminal Code – see paragraph 21 below) in connection with a breach of his right to privacy (Article 18 of the Constitution – see paragraph 18 below). On 4 November 2015 he extended the complaint to include another leader of UPyD, Mr H., who had allegedly contacted the monitoring company.

10. The applicant submitted that his correspondence had been of a private nature, referring to his membership status and his professional autonomy in relation to UPyD. The emails reproduced in the report originated from external accounts outside the party's domain, including his own account, and thus had been sent with a legitimate expectation of privacy. He argued that

the political strategies described in his emails and his right to dissent within the political party were protected by Article 6 of the Spanish Constitution, which referred to the democratic structure and operation of political parties. The applicant pointed out that the concept of private life set out in Article 8 of the Convention also covered aspects of public life, specifically the right to establish interpersonal relations in the context of professional or business life.

11. On 29 February 2016 Madrid Investigating Judge no. 32, finding that there was sufficient prima facie evidence of the participation of the accused in the alleged facts and observing that they could amount to an offence of unlawful disclosure of secrets, ordered the opening of criminal proceedings. The investigating judge held that the Constitutional Court's case-law, according to which companies could implement surveillance measures in respect of the business correspondence of their employees, was not applicable because there had been no working relationship between Mr P. and UPyD or between the applicant and UPyD, and an extensive interpretation of that case-law to the detriment of a fundamental right, such as the secrecy of communications, was not permissible.

12. On 21 September 2016 the Madrid *Audiencia Provincial*, upholding an appeal by the accused, overturned the investigating judge's decision and ordered the provisional discontinuation of the case (*sobreseimiento provisional*). The *Audiencia Provincial* found that the monitoring company had been commissioned to prepare the report in pursuance of the party's aim of detecting any potential wrongdoing occurring within the party's structure. It observed that UPyD's internal policy prohibited the use of official email accounts for personal purposes or in a way that could violate the rights of the party. It did not find it sufficiently proven that the accused had acted with any intention other than to identify irregularities in the party or that they had disclosed the content of the report to the press. It concluded that the offence was not sufficiently proven. The relevant parts of the decision read as follows:

> "It is clear from the report submitted by [the monitoring company] that the purpose of the report requested from it was to detect irregularities committed within the party through a blind search of the information stored in the mailboxes owned by UPyD that were assigned to [Mr P.] for the performance of his professional duties in the party, based on terms such as coalition, Cs, platform ...
>
> ... [t]he company in charge of the report ... had access to the rules on the use of UPyD email accounts, which indicate that the use of those accounts is subject to the following conditions: (i) it is forbidden to use them for personal purposes or purposes not related to the development of the tasks entrusted by the party; (ii) the content received and sent from [these accounts] must be stored in the inbox provided, the storage of information received through these means on equipment or media outside the party being expressly forbidden; (iii) the use of the accounts must be in accordance with UPyD instructions and it is expressly forbidden to send messages with illicit or inappropriate content or which in any way violate the rights of UPyD or third parties; (iv) the mailboxes associated with the email accounts provided may be subject to monitoring by UPyD; the purposes of monitoring are to protect the image and the resources of the party, as well as to guarantee the continuity of the party and to review adherence to the present

rules and conditions of use; (v) when sending emails to more than one addressee at the same time, it is mandatory to use the blind carbon copy option; (vi) all messages sent from a [UPyD] account must include the identification data of the party and the legal notice that the system adds by default in each email; (vii) at UPyD's discretion, [and] in any event, upon the termination of the user's relationship with the party, the account will be deactivated and the information sent and received will remain at UPyD's disposal.

Under these rules, of which the witness [Mr P.] stated that he had no knowledge, the use of the email accounts provided by the party was subject to certain conditions, among them that the party itself, once the relationship was terminated, had at its disposal the information collected.

Consequently, there is no evidence that the defendants, when commissioning the expert report and handing over to the chosen company the guidelines that were to be followed in its report, had any other purpose than to detect irregularities within the political party itself ... nor is it established that any of the defendants disclosed the conclusions of the report to the digital or print media ...

The raising of an allegation ... does not necessarily or unavoidably lead to the initiation of oral proceedings, but rather requires a reasonable legal and factual assessment that may lead to its rejection. Such a decision does not violate [the right to] judicial and legal protection, since the well-established constitutional case-law indicates that the institution of criminal proceedings does not imply an unconditional right to the opening of a trial, but merely a reasoned decision by a judge on the legal assessment of the facts, expressing the reasons for rejecting its processing.

... the [present] proceedings are provisionally discontinued since the [alleged] offence has not been duly proved."

13. On 20 October 2016 the applicant submitted a request to have the decision of 21 September 2016 declared null and void (*incidente de nulidad*). He submitted that the decision to discontinue the criminal proceedings had not been sufficiently reasoned and had not ensured the protection of his fundamental right to private life and secrecy of communications, thus violating his rights under Articles 18, 22 and 24 of the Spanish Constitution.

14. The Madrid *Audiencia Provincial* rejected the request on 26 October 2016, stating that the applicant's complaints had already been addressed in the contested decision.

15. On 13 December 2016 the applicant lodged an *amparo* appeal against both decisions of the *Audiencia Provincial* of 21 September 2016 and 26 October 2016, alleging a breach of his right to effective legal protection (Article 24 of the Constitution), his fundamental rights to privacy and secrecy of correspondence (Article 18) and his right to freedom of association (Article 22).

16. On 5 March 2018 the Constitutional Court dismissed the *amparo* appeal. It found that the reasons given by the *Audiencia Provincial* for dismissing the case had been adequate and sufficient: the appellate court had put the facts in context and, upon assessing them, had given appropriate reasons to rule out the application of criminal law, without any prejudice to the use of other legal remedies. The Constitutional Court further reiterated

that it was not its function to analyse the existence of the elements of an offence, as long as the interpretation given by the criminal courts was not unreasonable or contrary to the principle of legality, and that the right of individuals to lodge a criminal claim did not comprise a right to have someone punished. Lastly, it reiterated that the fundamental rights relied on by the applicant were not only protected by criminal law but by other legal remedies as well. The judgment read, in so far as relevant, as follows:

> "[The main scope of the *amparo* appeal] is to assess whether the decision declaring the provisional dismissal of the proceedings ... violates the *ius ut procedatur* of [the applicant] in the exercise of his right to criminal proceedings (Article 24 of the Spanish Constitution).
>
> ...
>
> The *amparo* [appeal] is not to be understood as requiring the [Constitutional] Court to rule on the lawfulness of interference by a political party with the fundamental rights to privacy and to secrecy of communications of one of its members (Article 18 of the Spanish Constitution). ... The analysis ... should be limited to verifying if the reasoning on which the provisional dismissal was based ... is in accordance with the constitutional requirements.
>
> ...
>
> The institution of criminal proceedings does not imply, in the context of Article 24 of the Spanish Constitution, an unconditional right to the opening of a trial, but merely a right to obtain at the investigation stage a reasoned judicial decision on the legal assessment of the facts, expressing the reasons for inadmissibility or for the termination of the proceedings.
>
> ...
>
> This situation is no different when an applicant alleges that the criminal offence consisted in the violation of fundamental rights, since 'it is not part of the content of any fundamental right to secure the criminal conviction of the person who violated [that right]' ...
>
> This does not mean that it is completely irrelevant whether the criminal claim is lodged for the defence of other fundamental rights. Certainly, a judicial decision on the continuation of a criminal investigation initiated to redress a possible breach of fundamental rights between individuals may, in itself, cause a violation of rights if it includes considerations or declarations that infringe its content.
>
> ...
>
> In such circumstances, Article 24 § 1 of the Spanish Constitution requires, besides a reasoned decision, a decision which is coherent and respectful of the content of the fundamental right affected.
>
> ...
>
> The review performed by of the [Constitutional] Court will be limited to an analysis of the judicial decision from an access-to-court perspective and, staying within these limits, will also encompass the substantive fundamental right affected.
>
> [The *Audiencia Provincial*] gave reasons for excluding the institution of criminal proceedings as a form of redress for the interference with the fundamental rights of the [applicant] which might possibly have been affected. It ruled out, in short, that the

conduct under investigation was susceptible to review in the criminal sphere, without prejudging other review mechanisms. The reasoning of the challenged decision is not insufficient from the perspective of the reinforced reasoning required by Article 24 ... The decision, in assessing the circumstances in which the interference with the email account intercepted by the [defendant] took place, merely rejects in a reasoned and reasonable way the intervention of criminal law, without prejudice to any other means of protecting and restoring the fundamental rights that might possibly have been affected.

...

It is not the role of this court, in the context of Article 24 of the Spanish Constitution, to rule on whether the assessment of the *Audiencia Provincial* on the elements of the offence is correct ...

It is also to be reminded that ... criminal matters are covered by the principle of minimum intervention [and that] a criminal sanction, as a mechanism of satisfaction or response, is presented as an *ultima ratio* measure, reserved for the most serious cases ...

The fundamental rights [relied on in the present *amparo* appeal] are not only protected by the criminal proceedings, but may be realised through other relevant remedies.

The judicial decision terminating the proceedings is, in any case, provisional, and they may be resumed, should new evidence be discovered which justifies the reopening."

17. Two judges issued a dissenting opinion, stating that, in view of the circumstances of the case, the *Audiencia Provincial*'s decision had not been sufficiently reasoned, considering the constitutional dimension of the facts. In particular, they argued, referring to the standards set by the Court in *Bărbulescu v. Romania* ([GC], no. 61496/08, 5 September 2017), that the decision of the *Audiencia Provincial* had not sufficiently analysed two relevant elements: (i) whether the user of the account (Mr P.) had known and consented to the internal rules on the use of the email account, and (ii) whether the user had been informed of the possibility that the leadership of the political party might access the content of his emails without his consent. In their view, the applicant's right to respect for his private life had not been sufficiently protected. Furthermore, they contended that the facts constituted an objective limitation of the applicant's right to private life, irrespective of the intention of the accused, and that the decision of the *Audiencia Provincial* had not been sufficiently reasoned in respect of the existence of the elements of the offence.

RELEVANT LEGAL FRAMEWORK

18. The relevant provisions of the Spanish Constitution read as follows:

Article 6

"Political parties are an expression of political pluralism; they contribute to the formation and expression of the will of the people and are a fundamental instrument for political participation. Their creation and the exercise of their activities shall be free in

so far as they respect the Constitution and the law. Their internal structure and operation must be democratic."

Article 18

"1. The right to honour, to personal and family privacy and to one's own image shall be guaranteed.

...

3. Secrecy of communications, particularly of postal, telegraphic and telephone communications, shall be guaranteed except in the event that there is a court order to the contrary."

Article 22

"1. The right of association shall be recognised.

..."

Article 24

"1. Every person has the right to effective protection by the judges and the courts in the exercise of his or her legitimate rights and interests, and under no circumstances may he or she go undefended."

Article 53

"2. Every citizen shall be entitled to seek protection of the freedoms and rights recognised in Article 14 and in the first section of Chapter II by bringing an action in the ordinary courts under a procedure designed to ensure priority and expedition and, in appropriate cases, by lodging an individual appeal (*recurso de amparo*) with the Constitutional Court. The latter procedure shall be applicable to conscientious objection as recognised in Article 30."

19. The relevant provisions of Organic Law no. 1/1982 of 5 May 1982 on civil protection of the right to honour, to personal and family privacy and to one's own image read as follows:

Section 1

"1. The fundamental right to honour, to personal and family privacy and to one's own image, as guaranteed by Article 18 of the Constitution, shall enjoy civil protection against all kinds of unlawful interference, in accordance with the provisions of this Organic Law.

2. The criminal nature of the interference shall not prevent recourse to the judicial protection procedure provided for in section 9 of this Law. In any event, the criteria of this Law shall be applicable for the determination of civil liability derived from an offence."

Section 9

"1. Judicial protection against unlawful interference with the rights referred to in this Law may be sought through ordinary procedural channels or through the procedure

provided for in Article 53 § 2 of the Constitution. It shall also be possible, where appropriate, to lodge an *amparo* appeal with the Constitutional Court.

2. Judicial protection shall include the adoption of all necessary measures to put an end to the unlawful interference and, in particular, those necessary to:

(a) restore to the injured party the full enjoyment of his or her rights by way of a declaration of the interference suffered, the immediate cessation of that interference and the restoration of the previous state; in the event of interference with the right to honour, the restoration of the violated right shall include, without prejudice to the right of reply within the legally established procedure, the total or partial publication of the judgment at the expense of the convicted person, with its public dissemination on at least the same scale as that of the interference suffered;

(b) prevent imminent or further interference;

(c) compensate for the damage caused;

(d) award the injured party any profit obtained by way of the unlawful interference with his or her rights."

20. The relevant provisions of Organic Law no. 6/2002 on Political Parties (regarding their organisation and functioning) read as follows:

Section 6

"Political parties shall adjust their organisation, functioning and activity to democratic principles and the provisions of the Constitution and the law. Political parties shall have organisational autonomy to establish their structure, organisation and functioning within only those limits established by the legal order."

Section 7

"1. The internal structure and functioning of political parties shall be democratic, and in any event shall establish forms of direct participation for members under the terms enshrined in the party's statutes, especially concerning the process of electing the party's governing body."

Section 8

"4. The statutes shall contain a detailed list of members' rights, including, in any event, the following rights for those with the strongest links to the political party:

...

(d) the right to challenge decisions of the party's bodies which they consider contrary to the law or the statutes;

(e) the right to refer to the body responsible for defending members' rights."

21. The relevant provisions of the Criminal Code read as follows:

Article 197

"1. Anyone who, in order to discover the secrets or breach the privacy of another person without the latter's consent, seizes the person's papers, correspondence, emails or any other documents or personal belongings, intercepts his or her communications or makes use of technical devices to listen, transmit, record or reproduce sounds or

images or any other communication signal shall be punished by a sentence of imprisonment of between one and four years and a fine amounting to between twelve and twenty-four months.

2. The same penalties shall be imposed on those who, without authorisation, seize, use or modify, to the detriment of a third party, the private personal or family data of another person stored in electronic or telematic files or any other type of file or register, public or private. The same penalties shall be imposed on those who, without authorisation, access such data by any means, alter them or use them to the detriment of the data subject or a third person."

22. The following provisions of the Code of Criminal Procedure concerning civil-party complaints in criminal proceedings are relevant to the present case:

Article 100

"All offences and minor offences shall give rise to criminal proceedings for the punishment of the party responsible and may also give rise to civil proceedings for the return of an item, the reparation of damage and compensation for the damage caused by the punishable act."

Article 112

"When only criminal proceedings are brought, civil proceedings shall also be deemed to have been brought, unless the victim or injured person waives the right to do so or expressly reserves it to be exercised after the conclusion of the criminal proceedings, if applicable."

Article 116

"The termination of the criminal proceedings shall not imply the termination of the civil proceedings, unless the termination arises from a final judgment stating that the act from which the civil proceedings might have arisen did not occur.

In all other circumstances, a person entitled to bring civil proceedings may do so in a court at the appropriate level of civil jurisdiction against the person(s) under the obligation to return the item, repair the damage or compensate for the damage suffered."

23. The relevant provisions of Organic Law no. 15/1999 on the Protection of Personal Data (*Ley Orgánica de protección de datos de carácter personal*), as in force at the material time, read as follows:

Section 5

"1. Data subjects whose personal data are requested must be informed in advance, explicitly, precisely and unambiguously, of the following:

(a) the existence of a personal data file or the fact that the data will be processed, the purpose thereof and the recipients of the information;

(b) the obligatory or optional nature of their response to the questions asked;

(c) the consequences of providing or refusing to provide the data;

(d) the existence of rights of access, rectification, erasure and objection; and

(e) the identity and address of the controller or, as appropriate, his or her representative."

Section 6

"1. Processing of personal data shall require the unambiguous consent of the data subject, unless otherwise provided for by law.

2. Consent shall not be required where the personal data are collected for the exercise of the functions proper to public authorities within the scope of their duties; where they relate to the parties to a contract or preliminary contract in connection with a business, employment or administrative relationship and are necessary for its maintenance or fulfilment; where the purpose of processing of the data is to protect a vital interest of the data subject under the terms of section 7(6) of this Act; or where the data are contained in sources accessible to the public and their processing is necessary to satisfy the legitimate interest pursued by the controller or that of the third party to whom the data are communicated, unless the fundamental rights and freedoms of the data subject are jeopardised."

Section 7

"1. In accordance with Article 16 § 2 of the Constitution, no one may be compelled to make statements regarding his or her ideology, religion or beliefs. When consent is requested in relation to such data, the data subject shall be informed of his or her right not to give such consent.

2. The processing of personal data that reveal ideology, union affiliation, religion and beliefs shall only be allowed with the express written consent of the data subject. Files maintained by political parties, trade unions, churches, confessions or religious communities and associations, foundations and other non-profit organisations whose purpose is political, philosophical, religious or trade unionist, in so far as the data of their members are concerned, shall be excluded from this provision, without prejudice to the fact that the submission of data will always require the consent of the data subject."

Section 10

"Those responsible for the files, as well as those who intervene in any phase of the data processing, shall be subject to a duty of confidentiality, as well as an obligation to conserve the data; these obligations shall subsist even after the relations with the file owner or person responsible for the file are terminated."

Section 11

"1. Personal data may only be communicated to third parties for purposes directly related to the legitimate interests of the assignor and assignee, with the prior consent of the data subject.

2. Consent shall not be required when:

(a) the transfer is authorised by law;

(b) the data are collected from sources accessible to the public; or

(c) the data are processed in connection with a freely accepted legitimate legal relationship in which implementation, performance and control necessarily involve an interconnection between the data processed and third-party files.

In these circumstances the communication of data shall only be legitimate if it is limited to its legitimate purpose."

Section 19

"1. Persons who, as a result of any failure by the data-processing manager or controller, have sustained any damage to their property or to their rights shall be entitled to compensation.

...

3. If the files are held by private-law entities, any proceedings shall be brought in the ordinary courts."

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

24. The applicant complained that the interception and disclosure of his emails and the dismissal of the criminal complaint lodged in connection with those events had entailed a violation of his right to respect for his private life and correspondence, in particular of the secrecy of private communications as provided for in Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

25. The Government submitted that the applicant had not properly exhausted domestic remedies, since he had only resorted to criminal proceedings in defence of his right to respect for private life. They argued that the circumstances in the present case were not serious enough to require protection by criminal law and that the applicant's rights could have been protected by civil remedies. The Government stated that the applicant had not been entitled to demand the criminal conviction of the defendants, that the legal characterisation given to the facts of a case fell within the State's margin of appreciation and that the judicial authorities were only required to give due reasons for their decisions. They asserted that there were several civil-law remedies available to the applicant: he could, in particular, have challenged the decisions of political parties in the civil courts under section 8 of the Organic Law on Political Parties or lodge a civil claim under the Organic Law on civil protection of the right to honour, to personal and family privacy and to one's own image. The Government noted that the applicant had not

challenged the decision of the Dispute Settlement Body or lodged any civil claim. Accordingly, in their view, the applicant had not given the domestic authorities the opportunity to remedy the alleged violation of his rights through appropriate channels. In this connection, they stressed that the Constitutional Court had focused on the reasoning of the *Audiencia Provincial*'s decision not to continue the criminal proceedings, rather than on the alleged violation of the applicant's right to respect for his private life.

26. The applicant submitted that the criminal proceedings had been the appropriate domestic remedy to seek redress for the violation of his right to privacy. Given that the Spanish State had decided to heighten the level of protection of private life by imposing criminal sanctions for the interception of emails, the Government could not criticise citizens for using that remedy.

27. The Court notes that the applicant has fully exhausted the criminal-law avenue by having pursued proceedings regarding the interception of his emails and their disclosure (see paragraphs 9-16 above). Whilst accepting that, regarding cases concerning an alleged breach of privacy, a criminal-law remedy is not always required and the civil-law nature remedies could be seen as sufficient (see, *mutatis mutandis*, *Söderman v. Sweden* [GC], no. 5786/08, § 85, ECHR 2013), the Court observes that in the present case a criminal remedy was available within the Spanish legal framework and the applicant's complaints were examined by the prosecutors and the criminal courts (see, *mutatis mutandis*, *Algirdas Butkevičius v. Lithuania*, no. 70489/17, § 60, 14 June 2022). Accordingly, and considering the particular circumstances of the case (see paragraphs 36-38 below), the Court cannot find that the criminal-law avenue was entirely inappropriate as a remedy for the applicant's complaint. It therefore dismisses the objection raised by the Government in this respect.

28. The Court notes that the applicant's complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

29. The applicant alleged that the interception and disclosure of the emails he had sent from his private account had amounted to a breach of his right to respect for his private life and correspondence. He maintained that, since the emails had been sent from his private account and since he had not had a relationship of dependency *vis-à-vis* UPyD, he could not have foreseen that his emails would be monitored by that political party. He argued that the dismissal of the criminal case with no reference to this relevant aspect had been in violation of Article 8.

30. The Government stated, firstly, that the emails had been addressed to a UPyD email account, so the applicant could have reasonably foreseen that

they might be monitored. Secondly, they argued that, since the content of the emails had directly and adversely affected UPyD, the political party had had the right to investigate its members' conduct, particularly in view of their duty of loyalty to the party. Lastly, the Government submitted that the decision of the *Audiencia Provincial* not to continue the criminal proceedings had been duly substantiated.

2. The Court's assessment

(a) General principles of the Court's case-law applicable in the present case

31. The Court has previously held that emails are covered by the notions of "private life" and "correspondence" within the meaning of Article 8, even when they are sent from the workplace or are of a professional nature (see *Copland v. the United Kingdom*, no. 62617/00, § 41, ECHR 2007-I).

32. While the essential object of Article 8 of the Convention is to protect individuals against arbitrary interference by public authorities, it may also impose on the State certain positive obligations to ensure effective respect for the rights protected by Article 8 (see *Bărbulescu v. Romania* ([GC], no. 61496/08, 5 September 2017, § 108). In cases where the monitoring of electronic communications is not the result of direct intervention by the national authorities, their responsibility would be engaged if the facts complained of stemmed from a failure on their part to secure the enjoyment of a right enshrined in Article 8 of the Convention, that is, to discharge the State's positive obligations (ibid., §§ 110-11). While the boundaries between the State's positive and negative obligations under the Convention do not lend themselves to precise definition, the applicable principles are nonetheless similar. In both contexts regard must be had in particular to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, subject in any event to the margin of appreciation enjoyed by the State (see *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, § 62, ECHR 2011, and *Bărbulescu*, cited above, § 112).

33. The choice of the means calculated to secure compliance with Article 8 of the Convention in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States' margin of appreciation. There are different ways of ensuring respect for private life, and the nature of the State's obligation will depend on the particular aspect of private life that is at issue (see *Bărbulescu*, cited above, § 113, and *Söderman* cited above, § 79, with further references). Where a particularly important facet of an individual's existence or identity is at stake, or where the activities at stake involve a most intimate aspect of private life, the margin allowed to the State is correspondingly narrowed. In particular, effective deterrence against grave acts, where fundamental values and essential aspects of private life are at stake, requires the States to ensure that

efficient criminal-law provisions are in place (see *Khadija Ismayilova v. Azerbaijan*, nos. 65286/13 and 57270/14, § 115, 10 January 2019, with further references).

34. The Court has held that in certain circumstances, the State's positive obligations under Article 8 of the Convention are not adequately fulfilled unless it secures respect for private life in the relations between individuals by setting up a legislative framework taking into consideration the various interests to be protected in a particular context (see *Bărbulescu*, cited above, § 115, with further references). Such protective measures are to be found in labour, civil and criminal law (ibid., § 116).

(b) Application of the above principles in the present case

35. The Court's task in the present case is to clarify whether the respondent State fulfilled its positive obligations in protecting the applicant's right to respect for his private life and correspondence in the particular circumstances of the case. As previously stated (see paragraph 6 above), the leadership of the political party hired a private company to monitor the emails received by one of its members, whom they suspected might be involved in negotiations with another political party. Among those emails were some sent by the applicant from his private email account.

36. The Court notes at the outset that the interception and disclosure of the applicant's emails amounted to a serious intrusion into his right to respect for his private life and correspondence.

37. In this regard, the Court attaches great importance to the fact that the intrusion took place in the context of membership of a political party. It stresses in that connection the essential role of political parties in democratic societies. Political parties are a form of association essential to the proper functioning of democracy (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, § 87, ECHR 2003-II). By reflecting the currents of opinion flowing through a country's population, political parties make an irreplaceable contribution to the political debate which is at the very core of the concept of a democratic society (see *Yumak and Sadak v. Turkey* [GC], no. 10226/03, § 107, ECHR 2008, and *Özgürlük ve Dayanışma Partisi (ÖDP) v. Turkey*, no. 7819/03, § 28, ECHR 2012).

38. The circumstances of the present case are thus different from those in cases where the intrusion took place in the context of an employer-employee relationship, which is contractual, entails particular rights and obligations on either side, is characterised by legal subordination, and is governed by its own legal rules (see *Bărbulescu*, cited above, § 117). The Court acknowledges that internal organisational structures of political parties are distinguishable from those of private companies and that the legal links existing between an employer and an employee and between a political party and one of its members are fundamentally different. The Court accepts that the organisational autonomy of associations, including political parties,

constitutes an important aspect of their freedom of association protected by Article 11 of the Convention and that they must be able to wield some power of discipline (see *Lovrić v. Croatia*, no. 38458/15, § 71, 4 April 2017). Nonetheless, the political loyalty expected of party members or the party's power of discipline cannot result in an unrestricted opportunity to monitor the party members' correspondence. On the contrary, the domestic authorities should ensure that the introduction of measures to monitor correspondence and other communications, irrespective of the extent and duration of such measures, is accompanied by adequate and sufficient safeguards against abuse (see, *mutatis mutandis*, *Bărbulescu*, cited above, § 120).

39. The Court observes that the applicant has not argued that the criminal-law provisions in force at the relevant time were lacking in quality. On the contrary, in his view, Article 197 of the Criminal Code was applicable to his case. Furthermore, the Court notes that he was able to intervene in the criminal proceedings and submit his arguments (see *M.P. v. Portugal*, no. 27516/14, § 45, 7 September 2021). Nor did he claim that the criminal investigation was not effective (contrast *Alković v. Montenegro*, no. 66895/10, §§ 65 and 70-73, 5 December 2017). The thrust of the applicant's complaint is that the *Audiencia Provincial*'s decision of 21 September 2016 (see paragraph 12 above) to discontinue the criminal proceedings instituted for unlawful disclosure of secret correspondence was not supported by sufficient reasons and did not take into account his right to respect for his private life and correspondence.

40. The Court further observes that both the Government and the Constitutional Court stated that the only obligation of the *Audiencia Provincial* was to give appropriate reasons for terminating the criminal proceedings and that in the present case it had discharged that obligation. In particular, the Constitutional Court stated that the reasons given by the *Audiencia Provincial* were coherent and respectful of the content of the fundamental right affected: it had assessed the circumstances in which the political party's monitoring of the email account had taken place and it had rejected, in a reasoned and reasonable way, the intervention of criminal law, without prejudice to any other means of protecting the fundamental rights that might potentially have been affected (see paragraph 16 above).

41. The *Audiencia Provincial*, for its part, ruled out the existence of an offence, referring to various factors in support of that finding (see paragraph 12 above). Firstly, the *Audiencia Provincial* found that the objective of the monitoring report had been to identify irregularities within the political party. Secondly, it observed that the monitoring had been limited to a search based on specific terms in the email accounts assigned to Mr. P. to carry out his functions within the party. Thirdly, it noted that the rules governing the UPyD email accounts clearly stated that the mailbox could be subject to monitoring and that the information would remain at UPyD's disposal upon the termination of the user's relationship with the party. It

concluded that there was no evidence of any other purpose by the defendants than detecting irregularities within the political party, nor was there any evidence of their participation in the disclosure of the report. Accordingly, it held that the alleged offence had not been duly proved.

42. In the Court's view, neither the reasoning of the *Audiencia Provincial*, nor the assessment by the Constitutional Court of that reasoning, appears arbitrary or unreasonable. Therefore, the Court does not see any grounds which could justify substituting its own opinion for that of the domestic courts. In this connection, it bears in mind that the role of the *Audiencia Provincial*, as a criminal court, was limited to determining whether the elements of the alleged offences were met and, in the affirmative, imposing an appropriate criminal sanction (see, *mutatis mutandis*, *Mas Gavarro v. Spain* (dec.), no. 26111/15, § 29, 18 October 2022). The Court further reiterates that it cannot take the place of the domestic authorities in the assessment of the facts of the case; nor can it decide on the alleged perpetrators' criminal responsibility (see *M.P. v. Portugal*, cited above, § 41).

43. Moreover, the Court observes that, in accordance with domestic law, the applicant could have brought an action in the civil courts after the discontinuation of the criminal proceedings, since they were not terminated by a final judgment but rather were provisionally discontinued (*auto de sobreseimiento provisional* – see paragraphs 12 and 22 above). It further takes note of the available civil remedies indicated by the Government. There is no indication that the applicant brought any civil proceedings, nor has he advanced any arguments to the effect that such remedies were not to be considered effective (see, *mutatis mutandis*, *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, §§ 135-37, 17 October 2019 and paragraphs 25 and 26 above). The Court therefore considers that the legal framework existing in Spain offered adequate protection of the applicant's right to respect for his private life and the secrecy of his correspondence (see, *mutatis mutandis*, *B.V. and Others v. Croatia*, no. 38435/13, §§ 162-64, 15 December 2015, and *Mas Gavarro*, cited above, §§ 30-33).

44. In view of the foregoing, and taking into account the respondent State's margin of appreciation, the Court cannot find that the domestic authorities failed to afford adequate protection of the applicant's right to respect for his private life and correspondence.

45. It follows that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention;

Done in English, and notified in writing on 11 January 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Georges Ravarani President