



**COLLOQUIUM ORGANISED BY THE SUPREME ADMINISTRATIVE COURT OF FINLAND**

**IN CO-OPERATION WITH ACA-EUROPE**

**HELSINKI 25–27 MAY 2025**

**DIALOGUE WITH THE EUROPEAN COURT OF HUMAN RIGHTS –  
ADVISORY OPINIONS UNDER PROTOCOL NO. 16 TO THE CONVENTION AND  
THE IMPACT OF THE COURT'S JUDGMENTS AT THE NATIONAL LEVEL**

***Questionnaire***

The Finnish presidency of ACA-Europe during 2023-25, in close co-operation with Sweden, has focused on the dialogue between the national supreme administrative jurisdictions and the European Courts, i.e., the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). During the Finnish presidency, seminars have been organised on a variety of issues like the duty of the national courts to make a reference for a preliminary ruling to the CJEU (Stockholm, October 2023), mechanisms of counteracting conflicting rulings from the domestic courts and the CJEU and the ECtHR (Zagreb, February 2024) and the multilevel protection of fundamental and human rights in European administrative courts (Inari, May 2024).

In the upcoming Colloquium, which will be held in Helsinki 25-27 May 2025, the focus will be on the judicial dialogue between the national supreme administrative courts and the ECtHR. In this questionnaire, as well as in the Colloquium, this dialogue is approached from two different perspectives.

The first part of the questionnaire examines the procedure in which a national court can seek an opinion from the ECtHR in a case pending before it, namely the mechanism of advisory opinions under Protocol No. 16 to the European Convention on Human Rights and Fundamental Freedoms (ECHR). The aim is to find answers to such questions as: Is the mechanism of advisory opinions perceived as a useful tool? What are the experiences so far? Can we draw any lessons already at this stage? Having in mind that all the participating countries have not acceded to the advisory opinion system, the questions will be different for those States that have done this and the ones that have not.

The second part of the questionnaire will focus on the impact of the judgments of the ECtHR at the national level. While in certain fields of law the jurisprudence of the ECtHR has been well recognised and embedded in the legal orders of the Contracting States, in some other fields the case law has been more contested and even criticised. This may be the case, for example, when the ECtHR is faced with new topics and uses evolutive interpretation of the Convention and its Protocols, or when the judgments are closely linked to politically sensitive areas such as national security or issues that traditionally have belonged to the field of political deliberation. In this questionnaire, the impact of the ECtHR case law is approached from a point of view of two such distinct but similarly pressing issues, namely climate change litigation and summary return of aliens at the border.





In section A of the second part of the questionnaire, we will explore the extremely topical issue of climate change litigation. Even though the ECHR does not contain any particular provisions on climate change or environmental matters, the ECtHR has been called upon to develop its case law in those issues as the exercise of certain Convention rights may be undermined by the serious adverse effects of climate change and the existence of harm to the environment.

In section B of the second part of the questionnaire, we will explore another contemporary issue linked to immigration law. As is well known, the ECtHR has a rich jurisprudence in this field where a wide variety of questions have been assessed under different Convention articles. In this questionnaire, the intention is to focus on a very specific and highly debated topic of summary returns of aliens at the border or shortly after entry into the territory (so called push-backs)<sup>1</sup>. The attention is specifically on those situations in which persons trying to enter a particular state have been denied entry at the border or in its close proximity, be it a land or sea border, and which have been assessed by the ECtHR especially against the prohibition of the collective expulsion of aliens.

In brief, the second part of the questionnaire aims at exploring the impact the case law of the ECtHR in the above-mentioned specific fields has had at the national level, both in terms of legislation and its interpretation by national courts. By looking at the national framework we are able to get a better understanding of how the rights protected by the Convention operate in the legal and political reality of the Contracting States, as the Convention is – as often repeated by the ECtHR – a living instrument anchored to the present-day conditions. Moreover, as novel issues of interpretation linked to changing and evolving challenges are first encountered at the level of the national courts, having a closer look at the national jurisprudence can serve to predict the questions to be raised before the ECtHR. This, for its part, underlines the two-way nature of the dialogue between European and national courts.

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<sup>1</sup> For the definition and principles drawn from the current case law, see [ECHR-KS Key Theme – Summary returns of migrants and/or asylum-seekers \(“push-backs”\) and related case scenarios \(last updated 31/08/2024\)](#).





## BACKGROUND INFORMATION

Please state the formal title of your court and the name of your country.

## I THE ADVISORY OPINION MECHANISM

*In accordance with Protocol No. 16 to the ECHR, the highest national courts or tribunals may request the ECtHR to give an advisory opinion. These requests concern questions of principle relating to the interpretation or application of the rights and freedoms defined in the ECHR or its protocols. The requesting court or tribunal may seek an advisory opinion only in the context of a case pending before it. It must give reasons for its request and must provide the ECtHR with the relevant legal and factual background to the pending case. Protocol No. 16 came into force on 1 August 2018.*

1. Has your country ratified Protocol No. 16?

- Yes. Please elaborate (e.g., the ratification year, which courts can make a request).  
 No, our country has not ratified Protocol No. 16. Please continue to Question 11.

**The following nine questions are addressed to states that have ratified Protocol No. 16:**

2. Has your court or any court in your country requested an advisory opinion from the ECtHR? If yes, what was the case about?

- Yes. Please elaborate.  
 No.

3. Has your court considered of its own motion in the context of a pending case whether an advisory opinion from the ECtHR could assist in resolving a particular question?

- Yes.  
     A request was made.  
         No request was made. Please elaborate on the reasons for deciding not to request an advisory opinion.  
 No.

4. Has a party to the proceedings asked your court to request an advisory opinion from the ECtHR?





- Yes. Please elaborate whether the party's request was accepted or rejected and if rejected, did you give reasons for the refusal.
- No.

5. If your court decided to request an advisory opinion, did you give your view on the question(s) posed? If not, for what reasons?

- Yes. Please elaborate.
- No. Please elaborate.
- Not applicable because our court has not requested an advisory opinion.

6. If an advisory opinion was requested and delivered, was it useful when resolving the case?

- Yes. Please elaborate.
- No. Please elaborate.
- Not applicable because our court has not requested an advisory opinion.

7. Was the advisory opinion cited in the decision of your court? Did your court enter into a dialogue with the advisory opinion or did you simply state its findings?

- Yes, the advisory opinion was cited in the decision of our court. Please elaborate.
- No, the advisory opinion was not cited in the decision of our court. Please elaborate.
- Not applicable because our court has not requested an advisory opinion.

8. If an advisory opinion was requested and delivered, did the advisory opinion have any wider impact on the national legal order?

- Yes. Please elaborate.
- No.
- Not applicable because our court has not requested an advisory opinion.





9. Have advisory opinions requested by other courts (in your country or abroad) had an impact on the national legal order?

- Yes. Please elaborate.  
 No.

10. The ECtHR is under a duty to give reasons for refusing a request for an advisory opinion. Has such reasoning been useful for your court when deciding whether to request an advisory opinion or when deciding how to formulate it?

- Yes. Please elaborate.  
 No.

**The following five questions are addressed to states that have not ratified Protocol No. 16:**

11. Is it known whether ratification is forthcoming?

- Yes. Please elaborate.  
 No, we do not know whether ratification is forthcoming.

12. If it is known that ratification is not forthcoming, do you know the reason(s) for this?

- Yes. Please elaborate.  
 No, we do not know the reasons for this.  
 Not applicable in the light of the answer to Question 11.

While the ratification of Protocol 16 remains unconfirmed, Spain has formally expressed several reservations against adopting it. These reservations have been conveyed both through an official declaration at the time of signing and in responses to various parliamentary inquiries. Spain considers that its judicial framework already provides robust human rights safeguards, with cases eligible for review up to the Constitutional Court, which incorporates ECHR jurisprudence. Additionally, it is argued that due to Spain's judicial structure, current national systems adequately support the principle of subsidiarity. Reference has also been made to the opinion of the Court of Justice of the European Union (CJEU) on EU accession to the ECHR, suggesting alignment with a broader EU approach. In favor of ratification, it is advocated a more strengthened dialogue between Spain's highest courts and the ECHR. These proponents argue that ratification would enhance consistency in human rights standards across Europe and reinforce the European commitment to protecting fundamental rights.





13. After the entry into force of Protocol No. 16 in 2018, has your court dealt with a case in which it might have been useful to be able to request an advisory opinion? If so, what was the nature of the question(s)?

- Yes. Please elaborate.  
 No.

14. Does your court make use of advisory opinions requested by courts abroad as sources of case law?

- Yes. Please elaborate.  
 No.

The question refers to responses from the ECHR to the advisory opinions requested by other courts. We understand that, if the responses from the ECHR are not binding, in the context of protocol 16, to the jurisdictions that request them, they should not be binding for other contracting States' jurisdictions. Thus, our court does not formally use those advisory opinions requested by foreign courts as binding sources of case law. However, such advisory opinions, are often consulted as a valuable interpretative tool, particularly in cases involving principles of human rights or other matters governed by international conventions to which Spain is a party. These opinions contribute to a broader understanding of international standards and jurisprudence, aiding our judges in aligning national rulings with established international interpretations where relevant.

15. Have advisory opinions requested by courts abroad had an impact on your national legal order?

- Yes. Please elaborate.  
 No.

In Spain, advisory opinions requested by courts abroad, particularly those issued by the European Court of Human Rights (ECHR) under Protocol 16, have an indirect but meaningful impact on our national legal order. While these opinions are not binding, they are frequently cited as persuasive authority, especially in cases involving human rights principles and the interpretation of European Convention rights. Beyond case law, advisory opinions from the ECHR have also influenced legislative development in Spain. Spanish lawmakers consider these opinions and broader ECHR jurisprudence when drafting and amending legislation, particularly in areas where alignment with European human rights standards is crucial. This indirect influence ensures that Spanish law evolves in harmony with international norms, promoting compliance with European standards and reducing potential conflicts between domestic law and human rights obligations. Although Spain has not ratified Protocol 16 and thus cannot directly request advisory opinions, our courts and legislators closely monitor these opinions as part of a broader dialogue with European jurisprudence. By doing so, Spain strengthens the principles of subsidiarity and alignment with international human rights, ensuring that both our judicial decisions and legislative frameworks reflect the evolving standards set forth by the ECHR and other European bodies. In short, while Spain is not a party to Protocol 16, this does not mean we stand apart from or ignore the legal acquis of the ECHR; rather, our courts and legislators work in close alignment with its principles, ensuring Spain remains fully engaged with European human rights standards.





## II THE IMPACT OF THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS ON THE NATIONAL LEVEL

### A. CLIMATE CHANGE LITIGATION<sup>2</sup>

*The intersection between climate change and human rights law can be regarded as an important theme for future climate litigation. On 9 April 2024, the Grand Chamber of the ECtHR issued three separate rulings on cases relating to climate change. In the case of [Verein KlimaSeniorinnen Schweiz and Others v. Switzerland \[GC\], 2024](#), the ECtHR found violations of Article 8 and Article 6.1 of the ECHR. Nonetheless, two other cases – *Duarte Agostinho and Others v. Portugal* and *32 Others and Carême v. France* – were declared inadmissible. These cases illustrate the challenging issues for national courts in relation to climate change, e.g. with regard to holding governments accountable for inadequate national climate policies through the perspective of human rights, admissibility criteria, interpretation of locus standi and national courts' competence to scrutinize political decision-makers' decisions and inaction.*

16. Are there specific rules concerning standing of individuals in the climate change litigation context before your court?

- Yes. Please elaborate.  
 No.

In Spain, there are specific rules governing standing in environmental litigation that can apply to climate change cases, particularly through what is known as the “environmental public action” (acción popular medioambiental). While climate litigation itself is relatively recent, Spain’s legislative framework—anchored in Article 45 of the Spanish Constitution and the Aarhus Convention—ensures access to justice for organizations committed to environmental protection. The Aarhus Law (Ley 27/2006), which incorporates the Aarhus Convention, enables non-profit environmental organizations to bring claims in defense of environmental protection as a public interest, provided they meet certain criteria, such as having environmental protection among their aims and operating within the affected area. This public action mechanism serves as a primary means for collective environmental protection in Spanish courts.

Spanish courts, especially the Supreme Court, have interpreted standing requirements broadly in line with the Aarhus Convention and the pro-actione principle, ensuring that legitimate environmental interests are represented and safeguarded. This framework, while originally established for environmental claims, provides an avenue for climate-related litigation as well. Additionally, Spain’s “Government Declaration on Climate and

<sup>2</sup> The phrase “climate change litigation” usually refers to cases that raise material issues of law or fact relating to climate change mitigation, adaptation or the science of climate change. Such cases are brought before a range of administrative, judicial and other adjudicatory bodies. For more details, see <https://climate.law.columbia.edu/content/climate-change-litigation> and <https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review>.





Environmental Emergency” reaffirms the importance of immediate action against climate change and positions environmental protection as integral to fundamental rights, such as the rights to life and health.

17. Are there specific rules concerning standing of associations in the climate change litigation context before your court?

- Yes. Please elaborate.  
 No.

Please see elaboration to question 16

18. Have there been any climate related cases before your court during recent years in which Article 8 (right to respect for private and family life) of the ECHR has played a role? Please elaborate and/or provide examples.

- Yes. Please elaborate.  
 Article 8 has been only a part of the argumentation.  
 Article 8 has formed an essential part of the court’s reasoning.  
 No.

While Article 8 of the ECHR has not been explicitly invoked in climate change cases before the Spanish Supreme Court, there have been significant climate-related cases where human rights considerations, including the right to a healthy environment and the right to life, have been central.

One of the most prominent cases is **Greenpeace and others v. Spain (STS 3556/2023 - ECLI:ES:TS:2023:3556)**, where environmental organizations sued the Spanish government for its insufficient climate action plan. Although the Supreme Court ultimately dismissed the case, the judgment mentions human rights and emphasizes the need to ensure an adequate environment for present and future generations. However, it does not directly refer to **Article 8 of the European Convention on Human Rights (ECHR)** or the **European Convention on Human Rights** in general. Instead, the argumentation focuses on the protection of fundamental rights linked to national law and European regulations, particularly regarding Spain’s international commitments under the **Paris Agreement** and European climate governance legislation.

The court's decision highlighted the complex legal and political challenges involved in climate change litigation. While it did not directly invoke Article 8, the case set a precedent for future climate-related legal actions in Spain, potentially paving the way for cases that may explicitly rely on human rights arguments, including those related to Article 8.

It's important to note that the legal landscape surrounding climate change and human rights is constantly evolving. As the impacts of climate change become more severe and widespread, it's likely that future cases will explore the relationship between climate change and human rights in greater detail.





19. Have there been any climate related cases before your court during recent years in which Article 6.1 (right to a fair trial/access to court) of the ECHR has played a role? Please elaborate and/or provide examples.

Yes.

No.

Yes, Article 6.1 of the European Convention on Human Rights (ECHR), which ensures the right to due process and access to court, has played a role in climate-related cases before Spanish courts.

In recent years, several environmental organizations have brought claims against national climate policies, challenging governmental decisions on the grounds of insufficient climate action. These cases, such as those brought by Greenpeace España, Ecologistas en Acción, and Oxfam Intermón, have invoked Article 6.1 ECHR to argue for their right to judicial review of government actions that impact fundamental rights, including the right to an adequate environment. Article 6.1 serves as a critical foundation for these plaintiffs to assert their standing and ensure that claims related to climate action are heard in court, thus reinforcing procedural fairness in environmental litigation.

The Supreme Court's jurisprudence has established that the concept of "right or legitimate interest" should be interpreted broadly, in line with the *pro actione* principle, which is integral to the effective judicial protection guaranteed by Article 24.1 of the Spanish Constitution. Additionally, it acknowledges the duty of judicial bodies, under Article 9 of the Aarhus Convention, to interpret the standing requirements for NGOs as outlined in Article 19.1(b) of the Law on Administrative Jurisdiction (LJCA) in a non-restrictive manner, to ensure effective protection of environmental interests. Essential to this recognition is the requirement that a link be demonstrated between the NGO initiating the action and the object of the case, "such that a favorable ruling results in a collective and specific benefit or the cessation of concrete and specific harms."

One of the leading cases was the judgment **ES:TS:2011:2911 (May 17 2011)**

The administrative appeal in this case, filed by the *Agrupación de Vecinos y Amigos de Llanes-AVALL*, seeks to have Royal Decree 1999/2009 of December 11 declared null and void. This decree designates a provisional reservation area in favor of the State for the exploration of resources under Section B), specifically underground structures potentially suitable for carbon dioxide storage, within the "Asturias Centro" area, covering parts of Asturias province and adjacent coastal continental shelf.

In this case, the Spanish Supreme Court examined the standing of the association *Agrupación de Vecinos y Amigos de Llanes-AVALL* to challenge Royal Decree 1999/2009, which designated a provisional reservation area for potential CO<sub>2</sub> storage exploration in "Asturias Centro." The respondents, including the State Attorney and the corporation *Hulleras del Norte, S.A.*, argued that the association lacked standing under Article 19.1(b) of the Law on Administrative Jurisdiction (LJCA). However, the court dismissed this argument, recognizing that the association's statutory purpose includes protecting and defending the natural environment of the Llanes region, a purpose clearly connected to the decree's environmental impact on the coastal area of Asturias.

The court cited its own jurisprudence on standing, noting that a "legitimate interest" should be broadly interpreted according to the *pro actione* principle, which supports effective judicial protection under Article 24.1 of the Spanish Constitution. It also referenced the Aarhus Convention, emphasizing the duty of courts to interpret standing requirements for environmental NGOs non-restrictively, ensuring that organizations pursuing environmental





protection can access judicial mechanisms. The court concluded that the association's challenge had a sufficient link to the community's environmental interests, thus granting it standing to pursue the claim.

20. Have there been climate related cases before your court during recent years in which there has been a link to the rights of future generations? Please elaborate and/or provide examples.

- Yes.  
 No.

Yes, there have been climate-related cases before the Spanish Supreme Court that have involved the rights of future generations. The most prominent example is Greenpeace and others v. Spain case, which involved two separate lawsuits filed by environmental organizations against the Spanish government.

In Greenpeace and others v. Spain (STS 3556/2023 - ECLI:ES:TS:2023:3556), the organizations argued that the government's National Energy and Climate Plan (PNIEC) for 2021-2030 was insufficient to meet the goals of the Paris Agreement and protect the rights of future generations. They argued that the PNIEC did not adequately address the urgency of the climate crisis and failed to ensure a sustainable future for future generations.

While the Supreme Court ultimately dismissed the case, it did acknowledge the importance of considering the rights of future generations in climate change litigation. The court's decision highlighted the complex legal and political challenges involved in climate change cases, but also opened the door for future litigation that may more explicitly address the rights of future generations.

The case demonstrates the growing recognition of the intergenerational nature of climate change and the potential for legal action to protect the rights of future generations. Although the Spanish Supreme Court has not yet issued a definitive ruling on the full extent to which future generations' rights are protected under Spanish law, these cases represent a significant step forward in climate change litigation in Spain.

21. Have there been any climate or other environmentally related cases before your court during recent years in which your court's competence to scrutinize political decision-makers' decision or inaction has been dealt with?

The Spanish Supreme Court has indeed dealt with several climate and environmentally related cases in recent years, where its competence to scrutinize political decision-makers' decisions or inaction has been a central issue. One of the most prominent examples has been already mentioned. Greenpeace and others v. Spain.

Other environmentally related cases before the Spanish Supreme Court have also involved the court's scrutiny of political decision-making. For example, the court has considered cases related to the approval of infrastructure projects, such as highways and dams, and the impact of these projects on the environment and human rights. In these cases, the court has had to balance the Administration's interest in economic development with the need to protect the environment and human rights.





Overall, the Spanish Supreme Court's role in climate and environmental litigation is still evolving. While the court has shown a willingness to engage with these issues, its ability to effectively scrutinize government decisions and hold decision-makers accountable remains relatively limited by the principle of administrative discretion.

22. Have there been cases before your court during recent years in which the court has examined whether the competent national authorities, be it at legislative, executive or judicial level, have met relevant requirements pursuant to the domestic climate framework?

Yes, the Spanish Supreme Court has examined whether competent national authorities have met relevant requirements pursuant to the domestic climate framework, particularly in the context of the above mentioned Greenpeace and others v. Spain case.

23. Has the *Klimaseniorinnen Schweiz v. Switzerland* case had an impact in your country? For instance, have new cases been brought to your court after that case? Please elaborate.

The *Klimaseniorinnen Schweiz v. Switzerland* case, while a landmark decision at the European Court of Human Rights, has not yet had a direct impact on specific new cases brought before the Spanish Supreme Court. However, it has certainly influenced the broader legal landscape surrounding climate change and human rights.

This case has set a precedent for individuals to hold governments accountable for their climate policies through human rights law. It has demonstrated that climate change can have significant impacts on individuals' rights, including their right to life and health.

While there haven't been direct citations to the *Klimaseniorinnen* case in Spanish Supreme Court decisions, its implications are likely to be felt in future climate-related litigation in Spain. As climate change continues to be a pressing issue, it is expected that more cases will be brought before Spanish courts, and the *Klimaseniorinnen* case may serve as a reference point for these cases.

It's important to note that the impact of international legal developments, including the *Klimaseniorinnen* case, on domestic legal systems can be complex and takes time. However, the increasing recognition of the human rights dimensions of climate change, both domestically and internationally, is likely to shape future legal strategies and decisions in Spain and elsewhere.

24. Can you identify any major differences between the legal questions raised by climate change, on one hand, and environmental matters, on the other hand, addressed so far in your court? Please elaborate and/or provide examples.

While climate change and environmental matters are closely intertwined, there are distinct legal questions raised by each in the context of Spanish Supreme Court cases.

#### Climate Change Cases:



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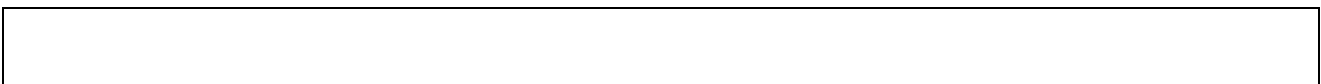


- **Long-term, systemic issues:** Climate change cases often involve long-term, systemic issues with far-reaching consequences. They require consideration of future generations and the global impact of national policies.
- **Scientific complexity:** These cases frequently involve complex scientific evidence and require courts to grapple with the latest climate science.
- **International law and human rights:** Climate change cases often intersect with international law, particularly climate treaties like the Paris Agreement, and human rights law, as climate change can impact fundamental rights like the right to life, health, and a healthy environment.

### Environmental Matters:

- **Specific, localized issues:** Environmental cases often focus on specific, localized issues, such as pollution, waste management, or the impact of a particular project on a specific ecosystem.
- **Domestic law and regulations:** These cases primarily rely on domestic environmental laws and regulations, although they may also involve EU law and international treaties.
- **Balance of interests:** Environmental cases frequently involve balancing competing interests, such as economic development and environmental protection.

While both climate change and environmental cases raise important legal questions, climate change cases often present unique challenges due to their systemic nature, long-term implications, and the need to consider international law and human rights.



### B. SUMMARY RETURNS OF ALIENS AT THE BORDER OR SHORTLY AFTER ENTRY INTO THE TERRITORY (“PUSH-BACKS”)

*In this questionnaire, the focus is particularly on the cases that have been assessed by the ECtHR primarily under Article 4 of Protocol No. 4 to the ECHR. Consequently, the focal question has been whether there has been a violation of the prohibition of the collective expulsion of aliens. The ECtHR cases in point are, in particular, [N.D. and N.T. v. Spain \[GC\], 2020](#), and [Shahzad v. Hungary, 2021](#). In addition, the existence of a sufficient remedy, in particular whether individuals were afforded an effective possibility of submitting arguments against their removal, has been assessed under Article 13 in conjunction with Article 4 of Protocol No. 4 for example in [Khlaifia and Others v. Italy \[GC\], 2016](#). In [Hirsi Jamaa and Others v. Italy \[GC\], 2012](#), the extraterritorial scope of Article 4 of Protocol No. 4 was confirmed with respect to State’s action on the high seas aiming at preventing migrants from reaching the borders of the State or even to push them back to another State. Furthermore, there are several cases pending at the ECtHR, and three cases concerning alleged summary returns of individuals to Belarus from neighbouring states have been grouped to be heard together on 12 February 2025 by the Grand Chamber.*





25. Is there specific national legislation applicable to returns of aliens at the border within the meaning of the ECtHR case law above? In particular, are there any specific national provisions intended to cover situations where entry is attempted by aliens *en masse* and/or where migratory flows are deemed to result from actions of a third country with the aim of destabilising the receiving state (“instrumentalised migration”)<sup>3</sup>? Please briefly explain the main points of the national provisions.

In Spain, specific national legislation addresses the summary return of aliens at the border, particularly through the **Tenth Additional Provision of Organic Law 4/2000**, which governs the rights and freedoms of foreigners in Spain and their social integration. This provision, added in 2015, specifically applies to the borders of Ceuta and Melilla, Spain’s enclaves in North Africa, where significant migratory pressure often arises. This law allows for what are commonly referred to as “hot returns” or *devoluciones en caliente (summary returns)*, enabling the immediate return of individuals attempting unauthorized entry by breaching border security.

The Tenth Additional Provision outlines that returns should occur while respecting international human rights obligations and should include special protections for vulnerable individuals, such as minors and those needing international protection. However, this process does not include individual assessments at the border, raising concerns under Article 4 of Protocol No. 4 of the ECHR, which prohibits the collective expulsion of aliens.

In the **N.D. and N.T. v. Spain** case, the European Court of Human Rights (ECtHR) assessed these returns and found that in cases where individuals avoid regular entry points, the state may lawfully apply immediate returns, provided they have access to legal entry channels and sufficient remedies within the receiving state.

Moreover, the Constitutional Court stated that this provision is consistent with the Constitution, in the wording given by the Final Provision 1.1 of Organic Law 4/2015, of March 30, provided it is interpreted as indicated in Legal Ground 8 C) of Constitutional Court Judgment 172/2020, of November 19 (Ref. BOE-A-2020-16819), specified in the following points:

- a) Application to individualized entries.
- b) Full judicial oversight.
- c) Compliance with international obligations.

Spain’s legislation does not currently include explicit provisions addressing “instrumentalized migration” or migration flows that might be used by third countries to destabilize Spain or the EU. However, the legislation is framed in a way that provided fundamental rights are respected, allows for security responses to mass entry attempts at the border, permitting a more streamlined approach when confronted with large groups. In this vein, Spain has bilateral agreements with neighboring countries, such as Morocco and Algeria, for the return of their nationals who are apprehended in Spanish territory. These agreements facilitate the swift return of migrants, particularly in cases of mass arrivals. Nonetheless, these agreements and the procedures they establish are also subject to judicial scrutiny and must respect fundamental rights and safeguards, as will be illustrated in the response to the following question.

<sup>3</sup> The term “instrumentalised migration” is used, *inter alia*, in Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147.





26. Does your court have jurisdiction in the field of immigration law? If so, has your court dealt with cases involving alleged summary returns of aliens? In particular, have there been cases where the notion of collective expulsion as defined in Article 4 of Protocol No. 4 has been invoked and/or applied? If yes, please briefly explain the main points of the national jurisprudence.

The leading case is the [STS 114/2024 - ECLI:ES:TS:2024:114](#)

In this judgment the Administrative Chamber of the Supreme Court confirmed that the return of Moroccan minors from Ceuta to Morocco carried out by Spanish authorities in August 2021 was illegal due to the “complete disregard” of the requirements of the Immigration Law, which mandates an individualized administrative procedure, information on each affected person’s situation, a hearing if the individual is mature enough, and intervention by the Public Prosecutor.

Furthermore, the Chamber, in agreement with the Public Prosecutor’s Office, confirms that the minors’ rights to physical and moral integrity were violated in their return to Morocco. Such a violation occurs when a person is put at serious risk of physical or psychological suffering, which the court finds was the case here. The administration made no assessment of the minors’ best interests or consideration of their individual circumstances.

The Supreme Court rejected appeals from the State Attorney’s Office and the Autonomous City of Ceuta against rulings by a Ceuta Court and the Andalusian High Court of Justice, which upheld the arguments of the Coordinadora de Barrios para el Seguimiento de Jóvenes y Menores (Neighborhood Coordinator for the Support of Youth and Minors)—acting on behalf of itself and eight Moroccan minors—and found that Spain had acted unlawfully by not following the procedures set forth in the Immigration Law and its Regulations when returning the minors.

In its ruling, the Supreme Court begins by acknowledging the gravity of the events in Ceuta on May 17 and 18, 2021, when around 12,000 people entered en masse and illegally, including approximately 1,500 minors. The Court notes that this presented an extraordinary challenge for both the State and the autonomous community.

However, it clarifies that the dispute concerns whether the Spain-Morocco Agreement of March 6, 2007, was sufficient on its own to justify the return of the minors to Morocco, or whether it was additionally necessary to follow the procedures established in Article 35 of Organic Law 4/2000 on Immigration and in Articles 191 and following of Royal Decree 557/2011, which require individualized administrative procedures, information about each affected person, a hearing if the individual is mature, and intervention by the Public Prosecutor.

The Supreme Court concludes that the 2007 Agreement does not, by itself, constitute sufficient legal grounds to decide on the return of the minors, primarily because it does not outline any procedural requirements. Therefore, as in any other administrative action—especially one that may affect fundamental rights—Spanish authorities are required to act through the corresponding administrative procedure, as a guarantee of the legality and accuracy of their decision and as a safeguard of the affected parties’ interests. In this case, the applicable procedures are those regulated by the Immigration Law and its Regulations.

The ruling further states that the invocation of exceptional circumstances by the appellants is “abstract,” as it does not justify the administration’s complete inaction; what might initially seem understandable becomes less so as





the situation persists. Thus, a lenient interpretation of legality, or even a waiver of compliance with legal requirements, cannot be justified by citing exceptional circumstances.

The Supreme Court adds that the complete disregard for procedural requirements is further reinforced by Article 4 of Protocol No. 4 of the European Convention on Human Rights, which unequivocally prohibits “the collective expulsion of aliens.”

The Chamber highlights that this international norm has been ratified by Spain and forms part of the Spanish legal system. Therefore, deciding to return a large number of unaccompanied minors without following any procedural steps constituted a collective expulsion of foreigners, “which is illegal according to Article 4 of Protocol No. 4 of the European Convention on Human Rights.”

Finally, the justices address the argument presented by both the State Attorney and the Lawyer of the Autonomous City of Ceuta that Morocco did not raise any objections about the manner in which the return of the minors was conducted and reportedly sent a generic message to Spanish authorities stating that all were well and back with their families.

The Chamber considers this an irrelevant factor, stating that “Morocco’s agreement only means, in purely legal terms, that it does not consider Spain to have breached the March 3, 2007, Agreement.” However, this does not mean that the Spanish administration acted in strict compliance with Spanish law. “The acquiescence of another country does not relieve Spanish authorities of their obligation to act in full compliance with the Constitution and Spanish laws,” and “the respectability of Spain as a rule-of-law state is at stake,” the ruling concludes.

27. Has the case law of the ECtHR in the field of summary returns of aliens and specifically the Court’s interpretation of the scope of Article 4 of Protocol No. 4 had an impact on the content of the national legislation and/or on its interpretation by the national courts? If yes, please briefly explain the main developments.

Please see answer to question 26

28. Have any cases been brought against your state in the ECtHR alleging that there has been a violation of Article 4 of Protocol No. 4 (alone or in conjunction with Article 13 of the ECHR) in the field of immigration law? If yes, please briefly explain the main features of these cases.

Please see the answer to question 25

