



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

FIFTH SECTION

CASE OF MENDIETA BORREGO v. SPAIN

(Application no. 3958/24)

JUDGMENT

STRASBOURG

16 October 2025

This judgment is final but it may be subject to editorial revision.

In the case of Mendieta Borrego v. Spain,

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

Andreas Zünd, *President*,

María Elósegui,

Mykola Gnatovskyy, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 3958/24) 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”) on 25 January 2024 by a Spanish national, Ms Eva Mendieta Borrego (“the applicant”), who was born in 1977, lives in Gelida and was represented by Mr L. Costa Sánchez, a lawyer practising in Barcelona;

the decision to give notice of the application to the Spanish Government (“the Government”), represented by their co-Agent, Ms H. E. Nicolás Martínez;

the decision to reject the Government’s objection to examination of the application by the Committee;

the parties’ observations;

Having deliberated in private on 18 September 2025,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant’s complaint under Article 1 of Protocol No. 1 to the Convention about the refusal to grant her a survivor’s pension following the death of her partner. It belongs to a group of similar applications, follow-ups of the Court’s judgment in *Valverde Digon v. Spain*, no. 22386/19, 26 January 2023 (see also *Domenech Aradilla and Rodríguez González v. Spain*, nos. 32667/19 and 30807/20, 19 January 2023).

2. The applicant cohabitated with her partner since 2003. In June 2008 her partner divorced from his wife. The applicant and her partner have three children together, one born in January 2008 and two others born in 2009.

3. Under the legal regime in force in Catalonia until March 2014, civil partnerships were not required to fulfil any formal registration requirement for surviving partners to be entitled to a survivor’s pension (provided that they met other requirements). Following the Constitutional Court’s judgment no. STC 40/2014 of 11 March 2014, published on 10 April 2014, as of the latter date access to survivor’s pensions for civil partnerships everywhere in Spain including Catalonia required the partnership to have been formally registered at least two years before one of the partners’ passing away. Relevant legal provisions and practice, including the impugned

Constitutional Court’s judgment, are summarised in *Valverde Digon* (cited above, §§ 15-28).

4. The applicant and her partner were never married or registered as “*de facto*” or civil partners. On 7 June 2015 the applicant’s partner died. Following her partner’s death, the applicant applied to the National Institute of Social Security (“INSS”) for a survivor’s pension. On 2 July 2015 the INSS rejected her request due to her failure to comply with legal requirements, namely the failure to formalise a civil partnership at least two years prior to her partner’s death. Her administrative appeal against this refusal was dismissed on 24 August 2015.

5. On 29 December 2017 the Labour Court no. 4 of Barcelona upheld the administrative refusal to recognise her right to survivor’s pension. According to the first-instance court, it “could be admitted” that the two-year registration requirement was impossible to comply with for *de facto* partners, if they had registered their partnership after the Constitutional Court’s judgment, but one of the partners died before the two-year period had expired. Therefore, the court, without giving details, did not rule out the possibility of modifying the two-year criterion where it was impossible or very difficult to comply with due to exceptional circumstances, such as illness or disability. However, it found that, in the absence of such circumstances in the case of the applicant and her partner, the requirement was fully applicable to them. On 11 March 2019 the High Court of Justice of Catalonia upheld the refusal on appeal, citing the lack of registration of her partnership two years prior to the death of the applicant’s partner. The applicant’s subsequent cassation appeal was rejected. On 27 October 2023 the Constitutional Court declared her *amparo* appeal inadmissible.

6. The applicant complained that the refusal by the domestic authorities to grant her a survivor’s pension due to unforeseeable retrospective application of a new eligibility requirement was in breach of Article 1 of Protocol No. 1 to the Convention.

THE COURT’S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO.1 TO THE CONVENTION

A. Admissibility

7. Invoking the same reasons as in *Valverde Digon* (cited above, §§ 45-47), the Government submitted that the applicant could not have had a “legitimate expectation” of acquiring a possession within the meaning of Article 1 of Protocol No. 1 to the Convention, and that the latter provision was therefore not applicable to the present case.

8. The applicant maintained that she had a legitimate expectation of receiving a survivor's pension because she and her partner had together constituted, under Catalan civil law, a civil partnership, which rendered her eligible for the pension following his death.

9. The Court notes that, prior to the Constitutional Court's judgment of 11 March 2014 coming into force, the applicant and her late partner had met the relevant legal requirements, such as uninterrupted cohabitation of more than five years prior to the death of their partner and having children in common, as well as other requirements (see *Valverde Digon*, cited above, § 61). The Court accepts that the new requirement to formalise their civil partnership was introduced before the death of her partner in June 2015, and they had not proceeded to register the partnership within that time. However, as in *Valverde Digon* (ibid.), the Court notes that the applicant's partner died less than two years after the new registration requirement had come into force on 10 April 2014. For the same reasons as in the aforementioned *Valverde Digon* judgment, the Court concludes that, in the present cases, the applicant could have entertained a "legitimate expectation" that she was eligible for a survivor's pension (ibid., § 63). It follows that Article 1 of Protocol No. 1 is applicable.

10. Further, the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention and must therefore be declared admissible.

B. Merits

11. The applicant pointed out that she had not become aware of the new legal requirement in time, as it had not received sufficient media coverage; and that she and her partner would be unable to register as a couple in a public registry. She stressed that her partner had passed away less than two years after the Constitutional Court's judgment, which introduced a new registration requirement for entitlement to the survivor's pension without any transitional period. Accordingly, it was objectively impossible for her to comply with the new requirement, but the authorities had failed to take that consideration into account.

12. In the Government's view, the requirement to formally register a partnership two years prior to the death of one of the partners in order for the surviving partner to obtain social benefits could not be considered to constitute an "excessive burden" for the purposes of Article 1 of Protocol No. 1. The Government noted that it had been open to the applicant and her partner to formalise their partnership through a notarial deed or to get married, but they had failed to do so for more than a year after the Constitutional Court's judgment had been published; nor had they provided convincing reasons for that failure.

13. Having regard to the general principles summarised in *Valverde Digon* (cited above, §§ 48-57), the Court finds no reason to depart from the conclusion reached in that case (*ibid.*, §§ 66-82), as follows.

14. The Court agrees with the Government that, unlike the applicant in *Valverde Digon* and her partner, the applicant in the present case did not take any steps to meet the new requirement of registration after 10 April 2014 until the death of the partner in June 2015. However, the crux of the applicant's claim in the present case is that, even if they had registered their partnership, she would not have obtained a survivor's pension, as less than two years had elapsed between the Constitutional Court's judgment and her partner's death. It was therefore impossible for the applicant to meet the new legal requirement introduced by the Constitutional Court's judgment of 10 April 2014. It follows that the applicant was affected by the lack of transitional measures, which was at the origin of the Court's finding of a violation in *Valverde Digon*, in the same manner as the applicant in that case. As in the leading case (*ibid.*, §§ 71-81), the Court concludes that imposing a more stringent formal requirement by the Constitutional Court without adequate transitional arrangements corresponding to the particular situation in cases such as that of the applicant entailed as it did the consequence of depriving the applicant of her legitimate expectation to receive a survivor's pension. The interference with the applicant's rights was therefore disproportionate and inconsistent with preserving a fair balance between the interests at stake in the circumstances of the present case.

15. There has accordingly been a violation of Article 1 of Protocol No.1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. The applicant claimed 154,895.36 euros (EUR) in respect of pecuniary damage which, according to her, corresponded to the survivor's pension she would have received between 2015 and 2025. She further claimed EUR 20,000 for non-pecuniary damage, as well as an unspecified amount for costs and expenses.

17. The Government disputed both the applicant's entitlement to the pension and the accuracy of her calculation; and argued that the claims under all heads were unsubstantiated.

18. The Court considers that, in the absence of a determination by the domestic authorities that the applicant was entitled to a specific pension amount, the Court is not in a position to determine the pecuniary damage suffered by her as a result of the violation of her rights under Article 1 of Protocol No. 1. It therefore makes no award under this head. The Court reiterates that domestic law provides for the possibility of reviewing final decisions which have been declared in breach of Convention rights by a judgment of the Court (see *Valverde Digon*, cited above, § 86).

19. The Court further considers it reasonable to award the applicant EUR 8,000 in respect of non-pecuniary damage, plus any tax that may be chargeable, and to dismiss the remainder of her claims under that head.

20. Lastly, the Court reiterates that an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, and noting the applicant's failure to either quantify her claims in respect of costs and expenses or to substantiate them with any documents, the Court dismisses her claims under that head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No.1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts at the rate applicable at the date of settlement, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

Andreas Zünd
President