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## **Spain: National Court. Chamber of Contentious-Administrative Proceedings, 17 July 2014, Appeal No. 405/2013**

**País de la Sentencia:**

Spain

**País del Solicitante:**

Kazakhstan

**Fecha de la Sentencia::**

17-07-2014

**Número de Registro de la Sentencia::**

Chamber of Contentious-Administrative Proceedings Case 3633/2014, of 17 July 2014.

**Nombre del Tribunal:**

Audiencia Nacional. Sala de lo Contencioso.

**Palabras Clave- Principal:**

Country of origin information

Exclusion from protection

Individual assessment

Political Opinion

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**Instrumentos Jurídicos de la UE Aplicables::**

International Law > [1951 Refugee Convention](#) [1] > [Art 1A](#) [2]

International Law > [1951 Refugee Convention](#) [1] > [Art 1D](#) [3]

International Law > [1951 Refugee Convention](#) [1] > Art 1E

International Law > [1951 Refugee Convention](#) [1] > [Art 1F](#) [4]

International Law > [1951 Refugee Convention](#) [1] > [Art 33](#) [5] > Art 33.2

International Law > [1951 Refugee Convention](#) [1] > [Art 33](#) [5]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [6]

Council of Europe Instruments

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [7]

European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [8]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] > [Art 4](#) [10]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] > [Art 4](#) [10] > [Art 4.4](#) [11]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] > [Art 5](#) [12] > [Art 5.1](#) [12]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] > [Art 5](#) [12] > [Art 5.2](#) [12]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] > [Art 8](#) [13] > [Art 8.1](#) [14]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] > [Art 8](#) [13]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] > [Art 10](#) [15]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] > [Art 10](#) [15] > [Art 10.2](#) [15]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] > [Art 11](#) [16] > Art 11.1 (d)

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] > [Art 11](#) [16] > [Art 11.2](#) [16]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] > [Art 12](#) [17]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] > [Art 13](#) [18]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] > [Art 21](#) [19] > Art 21.2 (a)

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**Extracto:**

When applying art. 1.F) of the Convention, there is a need of proving that the appellant is a concrete danger for the national security. As it is a restriction for the right of asylum, this provision should be applied restrictively. In the instant case, there is no sufficient indication that the applicant constitutes danger to national security.

**Hechos:**

The applicant, from Kazakhstan, was denied asylum on 5th July 2013 due to a consideration that he represents a threat to national security in the country of asylum. He was detained by the Spanish authorities in 2012, following an international arrest warrant for crimes of fraud and terrorism in Kazakhstan, and he first sought asylum on the 24th January 2013, which was denied after consideration of reports from the CNI (National Intelligence Centre) and UNHCR.

He was the bodyguard of Ablyazov, a Kazakh oligarch who was accused of fraud by the authorities of his home country and sought asylum in the United Kingdom.

The appellant claims the Kazakh authorities forced him to testify against Ablyazov which provoked his flight. He first reunited in the United Kingdom with Ablyazov and later on moved to Spain.

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**Fundamentos de Derecho:**

The contested resolution was made following an official report of the Spanish National Intelligence Centre that stated the potential threat to national security that the presence of the appellant would have in the country of asylum following article 9.a) of the Asylum Law 12/2009.

The appellant argues against the previous resolution in the basis of procedural violations. Given the circumstances of the case, he claims that his testimony, the absence of the legal time given to UNHCR to write their report and missing key information regarding persecution by Kazakhstan were not taken into consideration by the Court when applying art. 9.a) of the Asylum Law. The Court finds that the breach of some of these procedural criteria cannot determine whether he would be granted refugee status. The focus in the particular case are the material conditions of the exclusion clause to deny asylum.

When applying art. 1.F) of the Convention, there is a need of proving that the appellant is a concrete danger for the national security. As it is a restriction for the right of asylum, this provision should be applied restrictively. The Court does not find that there is substantial proof to agree that the applicant would be a danger to national security if he is granted international protection.

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**Fallo:**

Appeal partially granted. The contested resolution is annulled. However, as the Court did not analyse the grounds to determine the person's refugee status but the exclusion clause, the Ministry of Interior should analyse the asylum claim to determine if the appellant should be granted refugee status.

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**Procedimientos Posteriores:**

Sentencia del Tribunal Supremo n. 523/2015 (Sala de lo Contencioso, Sección 3ª), de 23 de febrero de 2015 (recurso n. 2944/2014).

**Comentarios/Observaciones:**

The final decision of the Court to not grant refugee status to the appellant despite annulling the contested resolution is controversial. Two of the Court's magistrates issued a particular vote regarding the opinion that the Court should have also granted refugee status to the appellant.

The asylum application follows article 8 of the Law 12/2009, which states that the application of those applicants who fall in one of the exclusion clauses, as the appellant, should be treated by urgent procedures. However, this does not mean that the Administration should not analyse the grounds of persecution and analyse only the exclusion clause, and the reasoning of the Court shows that the contested resolution did not analyse the reasons to grant refugeehood but just denied it under the grounds of security threat.

This provision reflects a breach in judicial effective protection, as this ruling merely reflects that the previous procedures, when admitting the asylum application of the appellant, did not analyse the grounds to grant refugeehood despite of admitting the solicitude, which is the main reason why this case has to go back to the Administration for a deeper analysis in order to see if the refugeehood conditions exist in the case of the appellant.

**Attachment(s):**



**Otras Fuentes citadas:**

Supreme Court ruling n. 153/2014 (Contentious Chamber, Section 3), of January 27, 2014 (appeal n. 4362/2012) ? (Sentencia del Tribunal Supremo n. 153/2014 (Sala de lo Contencioso, Sección 3ª), de 27 de enero de 2014 (recurso n. 4362/2012)).

Order of the National Court n. 3017/2006 (Contentious Chamber, Section 3), of July 13, 2006 (appeal 854/2003) ? (Auto de la Audiencia Nacional n. 3017/2006 (Sala de lo Contencioso, Sección 3ª), de 13 de julio de 2006 (recurso 854/2003)).

Supreme Court ruling n. 7726/2009 (Contentious Chamber, Section 5), of December 17, 2009 (appeal n. 4858/2006) ? (Sentencia del Tribunal Supremo n. 7726/2009 (Sala de lo Contencioso, Sección 5ª), de 17 de diciembre de 2009 (recurso n. 4858/2006)).

Supreme Court ruling n. 5647/2008 (Contentious Chamber, Section 5), of October 2, 2008 (appeal n. 66/2006) ? (Sentencia del Tribunal Supremo n. 5647/2008 (Sala de lo Contencioso, Sección 5ª), de 2 de octubre de 2008 (recurso n. 66/2006)).

Judgment of the Constitutional Court n. 236/2007, of November 7, 2007 (appeal for unconstitutionality n.1707-2001) ? (Sentencia del Tribunal Constitucional n. 236/2007, de 7 de noviembre de 2007 (recurso de inconstitucionalidad n. 1707-2001)).

Judgment of the Constitutional Court n. 24/2000 (1st Chamber), of January 31, 2000 (amparo appeal n. 1543/97) ? (Sentencia del Tribunal Constitucional n. 24/2000 (Sala 1ª), de 31 de enero de 2000 (recurso de amparo n. 1543/97)).

Judgment of the Constitutional Court n. 94/1993 (1st Chamber), of March 22, 1993 (amparo appeal n. 1744/89) ? (Sentencia del Tribunal Constitucional n. 94/1993 (Sala 1ª), de 22 de marzo de 1993 (recurso de amparo n. 1744/89)).

Judgment of the Constitutional Court n. 242/1994 (1st Chamber), of July 20, 1994 (amparo appeal n. 32/94) - (Sentencia del Tribunal Constitucional n. 242/1994 (Sala 1ª), de 20 de julio de 1994 (recurso de amparo n. 32/94)).

Supreme Court ruling n. 8589/2009 (Contentious Chamber, Section 5), of December 30, 2009 (appeal n. 760/2006) ? (Sentencia del Tribunal Supremo n. 8589/2009 (Sala de lo Contencioso, Sección 5ª), de 30 de diciembre de 2009 (recurso n. 760/2006)).

Supreme Court ruling n. 7725/2009 (Contentious Chamber, Section 5), of December 18, 2009 (appeal n. 4241/2006) ? (Sentencia del Tribunal Supremo n. 7725/2009 (Sala de lo Contencioso, Sección 5ª), de 18 de diciembre de 2009 (recurso n. 4241/2006)).

Supreme Court ruling n. 8507/2009 (Contentious Chamber, Section 5), of December 30, 2009 (appeal n. 3969/2005) ? (Sentencia del Tribunal Supremo n. 8507/2009 (Sala de lo Contencioso, Sección 5ª), de 30 de diciembre de 2009 (recurso n. 3969/2005)).

Supreme Court ruling n. 183/2007 (Contentious Chamber, Section 5), of January 3, 2007 (appeal n. 7193/2003) ? (Sentencia del Tribunal Supremo n. 183/2007 (Sala de lo Contencioso, Sección 5ª), de 3 de enero de 2007 (recurso n. 7193/2003)).

**National / Other Legislative Provisions:**

[ICCPR - Art 12 \[21\]](#)

[ICCPR - Art 13 \[22\]](#)

[Act 12/2009 of 30 October regulating the Right of Asylum and Subsidiary Protection \(Ley 12/2009 \[23\]](#)

[Act 30/1992 of 26 November regulating Public Administrations and of the Common Administrative Procedure \(Ley 30/1992 \[24\]](#)

[Spain - Royal Decree 203/1995 \[25\]](#)

[Spain - Organic Act 10/1995 of the Criminal Code \[26\]](#)

[Royal Decree of September 14 \[27\]](#)

[1882 \[28\]](#)

[which approves the Criminal Procedure Law \(Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal\) \[29\]](#)

[Spain - Act 6/1985 of 1 July regulating the Judicial Power \(Ley Orgánica 6/1985 de 1 de julio del Poder Judicial\) ? Article 248.4 \[30\]](#)

[Spain - Act 29/1998 of 13 July regulating the Administrative Jurisdiction \(Ley 29/1998 \[31\]](#)

[Spain - Act 37/2011 of 10 October regulating the measures of procedural facilitation \(Ley 37/2011 \[32\]](#)

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### Links:

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1>

[3] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1d>

[4] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1f>

[5] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#33>

[6] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[7] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>

[8] <https://m.asylumlawdatabase.eu/node/353>

[9] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[10] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 4 QD>

[11] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%204%20QD>

[12] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%205%20QD>

[13] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 8 QD>

[14] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%208%20QD>

[15] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2010%20QD>

[16] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2011%20QD>

[17] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 12 QD>

[18] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 13 QD>

[19] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#QD%20Art%2021>

[20] <https://m.asylumlawdatabase.eu/sites/default/files/aldfiles/SAN%2017%2007%202014.pdf>

[21] <https://m.asylumlawdatabase.eu/es/taxonomy/term/1859>

[22] <https://m.asylumlawdatabase.eu/es/taxonomy/term/1860>

[23] <https://m.asylumlawdatabase.eu/es/taxonomy/term/11773>

[24] <https://m.asylumlawdatabase.eu/es/taxonomy/term/11796>

[25] <https://m.asylumlawdatabase.eu/es/taxonomy/term/4422>

[26] <https://m.asylumlawdatabase.eu/es/taxonomy/term/8654>

[27] <https://m.asylumlawdatabase.eu/es/taxonomy/term/12137>

[28] <https://m.asylumlawdatabase.eu/es/taxonomy/term/12138>

[29] <https://m.asylumlawdatabase.eu/es/taxonomy/term/12139>

[30] <https://m.asylumlawdatabase.eu/es/taxonomy/term/11960>

[31] <https://m.asylumlawdatabase.eu/es/taxonomy/term/11955>

[32] <https://m.asylumlawdatabase.eu/es/taxonomy/term/11957>