

## LUDOVIC N. V SPAIN

EL TARAJAL IN FRONT OF THE UN COMMITTEE AGAINST TORTURE

### CASE SUMMARY

#### **THE CASE**

On 6<sup>th</sup> February 2014, at least 15 died, countless injured and 23 more pushed back at El Tarajal beach in Ceuta during a border operation of the Guardia Civil. 10 years on since the deadly events, Ludovic N.'s complaint to the UN Committee Against Torture addresses a litany of investigative failures after Spain finally archived the case in 2022.

Ludovic N. was 15 at the time, one of the youngest. Since he couldn't swim, Ludovic N. wore a floating device as he started to make his way forward holding the border sea wall with one hand and paddling forward with the other. He heard shots and cries and saw Guardia Civil officers shooting rubber bullets and firing tear gas at people in the water. As Ludovic N. held onto the sea wall with his hands, struggling to keep his head above the water, a Guardia Civil officer beat him on the arm with a baton, so hard that his skin tore. Ludovic N. carried on, despite his bleeding arm and struggling to breathe due to the gas used against people in the water. Like others around him, he feared for his life. When he reached the Spanish side, he was immediately apprehended by the Guardia Civil. Ludovic N. was not identified or offered any medical aid, translation or legal assistance. He was not given a chance to speak or be spoken to. He was swiftly escorted with others through a door in the border fence back to Morocco. There, he saw the bodies of those who had died when they were taken out of the water. Ludovic N. was later taken to a hospital in Nador where he received treatment informally, to be later that day taken to the Algerian border and expelled out of Morocco.

#### **THE JUDICIAL INVESTIGATION IN SPAIN**

On 10 February 2014, 19 Spanish NGOs submitted a joint criminal complaint before the Public Prosecutor's Office in relation to the events of 6 February 2014. In parallel, investigative judges no 1 and 6 of Ceuta opened five criminal investigations in relation to five bodies found off the coast of Ceuta between the 8 and 15 February 2014. In March 2014, all of these proceedings were joined and forwarded to the investigative judge nº 6 of Ceuta (*Juzgado de instrucción no 6 de*

*Ceuta*) to investigate four main potential crimes, namely reckless manslaughter (*homicidio imprudente*), intentional injury (*lesiones dolosas*) failure to rescue (*denegación de auxilio*) and administrative malpractice (*prevaricación administrativa*) as to the summary expulsions. Several Spanish NGOs (Coordinadora de Barrios, CEAR, Observatori DESC, APDHE and Comité René Cassin) joined the proceedings as *acusación popular* (public interest civil parties). The relatives of some of the deceased actively tried to participate in the proceedings as *acusación particular* (individual civil parties), but the investigative judge consistently refused to grant them such status.

Ten years since the events and after eight years of judicial investigation, the investigative judge archived the case three times and no trial was held. For the first two closures (in 2015 and 2018), the judge concluded that all available investigatory steps had been exhausted with no *prima facie* evidence of criminal behaviour by the 16 Guardia Civil officers directly involved in the 6 February 2014 events. The court of appeal (*Audiencia Provincial de Ceuta*) overruled both decisions in 2017 and 2018, ordering the investigative judge twice to identify the five deceased and locate and hear survivors, including specifically Ludovic N., who, despite a request filed by Observatori DESC in April 2017 and continued insistence of the *acusaciones populares* for his testimony, was never heard.

Still without hearing him, in September 2019 the investigative judge indicted the 16 Guardia Civil officers for reckless homicide and omission of their duty to help, dropping the charges of intentional injury and administrative malpractice in relation to the summary expulsions. However, one month later, the investigative judge archived the case again, relying on the controversial judge-made “Botín doctrine,” which prevents the opening of the trial stage despite *prima facie* evidence of criminal behaviour if neither the prosecutor nor the *acusación particular* support the accusation. Though in this case the court of appeal overruled the applicability of the Botín doctrine in July 2020, it still upheld the archiving of the case and considered available investigative steps had been exhausted without *prima facie* evidence of criminal behaviour. Dramatically, pointlessly and somewhat cruelly, the same day the same court of appeal finally granted *acusación particular* status to the families of the deceased, who had been fighting for the same for 8 years. The *acusaciones populares* appealed the archiving decision but in May 2022, the Supreme Court refused to overturn the court of appeal decision.

Despite his status as witness victim, Ludovic N. was never notified of this decision by the Spanish authorities, who consistently failed to facilitate his involvement in the national proceedings and deny him victims’ rights which should have been available to him under Spanish law. Ludovic N. was effectively prevented from

filing any appeal within the relevant time-limits, including to the Spanish Constitutional Court. Barred from challenging the final archiving of the judicial investigation in front of Spanish instances, Ludovic N. now turns to the UN Committee Against Torture.

However, in July 2022 parts of the *acusaciones populares* (Coordinadora de Barrios, CEAR, and APDHE) and some of the families (represented by Spanish lawyer Patricia Fernández Viçens, also lawyer of Coordinadora de Barrios) were able to submit two distinct constitutional complaints (*recursos de amparo*) before the Constitutional Court on time, focusing on the right to life and investigative failures in relation to the deceased. In June 2023, the Court admitted the complaint of the *acusación popular*. Both procedures are still pending, though they do not address the case of Ludovic N.

## **THE COMPLAINT TO THE UN COMMITTEE AGAINST TORTURE**

Ludovic N.’s complaint (“individual communication”) to the UN Committee Against Torture is grounded in his **ill-treatment** (article 16 and 1 and the prohibitions of torture, cruel, inhuman or degrading treatment), his **expulsion** (article 3 and the prohibition of refoulement) as well as the **failure to investigate his case ex officio** (articles 12, 13 and 14 and the obligations to investigate ex officio, examine cases promptly and impartially and provide redress to victims of ill-treatment).

Ludovic N. bases his complaint on the failure of the eight-year investigation to hear him, symptomatic of an unwillingness of the Spanish authorities to conduct an effective, prompt and impartial investigation to clarify the circumstances in which so many lost their lives, disappeared and were injured. Major shortcomings which the complaint addresses include: bias towards Guardia Civil officers and against black migrants, non-independence of investigative forces, obstruction of victims’ involvement and failure to take basic investigative steps. These steps were crucial to clarify (i) the nature and character of the use of anti-riot material (ii) the identity of the deceased and (iii) the evidence of injuries. These shortcomings echo the lack of promptness and impartiality of the investigative judge, the Public Prosecutor and the court of appeal.

The complaint by Ludovic N. is part of a series of legal challenges to address the impunity for systematic human rights violations inherent to pushbacks at the EU’s external borders, for which Spain’s policy at the borders of its African enclaves of Ceuta and Melilla provides a blueprint.