XXVIII. Spain

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This paper offers a concise analysis of five landmark judgments in Spanish case law from the last 25 years. While the selection is inevitably subjective and many relevant decisions have necessarily been left aside, the judgments examined here provide insight into some of the most significant developments in Spanish tort law over the past quarter of a century. These include: the jurisprudential shift concerning the burden of proof of fault (Judgment no 1); the denial of compensation for damage caused by Thalidomide (Judgment no 2); one of the most severe cases of environmental pollution in Spanish history (Judgment no 3); claims brought by a child for having been deprived of the opportunity not to have been born, commonly referred to as 'wrongful life' claims (Judgment no 4), and the compensation of personal injury arising from motor vehicle accidents and other forms of transport (Judgment no 5). Taken together, the selected cases seek to provide a kaleidoscopic view of the operation of the core elements of civil liability in Spanish law. The cases illustrate, in particular, how damage (Judgment no 4), causation (Judgment no 3), and fault (Judgment no 1) are articulated in judicial practice, while also addressing related issues such as the assessment of damages (Judgment no 5) and the application of prescription periods where damage is continuing or appears late (Judgment no 2). Although in most of the selected cases compensation is ultimately not awarded – and the picture presented here is therefore, so to speak, a photographic negative – the main areas of this field of law (product liability, environmental liability, medical liability, etc) are nevertheless covered.

1. Sentencia del Tribunal Supremo (Supreme Court Decision, STS) (Civil Chamber) 831/2007, 17 July 2007[1]

The first decision should be read in the context of the truly seismic shift that took place in the tort law doctrine of the Spanish Supreme Court (Civil Chamber) in the early 2000s. Such evolution cannot be understood

[1] ECLI:ES:TS:2007:5043. The decision is commented upon by *J Ribot/A Ruda,* Spain, in: H Koziol/BC Steininger (eds), European Tort Law (ETL) 2007 (2008) 541, no 27.

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as the result of a gradual doctrinal refinement alone. Rather, it reflects a profound transformation produced by the convergence of several structural factors: a radical procedural reform, a change in institutional leadership, and a substantial renewal of the Court's composition. Together, these elements altered not merely the outcomes of cases, but the very function and self-understanding of the Spanish Supreme Court (*Tribunal Supremo*) as a court of cassation.

The first decisive trigger of change was the Civil Procedure Act 2000 (*Ley de Enjuiciamiento Civil* [LEC]),[2] which deeply reconfigured the system of extraordinary appeals. This long-overdue reform (the previous statute was from 1881) redefined the admissibility criteria for cassation (*casación*); reoriented the Supreme Court toward a normative and doctrinal role rather than one focused on correcting individual wrongs; and introduced a more selective model of access to the Court, functionally closer to a 'court of precedents'. As a result, the Civil Chamber was compelled to clarify its 'nomofilactic' function (the creation and unification of legal doctrine), develop more systematic and abstract reasoning, and establish clearer, more stable doctrinal lines capable of guiding lower courts.[3]

To the foregoing, one must add a second element, namely, a change in the composition of the Court. Too little attention is usually paid to who the members of judicial bodies actually are and to how changes in court composition may prove determinative,[4] as the Spanish case clearly shows. In 2003, at a moment when the Chamber was still digesting the impact

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Except indicated otherwise, all the STS cited in this paper are from the First Chamber (Civil Chamber) of the Spanish Supreme Court.

[2] Act (Ley) 1/2000, of 7 January, *de Enjuiciamiento Civil* (Spanish Official Gazette, Boletín Oficial del Estado [BOE] 7, 8.1.2000).

[3] On the new statutory framework generally, see *M Morón Palomino*, La nueva casación civil (2001); *J Nieva Fenoll*, El recurso de casación civil (2003) and *J Montero Aroca/J Flors Matíes*, El recurso de casación civil (3rd edn 2018) with further references. On case law as a source of law generally, see *R Casas Vallès/V Ferreres Comella/E Roca Trias* (eds), La jurisprudencia como fuente del Derecho: interpretación creadora y arbitrio judicial (2006) and *F Clemente de Diego/JL Monereo Pérez*, La jurisprudencia como fuente del derecho (2016).

[4] Sociological studies on Spanish judiciary usually pay attention to criminal courts only. See *LM Lozano Martín*, Sus señorías: una aportación sociológica al estudio de la judicatura española (Tesis doctoral) (2024) <https://docta.ucm.es/rest/api/core/bitstreams/33781920-1320-4489-8ee9-f20d09e99207/content> and *E Blay Gil/I González Sánchez*, Los jueces penales: una introducción al estudio de la profesión (2020), besides the seminal (but rather outdated) studies by *JJ Toharia*, El juez español: un análisis sociológico (1975) and El juez y su imagen en la sociedad: pasado, presente y futuro (2000).

of the LEC, Ignacio Sierra Gil de la Cuesta was appointed President of the Civil Chamber. While presidents do not formally dictate substantive outcomes, their role may be crucial in moments of institutional transition. In a context marked by procedural uncertainty following the LEC reform, a sharp increase in technically complex litigation, and rising pressure to ensure doctrinal coherence, Sierra's presidency exercised influence through internal coordination, case management, and the promotion of a more coherent deliberative culture.[5] This leadership shift coincided with – and facilitated – the consolidation of the Court's new role under the post-2000 procedural architecture. But Sierra had already been President in the past,[6] so this factor alone cannot explain the change.

In fact, between 2000 and 2005, the Civil Chamber experienced one of the most significant waves of judicial renewal in its modern history. Notable appointments include Francisco Marín Castán (2000) – the grandson of a former President of the Spanish Supreme Court – with a strong background in the Supreme Court's Technical Office, bringing a highly structured, doctrinally systematic approach, and Clemente Auger Liñán (2003/2004). In addition, there was a decisive cluster of appointments in 2005, including José Antonio Seijas Quintana,[7] Vicente Luis Montés Penadés (then a full professor at the University of Valencia), and Encarnación Roca Trías (then a full professor at the University of Barcelona). Juan Antonio Xiol Ríos – a former Judge at the Administrative Chamber of the same court – succeeded Marín Castán as President of the Civil Chamber from 2005 until 2013 and was, without a doubt, one of the most influential figures in that Chamber's case law in the 2000s, significantly shaping its doctrinal trajectory before his later appointment to the Constitutional Court in 2013.[8] This renewal was not merely quantitative,

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[5] A personal profile of Sierra can be found under *E López Causapé*/*B Muñoz Yangüela*, Vitorinos: Ignacio Sierra, Asociación Judicial Francisco de Vitoria (2020) <https://www.ajfv.es/vitorinos-ignacio-sierra>.

[6] See *JM Lázaro,* Ignacio Sierra, nuevo presidente de la Sala Civil del Supremo, El País 28.6.1990 <https://elpais.com/diario/1990/06/28/espana/646524011_850215.html>.

[7] See *Jose Antonio Seijas Quintana*, «In personam». José Antonio Seijas Quintana (entrevistado), La Ley Probática 10 (2022) <https://www.aranzadilaley.es/tienda/legalteca> and *P Fernández-Rivera González*, Entrevista a D. José Antonio Seijas Quintana, Diálogos jurídicos. Anuario de la Facultad de Derecho de la Universidad de Oviedo 8 (2023) 345–352.

[8] Xiol, currently working as a lawyer after his retirement from the judiciary, was a resolute judge, renowned for adhering to his original views despite frequently finding himself in the minority of the court's chamber (especially when he was a Constitutional Court judge). His genius transformed the Civil Chamber of the Spanish Supreme Court and succeeded in dramatically reducing the vast backlog of pending

but it introduced judges with strong technical and theoretical sensitivity (both Montés and Roca were prestigious private law academics and Roca in particular was a co-author of one of the leading tort law textbooks);[9] greater attention to doctrinal coherence and line-building across cases, and a judicial culture more attuned to European influences – references to European soft law texts suddenly went on the rise – mass litigation, and evolving private law paradigms.

This transformation qualifies as seismic for several reasons: (i) it altered the Court's institutional function, since the Supreme Court moved decisively from a model of corrective justice to one of doctrinal governance of private law; (ii) it changed how case law was produced: reasoning became more abstract and systematic, and old dogmas were revisited and abandoned; and (iii) it redefined the relationship between the Supreme Court and lower courts, which became executors of the Supreme Court doctrine rather than autonomous interpreters awaiting correction.

A decision that illustrates this turning point from a tort law perspective is the one referred to above.[10] The case at stake involved a bad fall in an

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cases before the same. He has been rightfully described as 'one of the most prestigious members of the Spanish bench, and is well known for his illustrative flare in presenting arguments and rulings' (*JM Lázaro,* The judge with an institutional mountain to climb, El País 25.7.2012 <https://english.elpais.com/elpais/2012/06/25/inenglish/1340624012_836695.html>). Under his baton, the Civil Chamber decisions adopted a new style and structure which, among many other novelties, incorporated a list of abbreviations. In a way, it may be suggested that Xiol's public law training forced him (and the Chamber he presided over) to look at the preceding doctrine of the court from a new angle. On his approach, see *Hispacolex,* Juan Antonio Xiol Ríos. Presidente de la Sala 1ª del Tribunal Supremo de Justicia (2010) <www.hispacolex.com/biblioteca/entrevistas/juan-antonio-xiol-rios-presidente-de-la-sala-1a-del-tribunal-supremo-de-justicia/>.

[9] See *E Roca Trias/M Navarro Michel,* Derecho de Daños. Textos y materiales (8th edn 2020). Vicente Montés' outstanding legal production is commented upon by *FP Blasco Gascó et al* (eds), Estudios jurídicos en homenaje a Vicente L. Montés Penadés (2011); on his persona also see *F Blasco*, Discurso del doctorado Honoris causa a Vicente Luis Montés, Almaig, estudis i documents 26 (2010) 14–21. Legal scholars from Montés' *alma mater* (University of Valencia) joined efforts with some other tort experts to give continuity to an unfinished scholarly work of his in an impressive two volume set by *ME Clemente Meoro/ME Cobas Cobiella* (eds), Derecho de Daños (2021).

[10] The reporter judge in this case was Marín Castán. While the judgment is a collective act of the court, the reported judge (magistrado ponente) acts as an intellectual and organisational pivot of the decision, coordinating deliberation and translating the majority's position into a coherent text. A judge in the minority may file a disssenting opinion.

apartment. The claimant suffered injuries after tripping over a toy left on the floor inside his friends' private home and sought compensation on the basis of tort liability under art 1902 of the Spanish Civil Code (CC).[11] The Supreme Court dismissed the claim. It held that liability in tort requires proof of fault or negligence (*culpa*), as well as a causal link between the defendant's conduct and the damage suffered. The Court rejected any automatic or objective attribution of liability on the basis of a mere risk-creation, stressing that not every accident gives rise to compensation. In particular, the Court considered that the presence of a toy on the floor of a home constituted a foreseeable and ordinary risk inherent in everyday life, especially in a domestic environment. The accident was therefore classified as a mere fortuitous event (*caso fortuito*), for which no liability could be imposed in the absence of negligent conduct.[12]

The judgment is often cited as a leading authority for reaffirming a fault-based model of tort liability in Spanish law and for rejecting an expansive interpretation of objective liability beyond situations involving abnormal or extraordinary risk. This is of paramount importance, since for decades Spanish case law had interpreted art 1902 CC flexibly, effectively shifting the burden of proof to defendants and raising the standard of care to the point that liability approached strict liability, despite the formal or apparent retention of fault as a principle.[13] Recent Supreme Court decisions, however, mark a corrective turn and reverse the judicial tide: they reject any reversal of the burden of proof, refuse to ground liability on the mere creation of risk, and adopt a more restrictive approach that limits defendants' liability, as illustrated both in the present case and in subsequent decisions. A previous decision that paved the way for such a development was another decision on a bad fall, STS 149/2007, 22 February 2007.[14]

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[11] Royal Decree (Real Decreto, RD) of 24 July 1889, *por el que se publica el Código Civil* (Official Gazette [Gaceta de Madrid] no 206, 25.7.1889). A translation of the tort law provisions can be found at *A Ruda*, Spain, in: E Karner/K Oliphant/BC Steininger (eds), European Tort Law. Basic Texts (2nd edn 2018) 345.

[12] On liability for bad falls generally, see *A Ruda*, Comentario a la Sentencia de 6 de junio de 2002: Responsabilidad civil extracontractual. Caída en portal de edificio. Prueba del nexo causal. Responsabilidad por culpa de la comunidad de propietarios. Tendencia objetivadora: creación de riesgo para terceros. Actividad no peligrosa. Predisposición y "culpa" de la víctima. Valoración de la prueba: informe pericial, Cuadernos Civitas de jurisprudencia civil (CCJC) 60 (2002) 1067–1080 and *ML Kubica*, La responsabilidad civil por caídas en establecimientos abiertos al público (2017).

[13] Such stance was described in the seminal monograph by *S Cavanillas Mugica*, La transformación de la responsabilidad civil en la jurisprudencia (1987).

[14] ECLI:ES:TS:2007:1032. The decision's reporter judge was Xiol.

In light of the foregoing, it must be concluded that, within contemporary Spanish case law, the use of risk as a criterion of attribution does not constitute the general rule, unlike what happened *de facto* under the previous case law. Admittedly, however, there may be a number of situations in which such attribution is deemed to arise, mostly involving intrinsically dangerous activities.[15] At any rate, the decision under comment is illustrative of the criterion generally adopted under Spanish law, according to which in cases involving falls, the injured party ordinarily bears the consequences of the damage, insofar as such incidents are typically attributed to a lack of due care on the part of the victim.[16]

2. STS 544/2015, 20.10.2015[17]

The following decision recounts a particularly painful tragedy. As may be recalled,[18] a number of Thalidomide victims, grouped under an association known as AVITE, sought compensation for damage allegedly suffered as a result of in utero exposure to the drug. They claimed that they had not received any compensation for the harm suffered, including long-term sequelae that had manifested only many years after the initial exposure. The court of first instance awarded compensation notwithstanding the significant lapse of time between the exposure and the filing of the claim, which clearly exceeded the one-year limitation period established by the Spanish Civil Code (art 1968.2). However, the Court of Appeal overturned that decision and ruled in favour of the defendant pharmaceutical company (Grünenthal Pharma SA, a subsidiary of the

[15] On which, see *E Roca Trías*, El riesgo como criterio de imputación subjetiva del daño en la jurisprudencia del Tribunal Supremo español, InDret 4 (2009) 1, 10 <www.indret.com>. More extensively, see also *ML Kubica*, Fundamentos y técnicas de desarrollo de la responsabilidad objetiva (2017). On strict liability under Spanish law, see *X Basozabal Arrue*, Responsabilidad extracontractual objetiva. Parte general (2015).

[16] From a critical perspective in recent legal scholarship, see *M Yaben Peral*, La responsabilidad patrimonial objetiva por caídas en la vía pública (certeza de la incerteza) (2025); *A Yáñez de Andrés*, Caídas de viandantes y servicios públicos deficientes, Diario La Ley 10584 (2024) <https://diariolaley.laleynext.es/>; *A Quintana Afonso*, Accidente sufrido en una iglesia católica, Diario La Ley 10351 (2023) <https://diariolaley.laleynext.es/>; *idem*, Responsabilidad extracontractual derivada de accidente dentro de una iglesia católica (2023); also see *L Morate Martín*, Responsabilidad patrimonial del municipio: criterios de exoneración administrativa en las caídas en la vía pública, in: E Ortega Burgos/F Pastor Ruiz (eds), Derecho administrativo 2023 (2023) 721–734.

[17] ECLI:ES:TS:2015:4149.

[18] See *A Ruda*, Spain, in: E Karner/BC Steininger (eds), ETL 2015 (2016) 581, no 39.

German company Chemie Grünenthal GmbH) on the ground that the claimants had failed to prove the existence of a causal link between the defendant's conduct and the damage alleged. Although the claimants submitted an expert report linking the type of damage for which compensation was sought to exposure to the defective drug, the court found that the link was merely statistical or general. Consequently, the specific harm suffered by the individual claimants before the court was not shown to be causally attributable to the defendant's conduct.

The Spanish Supreme Court (*Tribunal Supremo*) upheld the Court of Appeal's judgment. It held that the drug had been marketed in the 1950s and 1960s and that liability for damage resulting from such exposure, which had been known for several decades, was clearly time-barred. In particular, the Supreme Court rejected the argument that the harm constituted continuous damage (*daños continuados*) and accordingly dismissed the claimants' contention that the limitation period had been suspended on the basis that the damage was allegedly ongoing. The Court also dismissed the argument that the limitation period had been interrupted or suspended by the adoption of a government regulation that provided relief to victims. With regard to causation, the Court acknowledged that there was no doubt that damage had been caused by in utero exposure to the drug. The judgment therefore recognised that the victims could bring a separate claim for damage that could not be considered at the time and might materialise in the future.

The claim brought by Thalidomide victims attracted considerable attention in Spain, as the Supreme Court's decision ultimately left them without compensation. This outcome may be partly explained by shortcomings in the legal strategy adopted, in particular the failure to clearly distinguish between initial damage, which was known from the outset and time-barred, and so-called late damage (*daños tardíos*). Some late-manifesting injuries were already known years before and are likely time-barred, whereas other unforeseeable forms of damage (such as arthrosis) might still give rise to claims, albeit with significant difficulties in proving the manufacturer's fault, if one bears in mind that damage was foreseeable when the drug was marketed.

Although Grünenthal's resistance to compensation may be criticised in light of its continued marketing of the drug despite known risks, the judgment did leave open the possibility of a new claim limited to late damage. In practice, however, the length of judicial proceedings and the difficulty of distinguishing new from old damage cast doubt on the effectiveness of tort law as a solution. This points instead to the need for mechanisms based on social solidarity, such as compensation schemes.

While the German Contergan Foundation provides some relief, Spanish victims largely do not benefit due to strict evidentiary requirements.

This case constitutes a paradigmatic example for the analysis of limitation periods in cases of long-term or latent damage, the distinction between permanent, continuous, and late-manifesting damage,[19] and the structural limits of tort liability in large-scale, historically rooted mass litigation. Although some authors have suggested that the procedural strategy adopted by the claimants may not have been the most appropriate, as it failed to clearly differentiate between damage that was already known and therefore time-barred, and genuinely late-manifesting or unforeseeable damage that might have justified a distinct legal approach,[20] the Spanish Supreme Court did not reverse or substantially modify its position in subsequent Thalidomide-specific litigation, and the decision has been confirmed and indirectly developed through subsequent case law on latent damage, prescription, and mass harm, which helps contextualise and consolidate its reasoning.[21]

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[19] On which, see *M Yzquierdo Tolsada*, Prescrita la acción contra los fabricantes de la Talidomida (comentario de la sentencia del Tribunal Supremo de 20 de octubre de 2015), Revista de la Asociación Española de Abogados Especializados en Responsabilidad Civil y Seguro (RAEAERCS) 57 (2016) 57–77; *E Llamas Pombo*, Daño continuado y talidomida, 129 Práctica derecho daños: Revista de Responsabilidad Civil y Seguros 2016, 1 and *J Avilés García*, Más allá de la prescripción: problemas interpretativos sobre el alcance de la Responsabilidad Civil en el caso de la talidomida, Revista de responsabilidad civil, circulación y seguro (RRCCS) 1 (2017) 6–25; *idem*, Tipología de daños, causalidad y prescripción: (A propósito del caso de la talidomida en España), Diario La Ley 8784 (2016) <https://diariolaley.laleynext.es/>. Also see *I Barreda*, El caso de la talidomida en España: entre la prescripción legal y el daño continuado, Actualidad del derecho sanitario 208 (2013) 810–815.

[20] See *E Moure González*, Las sentencias de la Talidomida. Recreación acrítica de lo que pudo haber sido y no fue, Diario La Ley 8718 (2016) <https://diariolaley.laleynext.es/> and *MD Ortiz Vidal*, Las dos claves olvidadas en el asunto de la "Talidomida": prescripción y un buen asesoramiento jurídico, in: B García Romero et al (eds), Cuestiones actuales de la prestación farmacéutica y los medicamentos (2017) 253–277.

[21] See *A Ruda*, Spain, in: E Karner/BC Steininger (eds), ETL 2013 (2014) 627, no 35. Also see *P Caballero Portero/C Fernández Moriano*, El regreso de la talidomida, Panorama actual del medicamento 460 (2023) 35-3; *A Piga Rivero/MT Alfonso Galán*, Talidomida, de nuevo ante los Tribunales, Actualidad del derecho sanitario 208 (2013) 805–809; *S Pintado Vázquez,* La catástrofe de la talidomida en el cincuentenario de su comercialización, Jano: Medicina y humanidades 1726 (2009) 34; *ML Martínez Frías*, Talidomida: 50 años después, Medicina clínica 139(1) (2012) 25–32; Daños por talidomida: prescripción de la acción: STS 21/7/2023, RRCCS 10 (2023) 43–45; *P Salvador Coderch et al*, Daños tardíos: Avite c. Grünenthal. Comentario a la SJPI nº 90 Madrid, 19.11.2013, sobre los daños causados por la talidomida, Indret: Revista para el Análisis del Derecho 1 (2014) 1–30 <www.indret.com>; *S Ramos González*, Talidomida II y los esfuerzos de AVITE por posponer el inicio del

Although it would generally be possible to hold the public authorities liable for damage caused by a drug whose marketing authorisation was granted negligently, or where the administration fails to order its withdrawal once it is discovered to cause harm, this possibility remains today more theoretical than real, since, in practice, the administration has not, to date, been found liable in any such cases.[22]

3. STS (Criminal Chamber) 865/2015, 14 January 2016[23]

The third decision highlighted here dealt with the *Prestige* case, widely regarded as the most serious environmental pollution disaster in Spanish history.[24] The *Prestige* oil tanker sank off the Galician coast in 2002 after suffering structural damage during a storm, causing a massive oil spill that affected Spain and neighbouring countries. Rather than towing the damaged vessel to a safe harbour, Spanish authorities ordered it to be taken further out to sea. After several days adrift, the ship broke in two and sank, worsening the environmental disaster.[25]

The vessel was – as is usually the case in this type of incident – an ageing tanker sailing under a flag of convenience and owned by a single-asset company, which complicated potential civil claims. Spanish authorities

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plazo de prescripción de la acción con base en el conocimiento tardío de las patentes de la Talidomida y otros documentos inscritos en registros públicos (Arts. 1968.2 y 1969 CC), CCJC 124 (2024) 279–296; *I Arana de la Fuente/E Blanco Martínez*, Responsabilidad civil por daños causados por la talidomida: cómputo del plazo de prescripción: Sentencia del Tribunal Supremo de 21 de julio de 2023, Anuario de derecho civil (ADC) 77(2) (2024) 929–972. An appeal before the Constitutional Court also failed, see *MJ Vaquero Pinto*, Historia del caso de la talidomida. Dies a quo del plazo de prescripción de la acción de responsabilidad civil: prescripción y amparo constitucional, Derecho Privado y Constitución 31 (2017) 275–316 and *A Moya Jiménez*, Jurisprudencia reciente: la talidomida y el Tribunal Constitucional, RRCCS 10 (2016) 60 f.

[22] See *MÁ Parra Lucán*, La responsabilidad civil por medicamentos y productos sanitarios a la luz del caso de la talidomida, Revista CESCO de Derecho de Consumo 8 (2013) 130–146, at 146 <https://dialnet.unirioja.es/descarga/articulo/4524508.pdf>.

[23] ECLI:ES:TS:2016:11. Commented upon by *A Ruda*, Spain, in: E Karner/BC Steininger (eds), ETL 2016 (2017) 582, nos 17–24.

[24] Among others, see *E Sierra Noguero/D Callejon Muzelle*, Los casos 'Prestige' y 'Aznalcóllar' y la responsabilidad civil medioambiental en el Estado español, Economist & Jurist 31(272) (2023) 80–91.

[25] On damage derived from the spill, see *A Ruda*, La tipología de los daños causados por el "Prestige", in: S Álvarez González/MP García Rubio (eds), La responsabilidad por los daños causados por el hundimiento del Prestige (2007) 37–112; on compensation of damage to the environment as such, *idem*, El daño ecológico puro (2017).

chose not to pursue uncertain litigation against foreign actors (such as the shipyard in China that had recently repaired the hull) and instead focused on criminal proceedings against the ship's captain. The Court of Appeal of A Coruña had held that the precise cause of the sinking could not be established. The captain was convicted only of disobedience to authorities and acquitted of environmental crimes, a decision that sparked widespread public criticism. The case was subsequently appealed to the Spanish Supreme Court. According to the latter, the *Prestige*'s captain knowingly commanded a ship that was unfit for navigation and repeatedly disobeyed orders from the maritime authorities. His conduct was found to be especially serious because it not only involved disobedience but also created a risk of catastrophic and irreversible environmental damage, constituting an environmental crime under art 326.e of the Spanish Criminal Code (CP).[26]

The Court was particularly critical of the captain's decision to flood the ship's tanks to stabilise it, a manoeuvre that weakened the vessel's structure and ultimately contributed to its sinking.[27] Overall, the captain was found to have increased the permissible risk of his activity and to have breached his objective duty of care. In tort liability terms, the Supreme Court departed from the lower court's ruling and held the captain liable under Spanish law. Although the 1992 Civil Liability Convention[28] – applicable to the case – normally channels liability to the shipowner, the Court applied the Convention's exception for intentional or reckless conduct, finding the captain grossly negligent. The Spanish state had advanced the compensation payouts, which affected individuals could claim from either those responsible for the accident or the International Oil Pollution Compensation (IOPC) Fund.[29] The shipowner was held subsidiarily liable due to its knowledge of the ship's poor condition. The insurer (London P&I Club) was found directly liable up to the policy limit of USD 1 billion, and the IOPC Fund was also held liable, with compensation to be determined later under the principle of full reparation. The IOPC Fund was eventually required to pay up to the limit set in its governing convention. At the time of the incident, that limit was 135 million SDRs (Special Drawing Rights) (approximately

[26] Organic Act 10/1995, of 23 November, *del Código Penal* (BOE no 281, 24.11.1995).

[27] From an engineering perspective, see *G Polo*, De nuevo el Prestige, Ingeniería naval 1030 (2024) 75 f.

[28] Instrument of Spain's accession to the 1992 Protocol amending the International Convention on Civil Liability for Oil Pollution Damage, 1969. Done in London on 27 November 1992 (BOE no 225, 20.9.1995).

[29] See *M Asensio Ruiz,* Environmental liability: the sinking of the vessel "Prestige", ConsorSeguros Revista Digital 10 (2019) <https://www.consorsegurosdigital.com/en/numero-10/content/reviews/environmental-liability-the-sinking-of-the-vessel-prestige>.

€ 147.9 million at the time) – the maximum amount the Fund could be held liable to pay under the 1992 Fund Convention before any supplementary mechanisms applied.[30]

This judgment brought an end to the domestic litigation concerning one of the most significant cases of marine pollution to have occurred off the Spanish coast. The case profoundly shaped Spanish public opinion and left a lasting mark on the country's collective imagination.[31] One particular legal feature of the case is that it addresses not only criminal liability but also civil liability, in accordance with the general rule in Spanish law (art 109 ff CP).[32] The approach adopted is, however, striking. First, it is remarkable that the captain – widely portrayed as having acted heroically during the incident – is ultimately cast as the story's sole villain. In order to reach this conclusion, the Court engages in a complex and arguably questionable line of reasoning that allows it to circumvent the application of the Civil Liability Convention, despite the Convention's clear rules on channelling of liability and liability caps. It is difficult to understand why the Court disregards the protection afforded to the captain under the Convention and instead gives precedence to domestic law. Moreover, with the benefit of hindsight, the Court portrays the captain as having a comprehensive awareness of the potential consequences of an oil spill – an assumption that appears unrealistic and effectively equates his conduct with that of someone knowingly courting disaster.

The Supreme Court's decision was also controversial because it assigned liability to the captain despite the lower court's finding that

[30] See IOPC, Twenty years since the Prestige incident (2022) <https://iopcfunds.org/news/twenty-years-since-the-prestige-incident/>. According to the same source, the London Club paid € 22.8 million.

[31] For instance, see *U Fellone Pérez/A Pajón Fernández*, "El mar escupía un lamento". Respuestas musicales ante desastres ecológicos en la España contemporánea: los casos del Prestige y el Mar Menor, Cuadernos de música iberoamericana 38 (2025) 19–48 <https://revistas.ucm.es/index.php/CMIB/article/view/98873/4564456574264>; *MA Rodríguez González*, Arte, activismo y educación: una cadena humana escolar ante la marea negra del Prestige, Arte, individuo y sociedad 4 (2025) 713–724 <https://revistas.ucm.es/index.php/ARIS/article/view/101453/4564456574189>; *JM Estévez-Saá/J Cañero Serrano*, Del Prestige al Toconao: una tragedia repetida, sufrida y narrada transculturalmente a ambos lados del Atlántico, in: E Cerdá Redondo (ed), Climate Change and Trans-Atlantic Transformations (2024) 171–184 and *D Vilavedra Fernández*, Una Galicia otra. Posibilidades disidentes en la narrativa post-Prestige, in: C Claesson (ed), Novela postcrisis en la España plurilingüe (2024) 310–336.

[32] More generally on this rule, see *L Bachmaier Winter/C Gómez-Jara Díez/A Ruda,* Blurred borders in Spanish tort and crime, in: M Dyson (ed), Comparing Tort and Crime (2015) 223–270.

causation could not be established. This approach suggests that the Court may have been unwilling to accept that the accident resulted from unknown factors or chance. This reveals a certain predisposition in Spanish case law to dispense with causation in difficult cases, as well as a will to shield the Spanish authorities from responsibility. The question of whether victims of the *Prestige* disaster actually received compensation is complex and unresolved, as the large compensation ordered against the insurer has not yet been collected, due to UK arbitration and enforcement issues that block execution of the Spanish judgment.[33] The subsequent litigation – even reaching the ECJ[34] – has aptly been described as an odyssey.[35] In practice, the polluter-pays principle is significantly diluted.

4. STS 581/2002, 7 January 2002[36]

Unlike some common law jurisdictions and a limited number of continental legal systems, Spanish tort law has consistently rejected wrongful

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[33] See *M Alba Fernández*, Nuevo hito en el caso Prestige: Nota sobre la sentencia de la High Court of Justice (Commercial Court) de 6 de ocubre de 2023 en el litigio entre el London Steam-Ship Owners' Mutual Insurance Association Limited y el reino de España, Cuadernos de derecho transnacional (CDT) 16(1) (2024) 656-670 <https://e-revistas.uc3m.es/index.php/CDT/es/article/view/8440>; *A Yáñez de Andrés*, El caso "Prestige" sucintas reflexiones actuales, Diario La Ley 10429 (2024) <https://diariolaley.laleynext.es/>; *A Gilabert Gascón*, El caso "Prestige" en el año de su vigésimo aniversario. Problemas pasados, presentes y futuros, Revista de Derecho del Sistema Financiero: mercados, operadores y contratos 4 (2022) 241–272 and *G Caballero/D Soto-Oñate*, Environmental crime and judicial rectification of the Prestige oil spill: The polluter pays, Marine Policy 84 (2017) 213–219.

[34] See *MC Urcelay Lecue*, El TJUE considera que prevalece la sentencia española que condena a la aseguradora del Prestige sobre el arbitraje británico que la exonera: Sentencia TJUE 20 junio 2022 (TJCE 2022, 140). Asunto C-700/20: London Steam-Ship Owners' Mutual Insurance Association Limited (London P&I Club) contra Reino de España (Gran Sala), Revista Aranzadi Doctrinal (RAD) 1 (2023) <https://www.aranzadilaley.es/tienda/legalteca> and *E Sierra Noguero*, Estudio de Derecho español, inglés y comunitario sobre la extensión al tercero perjudicado del convenio arbitral y de ley aplicable del seguro marítimo de responsabilidad civil, CDT 15(2) (2023) 942-961 <https://e-revistas.uc3m.es/index.php/CDT/es/article/view/8085>.

[35] See *O Gómez Fasanella/E de España Valenzuela*, La odisea judicial entre London Steam-Ship Owners-Mutual Insurance Association Limited y el Reino de España: Una aventura legal que está lejos de concluir, CDT 16(1) (2024) 798–805 <https://e-revistas.uc3m.es/index.php/CDT/es/article/view/8447>.

[36] ECLI:ES:TS:2002:4137. The decision is commented upon by *MP García Rubio/J Lete*, Spain, in: H Koziol/BC Steininger (eds), ETL 2002 (2003) 380, nos 2–7.

life claims.[37] In fact, the Spanish Supreme Court has never upheld an action in which a child seeks compensation on the basis that, due to medical negligence, they were born with a disability and that non-existence would have been preferable to life with impairment. Consequently, it is not possible to identify a 'first judgment' of the Spanish Supreme Court recognising wrongful life; rather, one must refer to the first one in which the Court expressly addressed and rejected such claims. That foundational ruling is the one mentioned above.

In the case at stake, the Court was confronted with a claim brought, directly or indirectly, in the name of a child born with serious disabilities, alleging that negligent prenatal diagnosis had deprived the mother of the possibility of terminating the pregnancy. The claim sought to characterise the child's very existence, under conditions of disability, as compensable damage. The Court categorically rejected this construction. Legal scholarship has noted that, under Spanish law, such claims are usually dismissed, yet the Supreme Court does not engage in – or place particular emphasis on – the legal reasoning required to justify that outcome. In the case under comment, the decision laconically concludes that the baby's handicap was not caused by the physician. Nevertheless, in recent years, one can observe a certain increase in the Court's attention to legal reasoning, including arguments like: (i) life cannot constitute legally compensable damage within the meaning of tort liability law; (ii) the counterfactual comparison required by wrongful life is legally impossible, as non-existence lacks juridical and ontological content capable of evaluation; and (iii) the proper subject of legal protection is parental autonomy, not the child's existence. As a result, harm 'belongs' to the parents, not to the child.[38] In sum, the Supreme Court excluded the possibility of recognising wrongful life as a valid cause of action under Spanish law.

The position adopted in the 2002 judgment has been consistently reaffirmed in later decisions of the Civil Chamber. At the same time, the Supreme Court has progressively refined and consolidated the admissibility of claims commonly labelled as wrongful birth. These actions are framed as compensation for the loss of the parents' opportunity to decide freely and responsibly about reproduction, due to deficient medical information

[37] See *A Ruda*, I didn't ask to be born: wrongful life from a comparative perspective (2010) 1 Journal of European Tort Law (JETL) 204–241 <https://www.degruyterbrill.com/document/doi/10.1515/jetl.2010.204/html>, with further references.

[38] See *A Macía Morillo*, El tratamiento de las acciones de wrongful birth y wrongful life a la luz de la nueva ley sobre interrupción voluntaria del embarazo, Revista jurídica Universidad Autónoma de Madrid 23 (2011) 83–98 <http://hdl.handle.net/10486/13725>, 96.

or negligent prenatal diagnosis. The compensable harm is thus conceptualised as a violation of parental autonomy.[39]

5. STS 1513/2019, of 17 May 2019[40]

One of the most distinctive features of Spanish tort law is the central role of the compensation schedule, or tariffication system (commonly referred to as the *baremo*), laid down as an annex to the Road Traf-

[39] In legal scholarship, see *A Paz Garibo*, El derecho a la vida cuando ésta es frágil como una exigencia de justicia: la perspectiva que ofrecen las acciones de "wrongful birth" y "wrongful life" sobre las personas con discapacidad, Persona y derecho: Revista de fundamentación de las Instituciones Jurídicas y de Derechos Humanos 81 (2019) 323–348; *P Gutiérrez Santiago*, Responsabilidad médico-sanitaria por daños vinculados a la concepción, gestación y nacimiento de una persona, Revista Boliviana de Derecho 26 (2018) 18–57 <https://dialnet.unirioja.es/descarga/articulo/6510512.pdf>; *AM Romero Coloma*, Las acciones de *wrongful life* y su problemática jurídica, RRCCS 11 (2016) 28–37; *Á Luna Yerga*, Responsabilidad civil médico-sanitaria por anticoncepciones fallidas ("Wrongful conception") y por error de diagnóstico prenatal ("Wrongful birth y wrongful life"), in: A Ortí Vallejo/MC García Garnica/RP Rojo Álvarez de Manzaneda (eds), La responsabilidad civil por daños causados por servicios defectuosos: Estudio de la responsabilidad civil por servicios susceptibles de provocar daños a la salud y seguridad de las personas (2015) 501–526; *AI Berrocal Lanzarot*, La responsabilidad por daños relacionados con la procreación, La Ley Derecho de Familia: Revista jurídica sobre familia y menores 8 (2015) <https://www.aranzadilaley.es/tienda/legalteca>; *A Paños Pérez*, Responsabilidad civil médica por wrongful birth y wrongful life, Diario La Ley 8396 (2014) <https://diariolaley.laleynext.es/>; *E Toral Lara*, Las acciones Wrongful birth y wrongful life en el ordenamiento español, in: E Llamas Pombo (ed), Estudios sobre la responsabilidad sanitaria: un análisis interdisciplinar (2014) 251–289; *JL Tomillo Urbina*, Responsabilidad por daños al inicio de la vida: las acciones Wrongful Birth y Wrongful Life, in: D Larios Risco et al (eds), Tratado de derecho sanitario (2013) 253–272; *E Mazzilli*, La acción de Wrongful Life en la reciente jurisprudencia del Tribunal Supremo: dudas y cuestiones abiertas, Aranzadi civil-mercantil. Revista doctrinal 10 (2012) 79–111; *MN Pacheco Jiménez*, Responsabilidad médica derivada de negligencia en el diagnóstico prenatal: acciones "wrongful birth" y "wrongful life". Repercusión de la proyectada ley de protección de la vida del concebido, Parlamento y Constitución. Anuario 15 (2012-2013) 287–308 <https://dialnet.unirioja.es/descarga/articulo/5082725.pdf>; *idem*, El abogado y las reclamaciones de responsabilidad por diagnóstico prenatal: acciones "wrongful birth y wrongful life", in: M Gisbert Pomata et al (eds), Retos de la abogacía ante la sociedad global (2012) 1801–1811; *A Macía Morillo*, La responsabilidad médica por los diagnósticos preconceptivos y prenatales: Las llamadas acciones de wrongful birth y wrongful life (2005) 183 ff and many others.

[40] ECLI:ES:TS:2019:1513. Commented upon by *A Ruda,* Spain, in: E Karner/BC Steininger (eds), ETL 2019 (2020) 613, no 45.

fic Act.[41] Originally designed for road traffic accidents, it provides standardised criteria and tables for assessing bodily harm, death, and economic loss. Over time, it has acquired broader relevance and is frequently applied by courts as a guiding reference beyond traffic accidents, while remaining subject to the principle of full compensation.

One case which provides an excellent example of that concerns the application of the *baremo* to an air crash, namely, the judgment arising from the Spanair JK5022 accident (Madrid-Barajas, 2008). In this judgment, the Spanish Supreme Court addressed whether the statutory compensation schedule in question could be used to quantify damages arising from an aviation disaster, an area governed neither by the Road Traffic Act nor by its underlying risk rationale. The Court held that the traffic accident compensation schedule may be applied as a guiding criterion (*criterio orientador*) in the context of an air crash, despite the fact that such accidents fall outside the material scope of road traffic liability law. The justification for this approach lies in considerations of legal certainty, equality of treatment, and methodological coherence in assessing personal injury damages.

Crucially, however, the Court introduced an important qualification to this application. It stressed that, in cases such as large-scale aviation accidents, the *baremo* does not operate as a closed or binding system: its internal limitations, ceilings, and corrective factors cannot be mechanically transposed, and its use must remain flexible and non-restrictive, in accordance with the overarching principle of full compensation of damage (*restitutio in integrum*). The Supreme Court expressly rejected the idea that the compensation schedule could function as a *de facto* cap on damages in contexts structurally different from road traffic accidents. The exceptional nature of aviation disasters – characterised by catastrophic harm, mass casualties, and a risk profile distinct from that of ordinary traffic – requires an adapted and corrective application of the schedule. In short, the *baremo* may serve as a reference framework, but not as a normative ceiling.[42]

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[41] Act 35/2015, of 22 September, *de reforma del sistema para la valoración de los daños y perjuicios causados a las personas en accidentes de circulación* (BOE no 228, 23.9. 2015).

[42] In legal scholarship, see *G Iturmendi Morales*, La valoración del daño personal en el caso Spanair, RRCCS 9 (2019) 3; *A Vicente Sempere Navarro*, Indemnización por el accidente de Spanair (vertientes civilista y laboralista), Revista española de derecho del trabajo 228 (2020) 13–25; *E Farnós Amorós*, La aplicación orientativa del baremo de tráfico y sus límites: de nuevo sobre el "caso Spanair", CCJC 120 (2022) 75–94; *P Jarne Muñoz*, De nuevo sobre la problemática valoración del daño en las catástrofes

This decision is widely regarded as a landmark in the Supreme Court's evolving approach to the transversal use of the traffic compensation schedule beyond its original statutory domain.[43] Together with later case law on asbestos-related diseases and other mass-harm scenarios, it supports the view that the *baremo* has become a general tool for the rationalisation of damages, while remaining subordinated to the principle of full compensation. The decision under comment may be seen as a paradigmatic example of how the Supreme Court reconciles standardisation and flexibility in quantifying personal injury damages outside the field of motor vehicle liability. Such an expansionist interpretation of the *baremo* is not always well received[44] and it has been suggested that there should probably be a separate *baremo* for medical malpractice cases.[45]

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aéreas: a propósito de los primeros pronunciamientos del tribunal supremo en relación con el accidente de Spanair de 20 de agosto de 2008, Revista de Derecho del Sistema Financiero: mercados, operadores y contratos (2020) 309–324. On other aspects of the case, also see *C Llorente Gómez de Segura*, "Forum non conveniens" revisited. El caso Spanair, CDT 3(2) (2011) 267–281 <https://e-revistas.uc3m.es/index.php/CDT/es/article/view/1336/557>; *M Herranz Ballesteros*, Conflicto de jurisdicciones y declinación de la competencia: los asuntos Honeywell y Spanair, CDT 5(2) (2013) 592–609 <https://e-revistas.uc3m.es/index.php/CDT/es/article/view/1826/865>; *I Lorente Martínez*, Litigación internacional, forum non conveniens y daños punitivos: el caso del accidente aéreo de Spanair, in: JR Robles Reyes (ed), Aportaciones de juristas noveles a la ciencia jurídica (2015) 115-128; *ID González Barrios*, Accidente de "Spanair". Interpretación del convenio de Montreal: cómputo del plazo de caducidad e imposición de los intereses del art. 20 LCS: Sentencia del Tribunal Supremo de 22.07.21, RRCCS 9 (2021) 37 f.

[43] Also see *A Ruda,* Spain, in: E Karner/BC Steininger (eds), ETL 2023 (2024) 633, no 70, with further references. Also see *J Solé Feliu*, Responsabilidad civil y accidente de navegación aérea. Un compendio de la jurisprudencia sobre el caso "Spanair": comentario a la STS 963/2023, de 14 de junio, CCJC 124 (2024) 177–204. This other decision extends that indicative (guidance-only) character of the *baremo* to the determination of who qualifies as an injured party (*perjudicados*). See *E Monterroso Casado*, La reparación ad integrum por daño moral en la responsabilidad civil de accidentes, Cuadernos de Derecho Privado 9 (2024) 99–139 <https://doi.org/10.62158/cdp.63>, 124.

[44] Among others, see *F Vasques-Terreiro Vega*, Únete a la rebelión contra el baremo de tráfico (Rogue one), Diario La Ley 8853 (2016).

[45] Among others, see *JA Badillo Arias*, ¿Es necesario un baremo para daños médicos?, RRCCS 9 (2014) 3; *E Llamas Pombo*, Negligencia médica, daño moral y baremo, Práctica derecho daños: Revista de Responsabilidad Civil y Seguros 103 (2012) 4 f.