

General State Administration (Administración General del Estado) v C.



29/06/2026

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Abstract

On 14 November 2023, C., an Algerian national, and two other individuals were intercepted by Spanish authorities while attempting to reach Ceuta by swimming. They were subsequently pushed back to Morocco pursuant to the Tenth Additional Provision of the Spanish Foreigners Act, which establishes the following Special Regime for Ceuta and Melilla:

“1- Foreign nationals detected at the border line within the territorial boundaries of Ceuta or Melilla while attempting to overcome the border barriers in order to cross the border irregularly may be refused entry in order to prevent their unlawful entry into Spain.

2- In all cases, refusal of entry shall be carried out in accordance with Spain's international obligations relating to human rights and international protection.

3- Applications for international protection shall be lodged at the designated facilities located at the border crossing points and shall be processed in accordance with the legislation governing international protection.”

C. challenged the pushback before the Contentious Administrative Court of Ceuta, which upheld the claim and annulled the measure. The State appealed this decision before the High Court of Justice of Andalusia, which [on 24 March 2025](#), confirmed the first instance judgment. The State subsequently lodged an appeal on cassation before the Supreme Court, which likewise upheld the decisions of the lower courts.

The Supreme Court referred to the judgments of the Spanish Constitutional Court issued in 2020 ([STC 172/2020 of 19 November 2020](#)) and 2021 (STC 13/2021) concerning the Special Regime applicable to Ceuta and Melilla. In those judgments, the Constitutional Court held that “border rejection” constitutes a new legal regime which, in a specific situation (namely, the detection of foreign nationals at the border line of the territorial boundaries of Ceuta or Melilla while they are attempting to overcome border containment elements in order to cross the border irregularly) allows the administration to carry out a material act of border surveillance aimed at immediately restoring the legality breached by the attempted irregular border crossing.

The Supreme Court also referred to the judgment of the European Court of Human Rights (ECtHR) in [N.D. and N.T. v Spain](#) (Applications Nos 8675/15 and 8697/1513, February 2020). In that case, the ECtHR noted that, for States such as Spain whose borders coincide, at least partially, with the external borders of the Schengen Area, the effectiveness of the rights guaranteed by the ECHR requires that they provide genuine and effective access to lawful means of entry, particularly border procedures for persons who have arrived at the border. These procedures must enable all persons facing persecution to submit an application for protection. The Supreme Court noted that the ECtHR held that, where such arrangements exist and guarantee the right to request protection under the ECHR, States “may refuse entry to their territory to aliens, including potential asylum-seekers, who have failed, without cogent reasons (...), to comply with these arrangements by seeking to cross the border at a different location, especially, as occurred in that case, by taking advantage of their large numbers and using force.”

Based on the above, the Supreme Court concluded that the Special Regime applicable to Ceuta and Melilla, namely ‘border rejection’ or pushbacks, is not established as a general rule applicable to all foreign nationals who attempt to cross the border irregularly, whether by land or by sea, as occurred in the present case. Rather, the court held that it applies only to those who attempt to cross the border by overcoming established border containment elements, such as fences, which cannot be equated with technological border-control devices, such as drones, thermal cameras, or sensors, that do not perform a material containment function but serve purposes of surveillance, detection, and alert.

On this basis, the Supreme Court dismissed the appeal and confirmed the decisions of the lower courts, finding that the applicable legal regime in this case was the expedited return procedure (*‘devolución’*) provided for in Article 58(3) of the Foreigners Act, which applies to third-country nationals who breach a prohibition on re-entry or to foreign nationals intercepted at the border or in its vicinity.

Nevertheless, the Supreme Court clarified that the Special Regime for Ceuta and Melilla refers to border containment elements and not exclusively to land-based containment elements or, specifically, to fences. Therefore, the regime could apply if maritime containment elements were established to protect the border line and individuals attempted to cross the border irregularly by overcoming such maritime containment elements.

 Country of Decision

Spain

 Court Name

ES: Supreme Court [Tribunal Supremo]

 Case Number

STS 2965/2026

 Date of Decision

29/06/2026

Country of Origin

Algeria

Keywords

Access to procedures

Return/Removal/Deportation

Source

[Spain - Poder Judicial](#)