



Unlawfulness of detention extended by the retroactive application of a change in the case-law

In today's Chamber judgment in the case of [Del Rio Prada v. Spain](#) (application no. 42750/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 7 (no punishment without law) of the European Convention on Human Rights; and

a violation of Article 5 § 1 (right to liberty and security) of the Convention.

The case concerned the postponement of the date of the applicant's release, in application of new case-law (the so-called "Parot doctrine"), adopted by the Supreme Court after she had been sentenced.

The Court considered that it had been impossible for Ms Del Rio Prada to foresee the retroactive application to her case of the change in the case-law on calculating remission, resulting in an extension of nine years to the length of her sentence.

The Court further held that Spain was to ensure the applicant's release at the earliest possible date.

Principal facts

The applicant, Ines Del Rio Prada, is a Spanish national who was born in 1958. She is serving a prison sentence in the region of Murcia (Spain). In eight sets of criminal proceedings for offences linked to terrorist attacks, she was sentenced to various prison terms. Served successively, the prison sentences would have totalled more than 3,000 years.

The applicant started serving her sentence in February 1989. In November 2000, having regard to the close legal and chronological connection between the offences, the *Audiencia Nacional* combined the various sentences and fixed the term to be served at 30 years, the maximum limit applicable under Article 70 of the 1973 Criminal Code, in force at the relevant time.

The case-law of the Spanish Supreme Court on prison benefits (particularly remission) changed in 2006. Although, under a judgment of 8 March 1994, the maximum term of 30 years provided for in Article 70 of the 1973 Criminal Code acted as a "new and autonomous sentence, to which the prison benefit provided for by law was applicable", the Supreme Court changed its position in a judgment of 28 February 2006 and

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

introduced the so-called "Parot doctrine", under which remission was to be applied to each sentence individually, and not to the maximum 30-year term.

On 24 April 2008, allowing for remission for work done in prison, the prison authorities proposed to release Ms Del Rio Prada on 2 July 2008. On 19 May 2008, however, the *Audiencia Nacional* asked the prison authorities to revise their calculation in application of the "Parot doctrine", following which the *Audiencia Nacional* decreed 27 June 2017 as the final date for the applicant's release. The appeal lodged by Ms Del Rio Prada before the *Audiencia Nacional* and the *amparo* appeal to the Constitutional Court were unsuccessful.

Complaints, procedure and composition of the Court

Relying on Article 7 (no punishment without law), the applicant complained that the Supreme Court's case-law had been applied retroactively. She also considered that her continued detention was contrary to Article 5 (right to liberty and security). Lastly, under Article 14 (prohibition of discrimination), she considered that the new case-law was applied by the Spanish courts for political reasons, to delay the release of prisoners convicted of acts of terrorism.

The application was lodged with the European Court of Human Rights on 3 August 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Corneliu **Bîrsan** (Romania),
Alvina **Gyulumyan** (Armenia),
Egbert **Myjer** (the Netherlands),
Ján **Šikuta** (Slovakia),
Luis **López Guerra** (Spain),
Nona **Tsotsoria** (Georgia),

and also Santiago **Quesada**, *Section Registrar*.

Decision of the Court

Article 7

Although measures concerning the execution of a sentence were not, in principle, part of the "penalty" within the meaning of Article 7, the Court was required to examine whether a particular measure amounted to a "penalty" for the purposes of that Article. In order to do so, the Court examined in the case of Ms Del Rio Prada the degree of accessibility and foreseeability of the relevant legislation and case-law.

The applicable provisions of the 1973 Criminal Code were somewhat ambiguous, and it was only on 8 March 1994 that the Supreme Court provided the first clarifications. Nonetheless, the practice of the prison authorities and of the Spanish courts consisted in considering the sentence to be served as a result of the 30-year maximum term established in Article 70 of the 1973 Criminal Code as though it were a new autonomous sentence, to which prison benefits such as remission for work were applied. Accordingly, at the time of the offences committed by the applicant and when the decision to combine her sentences was taken, the relevant Spanish law, including case-law, was, taken together, sufficiently precise as to enable her to identify the scope of the sentence and the manner of its execution.

In contrast, the applicant could not have foreseen that the method for calculating remission would be the subject of a change in the case-law (decision of the Supreme Court of 28 February 2006), thus calling into question the date of her release. The Court reiterated that the principle that only the law can define a crime and prescribe a penalty (no punishment without law) enshrined in Article 7 prohibits the criminal law from being interpreted broadly, to the detriment of the accused. The application of the Supreme Court's new interpretation had retroactively extended the applicant's sentence by nearly nine years, as the remission for work done in prison from which she ought to have been able to benefit was rendered invalid. Thus, this measure did not merely concern the execution of the sentence imposed on the applicant, but also had a decisive impact on the scope of the "penalty" within the meaning of Article 7.

The Court noted the absence of prior case-law along the lines of the Supreme Court's new interpretation; moreover, the Government accepted that prison and judicial practice still continued to follow the judgment of 8 March 1994 at the relevant time. In this regard, the Court emphasised that the domestic courts could not apply retroactively and to the detriment of the persons concerned the spirit of legislative changes that occurred after offences had been committed.

It had therefore been difficult, if not impossible, for Ms Del Rio Prada to foresee that the method for calculating remission would be the subject of a change in the Supreme Court's case-law in 2006 and that this change would be applied to her retroactively, thus extending substantially the duration of her imprisonment. In consequence, the Court concluded that there had been a violation of Article 7.

Article 5

The applicant did not contest the lawfulness of her detention prior to 2 July 2008, the date initially proposed for her release. She complained about her detention after that date.

As Ms Del Rio Prada had not been able to foresee the retroactive application to her case of the change in case-law on calculating remission, her detention had not been "lawful" since 3 July 2008, in breach of Article 5 § 1.

Article 14

The applicant alleged that the Supreme Court's new case-law had been used to delay the release of ETA prisoners. The Court considered that the principles applied by the *Audiencia Nacional* for calculating the applicant's prison benefits had been based on the case-law of the Supreme Court as set out in the judgment of 28 February 2006, a ruling that was general in scope and was therefore also applicable to individuals who were not members of ETA. The applicant's complaint under Article 14 was therefore dismissed as manifestly ill-founded.

Article 46

While it was for the respondent State, subject to supervision by the Committee of Ministers, to choose the means by which it would discharge its obligation under Article 46 (execution of judgments), the Court could, in exceptional cases, indicate the type of measure to be taken in order to put an end to the violation found. In the present case, the Court considered that Spain was to secure the applicant's release at the earliest possible date.

Just satisfaction (Article 41)

The court held that Spain was to pay the applicant 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,500 in respect of costs and expenses.

The judgment is available only in French.

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Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.