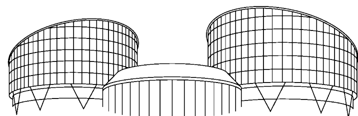

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
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ECHR 307 (2013)
21.10.2013

The Court delivers its Grand Chamber judgment in the *Del Río Prada* case

In today's Grand Chamber judgment in the case of Del Río Prada v. Spain (application no. 42750/09), which is final[1], the European Court of Human Rights held:

by fifteen votes to two, that there had been a **violation of Article 7** (no punishment without law) of the European Convention on Human Rights;

unanimously, that since 3 July 2008 the applicant's detention had not been lawful, in **violation of Article 5 § 1** of the Convention; and

by sixteen votes to one, that the respondent State was to ensure that the applicant was released at the earliest possible date.

The case concerned the postponement of the final release of a person convicted of terrorist offences, on the basis of a new approach – known as the "Parot doctrine" – adopted by the Supreme Court after she had been sentenced.

The Court considered that the applicant could not have foreseen either that the Supreme Court would depart from its previous case-law in February 2006, or that this change in approach would be applied to her and would result in the date of her release being postponed by almost nine years – from 2 July 2008 until 27 June 2017. The applicant had therefore served a longer term of imprisonment than she should have served under the Spanish legal system in operation at the time of her conviction. Accordingly, it was incumbent on the Spanish authorities to ensure that she was released at the earliest possible date.

Principal facts

The applicant, Inés del Río Prada, is a Spanish national who was born in 1958 and is currently serving a prison sentence in the region of Galicia (Spain). Between December 1988 and May 2000, in eight separate sets of criminal proceedings, she received a number of prison sentences for various offences linked to terrorist attacks carried out between 1982 and 1987. In all, the sentences amounted to over 3,000 years.

However, under Article 70.2 of the 1973 Criminal Code, as in force at the relevant time, the maximum "term to be served" (*condena*) by a convicted person was 30 years. This rule was also applicable where multiple sentences (*penas*) had been imposed in different proceedings if, as in Ms del Río Prada's case, the offences in question could have been tried as a single case because of the legal and chronological links between them. In November 2000 the *Audiencia Nacional* decided to combine the applicant's sentences and set a maximum term to be served, thus reducing the total of 3,000 years to a term of 30 years' imprisonment.

Following several decisions taken between 1993 and 2004 by judges responsible for the execution of sentences, Ms del Río Prada was granted remissions of sentence amounting to almost nine years for the work she had done while in prison, in accordance with Article 100 of the 1973 Criminal Code. In

1 Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

April 2008, having deducted these remissions from the maximum term of 30 years, the authorities at Murcia Prison (Spain), where Ms del Río Prada was being held at the time, proposed 2 July 2008 to the *Audiencia Nacional* as the date for her release.

In the meantime, the Spanish Supreme Court had departed from its previous case-law concerning remissions of sentence. Having found in a judgment of 8 March 1994 that the maximum 30-year term provided for in Article 70.2 of the 1973 Criminal Code was to be seen as a "new, independent sentence" to which all remissions of sentence were to be applied, it took the view in a judgment of 28 February 2006 that this term should no longer be treated as a separate sentence from those imposed in the various judgments convicting the accused, but rather as the maximum term a convicted person should spend in prison. Accordingly, remissions of sentence were henceforth to be applied to each of the sentences taken individually.

In the light of this new approach – known as the "Parot doctrine" – the *Audiencia Nacional* asked the prison authorities to change the proposed date of Ms del Río Prada's release and calculate a new date in line with the Supreme Court's recent case-law. In an order of 23 June 2008, based on a fresh proposal by the prison authorities, the *Audiencia Nacional* set the date for the applicant's final release at 27 June 2017. An appeal by the applicant to the *Audiencia Nacional* was rejected in July 2008, and her subsequent *amparo* appeal to the Constitutional Court was dismissed in February 2009.

Complaints, procedure and composition of the Court

Relying on Article 7 (no punishment without law), Ms del Río Prada complained that the Supreme Court's departure from the case-law concerning remissions of sentence had been retroactively applied to her after she had been sentenced, thus extending her detention by almost nine years. Under Article 5 § 1 (right to liberty and security), she further alleged that she had been kept in detention in breach of the requirements of "lawfulness" and "a procedure prescribed by law".

The application was lodged with the European Court of Human Rights on 3 August 2009. In a judgment of 10 July 2012 the Court held that there had been a violation of Article 7 and Article 5 § 1 of the Convention. On 4 October 2012 the Government requested that the case be referred to the Grand Chamber under Article 43 of the Convention (referral to the Grand Chamber). On 22 October 2012 the panel of the Grand Chamber accepted that request. A hearing was held on 20 March 2013.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Guido **Raimondi** (Italy),
Ineta **Ziemele** (Latvia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Elisabeth **Steiner** (Austria),
George **Nicolaou** (Cyprus),
Luis **López Guerra** (Spain),
Ledi **Bianku** (Albania),
Ann **Power-Forde** (Ireland),
Işıl **Karakaş** (Turkey),
Paul **Lemmens** (Belgium),
Paul **Mahoney** (the United Kingdom),
Aleš **Pejchal** (the Czech Republic),
Johannes **Silvis** (the Netherlands),
Valeriu **Griţco** (the Republic of Moldova),
Faris **Vehabović** (Bosnia and Herzegovina),

and also Michael **O’Boyle**, *Deputy Registrar.*

Decision of the Court

Article 7 (no punishment without law)

Firstly, the Court set out to determine, on the basis of the law and the practice of the Spanish courts, the scope of the “penalty” imposed on Ms del Río Prada. It appeared from Article 70.2 of the 1973 Criminal Code that the concept of “term to be served” (*condena*), corresponding to the maximum term of 30 years’ imprisonment, differed from that of the “sentences” (*penas*) imposed in the various judgments convicting the accused. At the same time, Article 100 of the 1973 Criminal Code had provided that prisoners were to be granted remissions of sentence for the work they did in prison, although it had not contained any specific guidance on how to apply such remissions when multiple sentences were combined and a maximum total term of imprisonment was fixed.

Despite the ambiguity of those provisions, before the Supreme Court had established the “Parot doctrine” in its judgment of February 2006, it had been the consistent practice of the Spanish prison and judicial authorities, when combining multiple sentences imposed on the same person and setting a maximum term to be served, to apply any remissions of sentence to the 30-year maximum term and not to each of the individual “sentences” imposed in the various judgments convicting the accused. Indeed, in its March 1994 judgment the Supreme Court had itself endorsed this approach.

Until the departure from case-law in February 2006, this approach had thus been applied to a large number of prisoners who, like Ms del Río Prada, had been convicted under the 1973 Criminal Code. The applicant had therefore had reason to believe that she would be treated in the same way. In other words, both at the time when the offences were committed and when the *Audiencia Nacional* decided in 2000 to combine the sentences and fix a maximum prison term, Spanish law – including the practice of the courts – had been sufficiently precise for Ms del Río Prada to comprehend the scope of the “penalty” imposed on her, namely a maximum term of 30 years’ imprisonment, from which any remissions of sentence for work done in detention would be deducted.

Secondly, the Court set out to determine whether the application of the “Parot doctrine” to Ms del Río Prada had altered only the “manner of execution” of her sentence or, on the contrary, had affected its “scope”. In that connection it reiterated the distinction between measures constituting a “penalty” and measures relating to its “manner of execution”; in theory, only the former were covered by Article 7. However, it also pointed out that this distinction was not always clear-cut in practice. Measures taken by the State after the final sentence had been imposed or while it was being served could conceivably result in the redefinition or modification of the scope of the “penalty” imposed by the trial court. Accordingly, the Court had to examine in each case what the “penalty” imposed actually entailed under domestic law – or, in other words, what its intrinsic nature was.

In the present case, the overall duration of the remissions of sentence granted to Ms del Río Prada – approximately nine years – had not been disputed by any of the courts dealing with her case. The order of June 2008 in which the *Audiencia Nacional* postponed the date of Ms del Río Prada’s final release until June 2017 had therefore not related to whether she deserved these remissions but rather to how they were to be applied.

The application of the “Parot doctrine” to Ms del Río Prada’s situation had deprived of any useful effect the remissions of sentence to which she was supposed to be entitled. The applicant, who had received multiple sentences, would now have to serve an actual term of 30 years’ imprisonment, on which her remissions of sentence had no effect whatsoever. Accordingly, the *Audiencia Nacional*’s recourse to the new method for applying remissions of sentence on the basis of the “Parot doctrine”

had not resulted solely in altering the “manner of execution” of the penalty imposed on Ms del Río Prada, but had also led to the redefinition of its “scope”. That being so, the order of 23 June 2008 fell within the ambit of Article 7.

Thirdly and lastly, the Court set out to establish whether the “Parot doctrine” had been reasonably foreseeable. It noted in this connection that the change in the system for applying remissions of sentence in Ms del Río Prada’s case had been the result of a new interpretation of the law by the Supreme Court in 2006. It was therefore necessary to determine whether this new interpretation had been consistent with a perceptible line of case-law development. However, the only relevant precedent had been the judgment of March 1994 in which the Supreme Court had taken the opposite approach to that pursued in its later judgment of February 2006. Furthermore, even before the judgment of March 1994, it had been the systematic practice of the prison and judicial authorities to apply remissions of sentence for work done in detention to the maximum term of 30 years.

Accordingly, at the time when Ms del Río Prada received her various sentences and when she was notified of the decision to combine them and set a maximum prison term, there had been no indication of any perceptible line of case-law development in keeping with the Supreme Court’s judgment of February 2006. Ms del Río Prada had therefore had no reason to foresee the departure from previous case-law resulting from the introduction of the “Parot doctrine”, or to believe that the *Audiencia Nacional*, as a result, would apply the remissions of sentence she had been granted to each of her sentences individually.

The Court therefore concluded that there had been a violation of Article 7.

Article 5 § 1 (right to liberty and security)

The Court noted, first of all, that the distinction made for the purposes of Article 7 between the “penalty” and its “manner of execution” was not decisive in relation to Article 5 § 1. Measures relating to the “execution” of a sentence could affect the right to liberty protected by Article 5 § 1, as the actual duration of deprivation of liberty depended partly on their application. Accordingly, while Article 7 applied to the “penalty” as imposed by the sentencing court, Article 5 applied to the resulting detention.

In the present case, the Court was in no doubt that the applicant had been convicted by a competent court in accordance with a procedure prescribed by law. Indeed, Ms del Río Prada herself had not disputed that her detention had been lawful until 2 July 2008, the date initially proposed by the prison authorities for her final release. However, the question to be determined was whether Ms del Río Prada’s continued detention after that date had been lawful. This required an examination of whether, at the time of her initial conviction and throughout the subsequent period of detention, the “law” authorising her continuing detention beyond 2 July 2008 had been sufficiently foreseeable in its application.

In the light of the considerations that had led it to find a violation of Article 7, the Court concluded that Ms del Río Prada could not reasonably have foreseen that the method used to apply remissions of sentence for work done in detention would change as a result of a departure from case-law by the Supreme Court in February 2006, and that the new approach would be applied to her. The application of the “Parot doctrine” in Ms del Río Prada’s case had resulted in delaying the date of her release by almost nine years. She had therefore served a longer term of imprisonment than she should have served under the Spanish legal system in operation at the time of her conviction, taking into account the remissions of sentence she had already been granted in conformity with the law.

The Court therefore concluded that since 3 July 2008, Ms del Río Prada’s detention had not been lawful, in violation of Article 5 § 1.

Article 46 (binding force and execution of judgments)

By virtue of Article 46, the High Contracting Parties undertook to abide by the Court's final judgments in cases to which they were parties, execution being supervised by the Committee of Ministers. In certain particular situations, with a view to assisting the respondent State in fulfilling its obligations under Article 46, the Court could seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation that had given rise to the finding of a violation.

Sometimes, where the nature of the violation found left no real choice as to the measures required to remedy it, the Court could decide to indicate only one such individual measure. Having regard to the particular circumstances of the present case and to the urgent need to put an end to the violations it had found, it considered it incumbent on the Spanish authorities to ensure that Ms del Río Prada was released at the earliest possible date.

Just satisfaction (Article 41)

The Court held, by ten votes to seven, that Spain was to pay Ms del Río Prada 30,000 euros (EUR) within three months, in respect of non-pecuniary damage. It also held, unanimously, that Spain was to pay EUR 1,500 to Ms del Río Prada in respect of costs and expenses.

Separate opinions

Judge Nicolaou expressed a concurring opinion.

Judges Villiger, Steiner, Power-Forde, Lemmens and Griţco expressed a joint partly dissenting opinion.

Judges Mahoney and Vehabović expressed a joint partly dissenting opinion.

Judge Mahoney expressed a partly dissenting opinion.

These opinions are annexed to the judgment.

The judgment is available in English and French.

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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.