



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

FIFTH SECTION

CASE OF GUIMON v. FRANCE

(Application no. 48798/14)

JUDGMENT
(Merits)

STRASBOURG

11 April 2019

FINAL

11/07/2019

This judgment became final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Guimon v. France,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Angelika Nußberger, *President*,

André Potocki,

Síofra O’Leary,

Mārtiņš Mits,

Gabriele Kucsko-Stadlmayer,

Lətif Hüseynov,

Lado Chanturia, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 11 April 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 48798/14) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a French national, Ms Laurence Guimon (“the applicant”), on 2 July 2014.

2. The applicant was represented by Ms M. Paulus Basurco, a lawyer practising in Saint-Jean de Luz. The French Government (“the Government”) were represented by their Agent, Mr F. Alabrune, Director of Legal Affairs at the Ministry of European and Foreign Affairs.

3. The applicant, who was imprisoned, alleged that the judicial authorities’ refusal to allow her to leave prison under escort to travel to a funeral home and pay her respects to her deceased father had infringed her rights as guaranteed by Article 8 of the Convention.

4. On 18 October 2017 the Government were given notice of the application.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1969.

6. At the relevant time she was detained in Rennes Prison. She has been released on licence since 1 March 2016.

7. On 24 January 2003 the applicant was placed in pre-trial detention in the context of several sets of criminal proceedings.

8. She was subsequently convicted on three occasions, primarily for participating in a criminal conspiracy for the preparation of an act of terrorism, receipt of stolen goods obtained through extortion as part of a

criminal conspiracy, possession and transport of weapons, explosive substances or devices, and the possession and use of forged administrative documents in connection with a terrorist enterprise.

9. She was sentenced on 26 April 2006 by the Paris Criminal Court to eight years' imprisonment; on 29 November 2006 she was sentenced by the Paris special Assize Court to a seventeen-year prison term, for two-thirds of which she would not be eligible for any form of release; and on 17 December 2008 the same assize court imposed a seventeen-year term, to run concurrently with the previous one.

10. By a judgment of 21 June 2011, the President of the Investigation Division of the Paris Court of Appeal ordered that the eight-year prison sentence be served, in part and for a period of five years, concurrently with the seventeen-year prison sentence imposed by the assize court on 29 November 2006.

11. On 21 January 2014 the applicant's lawyer applied to the vice-president at the Paris *tribunal de grande instance* responsible for post-sentencing issues and with jurisdiction for terrorism cases, requesting authorisation for the applicant to leave the prison under escort, so that she could pay her last respects to her father, who had died earlier that day in a Bayonne hospital. He pointed out that, in view of the latter's health problems, he had been unable to visit the applicant since her transfer in 2009 to Roanne, and subsequently to Rennes. He added that the applicant had been very attached to her father and considered it essential to be able to honour him one last time, alongside her mother, sister, daughter and brother.

12. By a letter of the same date, the lawyer specified that the applicant was suffering from Crohn's disease, a chronic inflammatory intestinal illness, which required frequent visits to the lavatory. He attached a document from the firm of undertakers, stating that the deceased's remains would be placed in a coffin on 22 January and the funeral held on Monday 27 January 2014.

13. On 22 January 2014 the public prosecutor at the Paris *tribunal de grande instance* advised against granting the applicant's request. He stated, in particular:

"... the [applicant's] numerous convictions do not argue in favour of granting such authorisation to leave prison under escort, which would necessarily have to be reinforced. Furthermore, given the family environment, [specifically] the applicant's brother and sister, who frequent Basque circles, an attempted escape cannot be ruled out, in spite of the circumstances at hand, namely the father's death."

14. By an order of the same date, the vice-president responsible for post-sentencing issues and with jurisdiction for terrorism cases refused the applicant's request for escorted leave of absence. He held as follows:

"... although the death of Mr J.X.G., [the applicant's] father, on 21 January 2014 is an exceptional ground that could justify a measure authorising her to leave the prison under escort within the meaning of Article 723-6 of the Code of Criminal Procedure,

this request must also be assessed in the light, firstly, of the given individual's personality and, secondly, of the likelihood of an attempt to escape.

In this connection, it should be noted that [the applicant], an active member of ETA until her arrest in 2003, ha[d] been convicted on several occasions of numerous offences falling within the scope of Article 706-16 of the Code of Criminal Procedure, governing acts of terrorism; those convictions demonstrate a clear and long-standing foothold in the Basque movement and terrorist actions.

Furthermore, [the applicant] has always refused to submit to psychiatric or psychological tests in the context of the proceedings against her, so that the judge responsible for the execution of sentences currently has no tangible information about her personality and the potential danger posed by her, even if it is well-established that her conduct in prison has been satisfactory.

Further, having regard to the fact that the release date is still distant (17 June 2019), [the applicant's] membership of a particularly well-organised terrorist movement and the potential for outside support in this connection, one cannot rule out the risk of attempted escape in the event of authorisation for escorted prison leave to travel to the Bayonne region.

Lastly, the geographical distance between Rennes Prison and Bayonne and the chronic illness from which [the applicant] suffers (Crohn's disease, requiring very regular visits to the lavatory, as per the medical certificate drawn up by Dr. L. B.) give rise to particularly challenging practical issues, including that of sufficient security, when it comes to escorting the prisoner to pay her respects to her father. Moreover, the time constraints are very tight.

..."

15. On 23 January 2014 the applicant appealed against this decision. She argued that the acts on which her convictions were based had been committed during the period she was in hiding; in addition, it had been decided that her two seventeen-year prison terms were to run concurrently and that five years of her eight-year sentence were to run concurrently with the other terms. She added that she had been imprisoned for eleven years and that her conduct in prison had been satisfactory; there had been no incident justifying fears that she would try to escape; in addition, she would be eligible for conditional release on 24 May 2014, which also undermined the likelihood of the alleged risk of absconding. She gave the example of a fellow prisoner in Rennes, who had been transferred to Saint-Jean-de-Luz in May 2013 in order to be able to attend her son's funeral. She was asking only to be allowed to pay her respects before her father's coffin in the funeral home and to embrace her mother and her daughter. She noted that her father's cremation had been postponed to 27 January 2014 in order to give the prison authorities time to organise her trip. The applicant further emphasised that her health problems had never presented an obstacle to her transfers from the Paris region to Bordeaux, from Bordeaux to Roanne and from Roanne to Rennes; she added that she had undertaken to ensure that her health problems would not complicate her absence from prison, and had

decided not to eat during the journey, which showed how important it was for her to be with her family during this time of grief.

16. By an order of 24 January 2014, a judge at the post-sentencing division of the Court of Appeal upheld the order of 22 January 2014. She held, in particular, as follows:

“Notwithstanding [the applicant’s] conviction for acts of terrorism and her membership of the separatist organisation ETA, which she continues to assert, the requested authorisation is perfectly justified on a human level at a particularly painful time for her, since [the applicant] has been unable to see her father since 2009 on account of her transfer to Rennes Prison and his illness, and legitimately wishes to see his body for one last time, with her family, when the coffin is removed prior to the cremation ceremony.

However, a threat to public order as a result of the return, in emotionally difficult circumstances, of a convicted Basque activist to the Basque Country, where she enjoys considerable support, cannot be ruled out, even if the visit is for only a few hours.

This risk implies, as a matter of necessity, particularly vigilant surveillance on the part of the authorities responsible for escorting her and for ensuring the smooth conduct of the journey, including organising the corresponding security arrangements, especially as a return journey in a single day is impossible, given the distances involved; a departure would have to be organised for the Sunday with an overnight stay in Gradignan Prison, so that [the applicant] could be present in Bayonne before 11 a.m., the time scheduled for the removal of the coffin.

However, after consultation with the competent gendarmerie units, which were contacted by the court as soon as it received the request on Friday 24 January, it appears that it will be physically impossible to organise this kind of escort at such short notice, having regard to the material and human constraints.

In those circumstances, the court can only take note of this impossibility and uphold the previous decision.”

17. The applicant applied for legal aid so that she could lodge an appeal on points of law against that decision.

18. By a decision of 27 March 2014, the legal aid board at the Court of Cassation refused her application, stating that no arguable ground of appeal on points of law could be made out against the impugned decision.

19. The applicant lodged an appeal against that decision. She relied on Article 8 of the Convention, emphasising that the president of the Post-sentencing Division had held that her request was perfectly justified on a human level. She submitted that mere material considerations were being used to justify the breach of her fundamental right. She challenged the arguments used, reiterating that she was not a prisoner subject to particular surveillance and thus did not require a reinforced escort, and that she would be eligible to apply for release on licence in four months. Lastly, she added that she could not be held responsible for the fact that she was being held in a prison hundreds of kilometres from her home, which was also the reason her father had been unable to visit her.

20. By an order of 29 April 2014 the judge delegated by the President of the Court of Cassation dismissed the appeal. He pointed out that the Court of Cassation's review of a case did not concern the lower courts' assessment of the facts and evidence, and that it did not appear, having regard to the documents in the file, that a serious ground of cassation based on a failure in the contested decision to comply with the applicable legal rules could be made out.

II. RELEVANT DOMESTIC LAW

21. In respect of an individual who has been convicted of acts of terrorism and related offences, only the post-sentencing judge at the Paris *tribunal de grande instance*, the Paris Sentence Enforcement Court and the sentence-enforcement division at the Paris Court of Appeal have jurisdiction, irrespective of the convicted person's place of detention or residence. In urgent cases, the post-sentencing judge with jurisdiction for terrorism cases issues orders regarding, among other areas, escorted leave without seeking the opinions of the post-sentencing judge who has territorial jurisdiction and the sentence-enforcement board. Such orders may be contested on appeal within twenty-four hours of their notification. An appeal on points of law may be lodged against orders and judgments concerning, in particular, escorted leave, within five days of notification; such an appeal does not have suspensive effect.

22. Persons sentenced to a prison term who are serving the minimum period in relation to their sentence are not entitled to unescorted leave. They may only be granted escorted leave on an exceptional basis.

23. The relevant provisions of the Code of Criminal Procedure (CPP) as in force at the material time, read as follows:

Article 706-16

"The acts of terrorism established as crimes under Articles 421-1 to 421-6 of the Criminal Code, and the related offences, shall be prosecuted, investigated and tried in accordance with the rules of the present Code, subject to the provisions of the present Part. ..."

Article 706-22-1

"By derogation from the provisions of Article 712-10, only the post-sentencing judge of the Paris *tribunal de grande instance*, the Paris Sentence Enforcement Court and the post-sentencing division of the Paris Court of Appeal shall have jurisdiction to take decisions regarding persons convicted of an offence falling within the scope of Article 706-16, irrespective of the convicted person's place of detention or residence.

These decisions shall be taken after obtaining the opinion of the post-sentencing judge who would have jurisdiction under Article 712-10..."

Article 712-5

“Except in urgent situations, decisions on reduction of sentences, requests for leave under escort and day-release shall be taken after obtaining the opinion of the sentence-enforcement board. ...”

Article 712-11

“The decisions of the post-sentencing judge and of the sentence enforcement court may be contested on an appeal by the prisoner, by the public prosecutor and by the Principal Public Prosecutor, from the point that they are notified:

1. Within twenty-four hours as regards the orders mentioned in Articles 712-5 and 712-8 ...”

Article 712-12

“An appeal against the orders referred to in Articles 712-5 and 712-8 shall be brought before the president of the Post-sentencing Division of the Court of Appeal, who shall decide by means of a reasoned order in the light of the written observations of the public prosecutor and of the prisoner or his or her lawyer.”

Article 712-15

“An appeal on points of law may be lodged within five days after the orders and judgments mentioned in Articles 712-12 and 712-13 have been served. Such an appeal shall not have suspensive effect.”

Article 723-3

“Authorisation for leave permits a prisoner to be absent from a detention facility for a certain fixed period of time which is set off against the length of the sentence that is being served.

It is intended to prepare the prisoner for professional and social reintegration, to maintain his or her family ties or to enable him or her to fulfil an obligation at which his or her presence is required.”

Article 723-6

“Every prisoner may, under the conditions laid down in Article 712-5, obtain, on an exceptional basis, authorisation for escorted leave.”

Article D49-79

“In urgent cases, the Paris post-sentencing judge may rule without obtaining the opinion of the post-sentencing judge who would have jurisdiction in application of Article 712-10.”

Article D142-1

“The conditions for the time-period provided for in Articles D. 143 to D. 146 shall only be applicable if the prisoner is not serving the minimum term imposed.”

Article D144

“In the event of the serious illness or death of a close relative, leave may be granted for a maximum period of three days, both to prisoners who have been sentenced to a

prison term not exceeding five years, and to prisoners serving a prison term of over five years, where they have served half of their sentence.”

Article D145

“Leave of a maximum duration of three days may be granted, with a view to maintaining family ties or preparing them for social reintegration, to prisoners who have served half of their sentence and who have a remaining period of less than three years to serve in detention...”

Article D146

“Convicted prisoners who are being held in detention centre may be granted leave as provided for in Article D. 145 where they have served a third of their sentence.”

Article D425

“In application of the provisions of Article 723-3 concerning leave authorisations, and under the conditions set out in Article D. 144, prisoners may be authorised to travel to a close relative who is seriously ill or had died.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

24. The applicant complained about the judicial authorities’ refusal to grant her escorted leave from prison in order to travel to the funeral home and pay her last respects to her deceased father. She relied on Article 8 of the Convention, which reads:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

25. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

26. The applicant submitted firstly that the provisions of Article 723-6 of the Code of Criminal Procedure were not sufficiently foreseeable, in that they did not enable her to predict the possible grounds for refusing her request for escorted leave.

27. She further argued that the judicial authorities' refusal to grant escorted leave to travel to the funeral home did not pursue a legitimate aim and was neither justified nor necessary in a democratic society. She submitted that her journey under escort to the Basque Country would not have been likely to lead to a public-order disorder disturbance, given that ETA had announced an end to the armed struggle in October 2011. Furthermore, there had also been no risk of her absconding, since she had served the greater part of her prison sentence and was entitled to request conditional release four months after her father's death, that is, on 24 May 2014. In view of her illness and her father's death, her physical and psychological state could not be used to substantiate a risk of absconding.

28. The applicant also challenged the Government's argument that it had not been feasible in practice to organise an escort. She submitted that her family had arranged for her father's cremation to be held six days after his death, so that the authorities could take the necessary measures. Indeed, she had asked only to be able to travel to the funeral home, and not the crematorium. She added that her state of health had not been an obstacle to transfers between prisons. In particular, the last inter-prison transfer, from Roanne to Rennes, had not required any specific measures although the travelling time, about six hours, was comparable to what would have been necessary to travel to the funeral home in Bayonne.

29. She added that she had not seen her father for four years on account of his health, which had prevented him from travelling to her distant place of detention, and that she had had to wait until 12 April 2014 to see her sister, mother and daughter, that is, almost three months after her father's death.

30. The Government did not dispute that the judicial authorities' refusal to grant the applicant's request for escorted leave in order to travel to her father's funeral had amounted to interference in her right to respect for her family life.

31. However, they considered that this interference had been in accordance with the law. They pointed out, firstly, that, under the applicable domestic law, the applicant could not claim to be entitled to unescorted leave, since on the date she submitted her request she had been serving the minimum period attached to her sentence. They further indicated that, in accordance with the provisions of Article 723-6 of the Code of Criminal Procedure, permission to leave prison under escort was not a right and a

convicted person was entitled to it only exceptionally. They added that the basis of this type of measure was essentially humanitarian and that, in consequence, it had been sufficiently foreseeable that the applicant's request could be refused on public order grounds.

32. They added that the interference had pursued legitimate aims, namely the interests of public safety and the prevention of disorder or crime.

33. They alleged that the refusal to grant the applicant's request had been necessary in a democratic society, had corresponded to a pressing social need, namely that of preventing the risk of absconding and of public disturbance, and lastly, that it had been proportionate to the aims pursued. They specified that the criminal profile of the applicant, who had been convicted of terrorist acts and continued to assert her membership of ETA and for whom completion of her prison term was still distant (17 June 2019), indicated a serious risk of absconding. They considered that this risk had not been mitigated by the cessation of ETA's armed struggle. In their view, the risk of public disturbance was high, given the location and context of the funeral of the applicant's father. It was due to take place in Bayonne, in the Basque Country, where ETA organised its activities. In addition, the applicant's brother and sister, who were themselves identified as being active in the Basque movement, were due to be present. According to the Government, the high risk of public-order disturbances and of absconding implied a reinforced escort team, which it had not been physically possible to organise, given the time available and the geographical distance involved. They added that surveillance of a prisoner by an escort during authorised leave was more complicated than during transfers from one prison to another (on these latter occasions, prisoners did not exit into open public areas).

34. They considered that the domestic courts had balanced the right to respect for the applicant's family life, in acknowledging the justified nature of her request in human terms at a painful time for her, against the security constraints.

35. They added that, in contrast to the situations in the cases of *Lind v. Russia* (no. 25664/05, 6 December 2007) and *Płoski v. Poland* (no. 26761/95, 12 November 2002), it had not been possible to offer the applicant an alternative measure to escorted leave.

36. They specified that the prison authorities had made every effort to maintain the applicant's family ties; she had received visits from members of her family and had been able to communicate, particularly by telephone, with her father once his health had prevented him from continuing to make long journeys to the prison. They submitted a list of the persons who had visited the applicant in the prison visiting rooms between 16 November 2013 and 16 November 2014, and a calculation of the periods that the applicant had spent with family members or with her partner in a family unit.

2. *The Court's assessment*

37. The Court reiterates that detention, like any other measure depriving a person of his liberty, entails inherent limitations on his private and family life. However, it is an essential part of a prisoner's right to respect for family life that the authorities enable him or, if need be, help him, to maintain contact with his close family (see *Messina v. Italy* (no. 2), no. 25498/94, § 61, ECHR 2000-X, and *Khoroshenko v. Russia* [GC], no. 41418/04, § 106, ECHR 2015).

38. At the same time, the Court recognises that some measure of control of prisoners' contacts with the outside world is called for and is not of itself incompatible with the Convention (see *Schemkamper v. France*, no. 75833/01, § 30, 18 October 2005). In addition, the right to prison leave is not guaranteed as such by the Convention (see *Marincola and Sestito v. Italy* (dec.), no. 42662/98, 25 November 1999; *Kanalas v. Romania*, no. 20323/14, § 66, 6 December 2016; and *Vonica v. Romania* [committee], no. 78344/14, § 68, 28 February 2017). Indeed, Article 8 of the Convention does not guarantee a detained person a right to leave, and the Court has held on numerous occasions that existence of a system for requesting leave is not in itself open to criticism (see, *inter alia*, *Sannino v. Italy* (dec.), no. 72639/01, 3 May 2005).

39. It is not disputed in the present case that the decision not to grant the applicant's request for escorted leave to travel to the funeral home and pay her respects to her deceased father amounted to an interference in her right to respect for family life as guaranteed by Article 8 of the Convention (see *Płoski v. Poland*, no. 26761/95, § 32, 12 November 2002, and *Kanalas*, cited above, § 54, 6 December 2016).

40. Such interference is not in breach of the Convention if it is in accordance with the law, pursues one or more of the legitimate aims contemplated in paragraph 2 of Article 8 and may be regarded as a measure which is necessary in a democratic society (see *Płoski*, cited above, § 30).

41. The Court notes that the contested refusal to grant escorted leave was in accordance with the law, namely Article 723-6 of the Code of Criminal Procedure, and that the risks of escape and public disorder were inherent in granting temporary leave, on an exceptional basis, to a convicted prisoner, with or without an escort. Except in urgent situations, decisions on requests for leave under escort were taken after obtaining the opinion of the sentence enforcement board. The Court considers that the possible grounds for refusing a request by a prisoner, such as the applicant, were sufficiently foreseeable.

42. It further considers that the interference, the purpose of which was to prevent the risk of escape and public disorder, was intended to ensure public safety and the prevention of disorder and crime (see *Kanalas*, cited above, § 57).

43. It remains to be determined whether the decision in question was “necessary in a democratic society”.

44. The Court reiterates that when assessing the obligations imposed on the Contracting States by Article 8 in this area, regard must be had to the ordinary and reasonable requirements of imprisonment and to the resultant degree of discretion which the national authorities must be allowed in regulating a prisoner’s contact with his family (see *Lavents v. Latvia*, no. 58442/00, § 141, 28 November 2002). It is the duty of the State to demonstrate that the inherent restrictions on a prisoner’s rights and freedoms are nonetheless necessary in a democratic society and that they are based on a pressing social need (see *Płoski*, cited above, § 35).

45. The Court notes that the judicial authorities, at first instance and on appeal, examined the applicant’s request with care and found that her father’s death constituted an exceptional ground which could justify granting escorted leave. Furthermore, the judge in the post-sentencing division took account of the fact that the applicant had not seen her father since 2009 in finding that her request was justified on the human level.

46. It notes that the authorities nevertheless refused the applicant’s request, on the grounds, firstly, of her criminal profile, in that she was serving several prison terms for terrorist acts and continued to assert her membership of the organisation ETA, and, secondly, that it was impossible to organise a reinforced escort within the time available.

47. The Court is aware of the problems of a financial and logistical nature caused by escorted leaves (see *Płoski*, cited above, § 37, and *Kubiak v. Poland*, no. 2900/11, § 26, 21 April 2015). It notes that the national authorities duly examined the applicant’s profile, the seriousness of the crimes committed (punished by a long prison sentence), the context of the trip that would have to be organised, the factual considerations (in particular the geographical distance of almost 650 km), and concluded that the escort would be to be a particularly robust one. The Court notes that the applicant submitted her request for leave promptly, allowing the authorities a period of six days to organise an escort. However, it finds no grounds to contest the Government’s assessment that the time available, once final permission for escorted leave was granted, was insufficient to arrange an escort comprising officers who were specially trained in the transfer and supervision of prisoners convicted of terrorist offences and to organise the prior inspection of premises.

48. The Court notes that in the circumstances of the case there was no practicable means of acceding to the applicant’s request other than by granting escorted leave (see, *a contrario*, *Kanalas*, cited above, § 64, with further references).

49. It notes that the applicant had not seen her father since 2009, but that she had regular visits from members of her family and from friends, as submitted by the Government (see paragraph 36 above).

50. In consequence, the Court considers that the judicial authorities carried out a balancing exercise between the interests at stake, namely the applicant's right to respect for her family life on the one hand and public safety and the prevention of disorder and crime on the other (see, *a contrario*, *Kanalas*, cited above, § 65). It therefore finds that the respondent State did not overstep the margin of appreciation afforded to it in this area.

51. Having regard to the above considerations, the Court finds that, in the circumstances of the case, the decision not to grant the applicant's request for escorted leave in order to travel to the funeral home and pay her last respects to her deceased father was not disproportionate to the legitimate aims pursued.

52. There has accordingly been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention;

Done in French, and notified in writing on 11 April 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President