

APPLICATION N° 32829/96

Luis IRURETAGOYENA v/France

DECISION of 12 January 1998 on the admissibility of the application

Article 3 of the Convention

- a) Regardless of the applicant's conduct, nothing can justify acts of torture or inhuman or degrading treatment*
- b) Expulsion of a person may raise an issue under this provision and hence engage the responsibility of the State where substantial grounds have been shown for believing that the person concerned would face a real risk of being subjected to treatment contrary to Article 3 in the country to which he is to be expelled*
- c) The existence of a risk of ill-treatment must be assessed primarily with reference to those facts which were known or ought to have been known to the respondent State at the time of the expulsion, but the Convention organs may have regard to information which comes to light subsequently*
- d) Expulsion to Spain of a person claiming that he would be subjected to treatment contrary to this provision in that country. In assessing the risk, the Commission takes account of the fact that, according to a report of the Committee for the Prevention of Torture, ill-treatment by the security forces is no longer a matter of practice in Spain, even if it would be premature to conclude that such methods have been eradicated. Furthermore, the mere fact that the applicant had been an active member of ETA was clearly insufficient for the French authorities to conclude, at the point at which the expulsion order was made and executed, that he would be subjected to treatment contrary to this provision.*

Article 26 of the Convention

- a) *The obligation to exhaust domestic remedies requires only that an applicant make use of remedies likely to be effective and adequate*
 - b) *Where an individual complains that his expulsion to a particular country exposes him to a serious danger appeals without suspensive effect cannot be considered effective*
 - c) *In France an appeal against an expulsion order to the Administrative Court cannot be considered an effective remedy given that such an appeal does not suspend enforcement of the order in question*
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THE FACTS

The applicant is a Spanish citizen of Basque origin. He was born in 1956 in Tolosa. Before the Commission he was represented by Mr Didier Rouget, a senior lecturer at the University of Paris VIII.

The facts of the case, as submitted by the parties, may be summarised as follows:

A *The particular circumstances of the case*

a) *The applicant's deportation from France*

The applicant, who is a member of the Basque separatist organisation *Euzkadi ta Askatasuna* ("ETA"), entered France on an unspecified date and remained there illegally. He was arrested on 5 June 1992 in the course of a search carried out under warrant in an apartment in the 20th *arrondissement* of Paris, during which the police discovered a firearm "category 1" and "category 4" ammunition, explosives and stolen and forged documents. Subsequently, the applicant was charged with criminal conspiracy and remanded in custody on 9 June 1992. On 20 December 1995, Paris Criminal Court convicted the applicant and sentenced him to five years' imprisonment and a five-year internal exclusion order (*interdiction de séjour*) for possession of a firearm and ammunition without a licence, using forged administrative documents and conspiracy with a view to committing one or more serious crimes or one or more major offences punishable by ten years' imprisonment.

The applicant was scheduled to be released on 9 June 1996.

During his sentence, the applicant was informed that deportation proceedings had been commenced against him. On 20 May 1996, the Aliens' Residence and Deportation Board attached to Creteil *tribunal de grande instance* met and recommended that the applicant be deported.

On 4 June 1996, the applicant took preventive action, filing an application with Paris Administrative Court for the annulment of any deportation order which might be issued against him, or, in the alternative, a stay of execution of such order. In the application, he pointed out that no request for his extradition had been made by the Spanish authorities and that his sentence had not included an order excluding him from French territory. He expressed fears about being subjected to interrogation under torture without any judicial control, referring to a number of reports on Spain by international organisations, such as reports of the European Committee for the Prevention of Torture (hereinafter the "CPT") of the Council of Europe, the findings and recommendations of the United Nations Human Rights Committee and Amnesty International reports. He invoked Article 3 of the Convention. He also argued that handing him over to the Spanish security forces, in execution of any deportation order, would involve a deprivation of liberty contrary to Article 5 of the Convention, para. 1 (c) and (f) and paras. 3 and 4. The applicant also invoked Article 6 para. 2 and Articles 8, 13 and 18 of the Convention. His application to Paris Administrative Court is still pending.

On 5 June 1996, a deportation order regarding the applicant was issued and served on him on 8 June 1996. The same day, the applicant was released from Fresnes Prison and transferred by the French police to the Franco-Spanish border post at Perthus. According to the Government, when he crossed the border, the Spanish Civil Guard checked his papers and proceeded to arrest him in accordance with the instructions of a judge of the third *Audiencia Nacional* investigative tribunal, who had authorised him to be transferred from the border post to the headquarters of the Civil Guard. According to the applicant, he was handed over to the Spanish Civil Guard.

b) The criminal proceedings against the applicant in Spain

The applicant was taken to Madrid and held in custody until 11 June 1996, when he was brought before a judge of the third *Audiencia Nacional* investigative tribunal.

In a decision of 11 June 1996, the judge ordered that the applicant should not communicate with anyone else for one month and remanded him in custody on the charge of membership of an armed group.

On 14 December 1996, the applicant was released after posting bail of 2,000,000 pesetas. On 16 December 1996, the *Audiencia Nacional* issued an order forbidding the applicant to leave Spanish territory.

c) The alleged ill-treatment of the applicant in Spain

On 2 December 1996, the applicant filed a criminal complaint with San Sebastian investigating judge No 2 describing ill-treatment to which he claimed to have been subjected by the Spanish security forces during his custody. The contents of the complaint may be summarised as follows:

According to the applicant, while being taken to Madrid in a police van, the Civil Guard officers escorting him uncovered his back, put ointment or liquid on his upper back and kidney area and then subjected him to electric shocks while at the same time hitting, insulting and threatening him. On arrival in Madrid on Sunday 9 June at about a quarter past midnight, he was locked in a cell. One of the guards who had escorted him read him his rights from an *Audiencia Nacional* document. Shortly afterwards he was taken to an "interview" room near his cell. While being questioned, he was again struck and threatened. Screams were heard from a neighbouring cell and he was threatened with the same treatment. Then his interrogators again struck him with their hands and with a broomstick shaped like a "T" on his right big toe, his testicles and the backs of his legs.

At about 9 a.m. on Sunday morning he was visited by the police surgeon who took his pulse and blood pressure. The applicant told him that he had been given electric shocks and asked him to examine his back with a stethoscope. The doctor noted his complaints.

After the doctor had gone, he was again taken to an "interview" room where he was questioned and the police carried out a handwriting test in the presence of a lawyer who had been officially assigned to him. After a break in his cell he was again taken to the "interview" room, where he was forced to drop his trousers and sit on a padded chair. A hood was put over his head and his arms were fastened to the back of the chair. His legs were also made fast and moistened with a substance like the one that had been used on him in the police van. Then the electric shock sessions started, this time using a much higher voltage than the previous ones. These sessions alternated with sessions in which the hood was used to partly suffocate him. Then he was told to move his head if he had something to say. Some time later, a police officer came in, took the hood off and gave him some water. He was never able to see the officers' faces.

When the "interview" was over, he slept - he did not know for how long.

On the morning of 10 June 1996, the applicant was again interrogated, then an officially-assigned lawyer attended him in the presence of five Civil Guards. During the afternoon of 10 June, he was questioned about his life and the political situation in the Basque country. He was seen by the police surgeon, who examined him and asked him

if he had slept well. He was later taken to another officially-assigned lawyer to identify people from photographs. This was at about 6 p.m. He was then taken back to his cell and to the "interview" room where he had to undergo further sessions of being suffocated with the hood and beaten. He was then taken to an officially-assigned lawyer, in whose presence he signed a statement. While there, he saw that it was 7 a.m. on 11 June 1996. He had spent more than a day without sleeping.

That day, the applicant was taken to the *Audiencia Nacional*, where he was again visited by the police surgeon whom he had seen at the time of the interrogations. The applicant told him about the ill-treatment to which he had been subjected and showed him the marks on his body. The doctor noted what he said, examined him and encouraged him to tell the whole story to the court.

When he was brought before *Audiencia Nacional* investigating judge No. 3, he was not allowed to have the assistance of his lawyer as the judge dictated that he was forbidden to communicate with anyone. The judge asked him if he had been examined by a doctor, then started taking a statement from him. At the end of the hearing, the judge ordered that he be detained incommunicado. He was taken by the Civil Guard to Madrid II - Meco Prison, arriving there on 11 June 1996 at about 5 p.m. On arrival, he was examined by a doctor who saw the marks on his body, noted them, copied his findings into his medical report and prescribed the applicant three paracetamol tablets a day for several days.

The applicant was held in solitary confinement for a fortnight, then transferred to the ordinary regime on 23 August 1996. At this point, he had severe and increasing pain in his right leg and lumbar region.

Since 12 August 1996 he has been treated with pain-killers and anti-inflammatory tablets and a vitamin complex.

B Relevant domestic law

a) Exclusion from French territory

Section 131-30 of the Criminal Code

"Where the law so provides, any alien convicted of a serious crime (*crime*) or major offence (*delit*) may be sentenced to be excluded from French territory, either permanently or for a period of up to ten years.

An order excluding a convicted person from French territory automatically comprises authority to expel that person on the expiry of his sentence of imprisonment (where applicable).

"

b) Exclusion from areas within French territory

Section 131 31 of the Criminal Code

"An internal exclusion order (*interdiction de séjour*) prohibits the convicted person from entering certain areas determined by the court. It also entails the taking of certain measures to keep the person in question under surveillance and to assist him. The list of prohibited areas and the surveillance and assistance measures may be modified by the judge responsible for the execution of sentences in accordance with the procedure laid down in the Code of Criminal Procedure.

An internal exclusion order cannot be made for longer than ten years (in the case of a person convicted of a serious crime) or five years (in the case of a person convicted of a major offence)."

COMPLAINTS (Extract)

The applicant complains that the decision to hand him over to the Spanish security forces involved the risk of an irreversible, and particularly grave, violation of human rights. In particular, the risk of his being subjected to torture and inhuman or degrading treatment contrary to Article 3 of the Convention. He claims that these fears turned out to be well-founded since, after being handed over to the Civil Guard, he was indeed subjected to treatment contrary to Article 3.

He also alleges a violation of Article 5 of the Convention, para. 1 (c) and (f) and paras. 3 and 4, claiming that his forcible removal to Spain was in reality a "disguised extradition" aimed at securing his detention and conviction in that country.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 4 June 1996 and registered on 30 August 1996.

On 4 June 1996, the applicant requested the Commission to intercede on his behalf with the French Government so as to prevent it from deporting him to Spain. The same day, the President of the Commission decided that it was not appropriate to grant that request, which had been submitted under Rule 36 of the Commission's Rules of Procedure.

On 24 February 1997, the Commission decided to bring the applicant's complaints under Articles 3 and 5 para. 1 of the Convention to the notice of the French Government and to invite them to submit written observations thereon.

The Government submitted their observations on 19 June 1997, after an extension of the time-limit fixed for this purpose. The applicant replied on 19 September 1997.

THE LAW (Extract)

1 The applicant complains that the decision to hand him over to the Spanish security forces involved the risk of his being subjected to torture and inhuman or degrading treatment contrary to Article 3 of the Convention, which provides as follows

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment "

The respondent Government raise a preliminary objection to the effect that domestic remedies have not been exhausted. Specifically, they point out, firstly, that the applicant failed to lodge an appeal against the judgment of Paris Criminal Court of 20 November 1995 sentencing him to a five-year internal exclusion order and, secondly, that the appeals which he lodged with Paris Administrative Court against the deportation order are still pending

The applicant contests this view. With regard, firstly, to the five-year internal exclusion order imposed on him by Paris Criminal Court, the applicant points out that, unlike an order excluding someone from French territory, an internal exclusion order can be made against French people as well as foreigners and can never prohibit a person from entering the whole of French territory or entail expulsion from French territory. Paris Criminal Court sentenced him to a five-year internal exclusion order, not an order excluding him from French territory, as the Government erroneously maintain. Therefore, there is no relationship, in law, between the internal exclusion order made on 20 December 1995 by Paris Criminal Court and the deportation order of 5 June 1996 issued by the Minister of the Interior. In the present case, he is complaining only about the deportation order.

The Commission recalls that the obligation to exhaust domestic remedies requires only that an applicant should use the remedies likely to be effective, adequate and accessible. Where a person alleges that being expelled would expose him to serious danger, appeals without suspensive effect cannot be regarded as effective (see No 10078/82, Dec 13 12 84, D R 41, p 103, No 12461/86, Dec 10 12 86, D R 51, p 258, No 19776/92 Dec 18 10 93, unpublished, H L R v France, Appendix to Comm Report 7 12 95 and No 31113/96, Dec 5 12 96, D R 87, p 151).

In the present case, the action on the part of the respondent State authorities about which the applicant is complaining is the deportation order of 5 June 1996, and not the internal exclusion order made by Paris Criminal Court on 20 December 1995. The Government have not been able to show that an appeal to the Administrative Court has the effect of suspending the execution of a deportation order.

Therefore, an appeal against the deportation order cannot be considered as effective in accordance with the generally-recognised rules of international law and the Government's preliminary objection that domestic remedies have not been exhausted cannot be allowed

In the alternative, the Government submit that the complaint is unfounded

The Government acknowledge that according to the case-law of the Convention organs expulsion may raise an issue under Article 3 of the Convention where substantial grounds have been shown for believing that the person concerned would face a real risk of being subjected to treatment contrary to Article 3 if expelled to the other country in question. Where this is the case, Article 3 implies an obligation not to expel the convicted person to that country

The Government emphasise that, in conformity with French law and in particular section 27 *bis* of the Ordinance of 2 August 1945 (as amended), the decision to deport the applicant to Spain was taken with due regard to the potential risk of a breach of his Convention rights. In this regard, the Government point out that the applicant never applied for political refugee status during the whole time he was in France. Nor did he take steps to find a third country willing to accept him, so as to avoid being deported to Spain. Moreover, the investigation carried out by the authorities, both judicial and administrative, into the applicant's situation failed to uncover well-substantiated personal factors capable of seriously suggesting that he would be exposed to treatment contrary to Article 3 if he returned to Spain.

The Government add that, while the possibility that the applicant would be prosecuted in Spain could not be excluded, given his membership of ETA and his previous activities, this alone does not mean that the deportation order was in violation of Article 3 of the Convention, having regard to the fact that Spain is a member of the European Union and a State governed by the rule of law, in which the courts safeguard respect for human rights and individual liberties. Spain has entered into international commitments concerning the protection of human rights such as the European Convention on Human Rights and the United Nations International Covenant on Civil and Political Rights.

With respect to the applicant's allegations that he suffered ill-treatment at the hands of the Civil Guard, the Government note that a criminal complaint has been filed with San Sebastian investigating judge No. 2. Therefore, it is for the Spanish judicial authorities to investigate this complaint in accordance with the relevant Spanish legislation.

For his part, the applicant submits that the fact that he ran the risk of being subjected to torture and ill-treatment is corroborated by the reports of numerous international organisations on Spain and in particular by the findings and recommendations of the CPT in reports based on its visits to Spain. The applicant also refers to the findings and recommendations of the United Nations Human Rights Committee, which, when examining the report submitted by Spain under Article 40 of the International Covenant on Civil and Political Rights, expressed its concern about the many reports it had received alleging that persons suspected of terrorist activities had been subjected to ill-treatment and torture by members of the security forces.

In response to the Government's argument that Spain is a State governed by the rule of law and a member of the European Union, the applicant points out that CPT reports concern only States which are members of the Council of Europe and parties to the European Convention on Human Rights, and that these reports record findings of treatment contrary to Article 3 of the Convention, which makes no distinction between Contracting Parties and other States.

The applicant also refers to a number of reports on Spain by independent non-governmental organisations (hereinafter "NGOs"), such as Amnesty International, the Association pour la Prévention de la Torture etc., exposing the practice of torture by the Spanish security forces. He adds that several other persons of Basque origin handed over by France to the Spanish security forces, in similar circumstances have been tortured. In his own case, the risk of torture if he was deported to Spain appeared even more real and significant given that he had already been arrested by the Spanish police in 1979 and depicted as an ETA militant by the Spanish authorities. Therefore, there was a serious risk that the Spanish security forces would use every method, including unlawful ones, to obtain all the information that he was assumed to have.

Further, the applicant rejects the Government's argument that the fact that he did not seek political refugee status or a third country willing to receive him amounts to a failure to demonstrate that he was at risk of being treated in a manner contrary to Article 3 of the Convention. On this point, he argues that Article 3 protects everyone, not merely those seeking or having been granted refugee status. Finally, he claims that a State is under a positive obligation not to expel an individual to a country where there is a risk of Article 3 of the Convention being violated.

Moreover, the applicant complains that France deliberately handed him over to the Civil Guard, despite the fact that the culture and methods of this particular branch of the forces of law and order are criticised by international organisations and even by many authorities within Spain. Therefore, when the French authorities handed him over to the Civil Guard, who tortured him, they were perfectly aware of the potential consequences. Finally, the applicant emphasises that the Civil Guard subjected him to a combination of various methods of ill-treatment, such as giving him electric shocks, partially suffocating him by putting a plastic bag over his head, repeatedly hitting him (particularly on the head with the flat of their hands), shouting at him, uttering threats close up to his ears, threatening him in the form of making him listen to the screams

of other people being tortured in the same building and long interrogation sessions with sleep deprivation. He points out that the presence of injuries caused by the Civil Guard during his period in custody is confirmed by the medical reports of the police surgeon and the prison doctor. He affirms that he has had to follow a prolonged course of medical treatment as a result of the treatment to which he was subjected. He considers that, having regard to the danger to which he was exposed, the French Government acted very irresponsibly, particularly by their refusal to take account of the objective evidence of that danger.

The Commission recalls, firstly, that the Contracting States have the right, as a matter of well-established international law and subject to their Treaty obligations including the Convention, to control the entry, residence and expulsion of aliens (see *Eur. Court HR, Vilvarajah and Others v the United Kingdom* judgment of 30 October 1991, Series A no. 215, p. 34, para. 102).

However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if expelled to a certain country, face a real risk of being subjected to treatment contrary to Article 3. In these circumstances, Article 3 implies the obligation not to expel the person in question to that country (see *Eur. Court HR*, judgments in the cases of *Soering v the United Kingdom* of 7 July 1989, Series A no. 161, p. 35, paras. 90-91; *Cruz Varas and Others v Sweden* of 20 March 1991, Series A no. 201, p. 28, paras. 69-70; *Vijayanathan and Others v the United Kingdom* *op cit*, p. 34, para. 103; *Chahal v the United Kingdom* of 15 November 1996, Reports of Judgments and Decisions 1996 V, pp. 1853-1855, paras. 73-74 and 80; *Ahmed v Austria* of 17 December 1996, Reports of Judgments and Decisions 1996-VI, p. 2206, para. 39; *H. L. R. v France* of 29 April 1997, Reports of Judgments and Decisions 1997-III, p. 757, paras. 33-34 and *D v the United Kingdom* of 2 May 1997, Reports of Judgments and Decisions 1997-III, p. 791, para. 46).

It is also important to recall that Article 3, which enshrines one of the most fundamental values of democratic society (see the above-mentioned *Soering* judgment, p. 34, para. 88), prohibits, in absolute terms, torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see the judgments in the cases of *Ireland v the United Kingdom* of 18 January 1978, Series A no. 25, p. 65, para. 163; *Chahal v the United Kingdom* *op cit*, p. 1855, para. 79; *Ahmed* *op cit*, pp. 2206-2207, paras. 40-41; *H. L. R. v France*, *op cit*, p. 757, para. 35; *D v the United Kingdom*, *op cit*, p. 792, para. 47 and, recently, *Aydin v Turkey* of 25 September 1997, Reports of Judgments and Decisions 1997, para. 81).

Where a Contracting State expels an alien from its territory, its responsibility under Article 3 of the Convention is engaged if it thereby exposes him directly to serious danger of being treated in a manner contrary to that provision.

In the present case, the Commission notes that, in ratifying the Convention, the Spanish State agreed to respect the rights contained in it including Article 3. It also recognised the right of individual petition provided for by the Convention. Hence, there is a presumption that treatment contrary to Article 3 does not occur in that State.

The Commission recalls that the existence of a risk of ill-treatment must be assessed primarily with reference to those facts which were known or ought to have been known to the respondent State at the time of the expulsion, even if the Convention organs may have regard to information which comes to light subsequently (see, *mutatis mutandis*, No. 25342/94, Dec. 4 9 95, D.R. 82 p. 134).

On this point, the Commission notes that, according to a CPT report, torture and ill-treatment by the security forces is no longer common practice in Spain even if, in the light of the allegations made, it would be premature to conclude that the use of such methods has been entirely rooted out. Other international bodies, such as the United Nations Committee against Torture and the United Nations Human Rights Committee, have expressed their concern about the situation in Spain in this regard. The Commission also observes that the applicant was arrested by the Civil Guard which, according to the CPT report, is the law-enforcement agency most frequently accused of using unlawful methods.

It is also true that the fact that the applicant had been an active member of ETA may have exposed him to increased risk, given that the Civil Guard might regard him as an important source of information about the activities of that organisation.

However, the mere fact of his ETA membership could not suffice for the French authorities to conclude that the applicant ran a serious risk of being treated in a manner contrary to Article 3 of the Convention in Spain. The Commission notes that the applicant did not apply for political refugee status in France, nor has he demonstrated that he raised, before the French authorities, particular circumstances relating to himself or his activities in Spain which would make it probable that he would be tortured or treated in any other manner prohibited under Article 3.

In the light of the foregoing, the Commission considers that, in the circumstances of the case, it appears difficult to conclude that, at the time at which the deportation order was made and enforced by the French authorities, there were reasonable grounds for believing that the applicant would be subjected to treatment contrary to Article 3 of the Convention in Spain. As regards what happened after the applicant's arrival in Spain, the Commission recalls that the applicant will be able, if appropriate, to complain of this by means of an application against Spain.

Therefore, the Commission has reached the conclusion that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 27 para 2 of the Convention

2 The applicant, invoking Article 5 of the Convention, paras 1 (c) and (f), 3 and 4 submits that his forcible removal to Spain was in reality a "disguised extradition" designed to secure his detention and conviction in that country

The relevant provisions of Article 5 are as follows

"1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law

c the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so

f the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition

3 Everyone arrested or detained in accordance with the provisions of paragraph 1 c of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial

4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful

"

The Government claim that the procedure followed in the applicant's case did not constitute "handing him over" to the Spanish authorities, but enforcing the deportation order in a perfectly lawful manner, in accordance with sections 26 *bis* and 27 *bis* of the Ordinance of 2 November 1945 (as amended)

Under section 27 *bis* of the Ordinance of 1945, a person subject to a deportation order is to be sent to the country of which he is a national - save, of course, in the case of a refugee - or a country which has issued him with a travel document, or which he may lawfully enter, subject to the general proviso that the alien must not be sent to a country in which he will be exposed to danger to his life or liberty or to treatment contrary to Article 3 of the Convention. In the instant case, it has not been shown that when the decision to enforce the deportation order was taken, the applicant fell within the scope of this general proviso, nor that he could point to another State which he could lawfully enter

Section 26 *bis* of the Ordinance provides that a deportation order may be enforced automatically on the release of the person concerned from his place of detention, in order to prevent him taking advantage of his return to freedom in order to go underground and revert to activities likely to endanger public safety. Automatic enforcement of a deportation order necessarily involves the individual being escorted by French police to the border with the country to which he is being deported, in order to ensure that he does actually leave national territory

The Government underline that the decision to enforce the order deporting the applicant to Spain was made entirely lawfully

The Government also submit that the purpose of the proceedings brought against the applicant was not to circumvent an Indictments Division recommendation against extradition, as in the *Bozano* case. Indeed, in that case, the deportation order was not served on the individual in question for a month, whereas in the present case the order was issued on 5 June 1996 and served on 8 June 1996. Therefore, the authorities had not used any ruses to keep the applicant in ignorance of events concerning him

Finally, the Government observe that the circumstances of the applicant's deportation are very similar to those obtaining in the *Urrutikoetxea v France* case, which the Commission declared inadmissible on 5 December 1996 (see No. 31113/96, Dec. 5 5 96 D R 87, p. 151)

The applicant, on the other hand, claims that, contrary to the Government's assertions, the French authorities did indeed hand him over to the Spanish Civil Guard. He states that, when he was taken to La Junquera border post, the French police had a conversation with the Civil Guard officers and exchanged documents. Moreover, the

Civil Guard officers drew up a report confirming that he had been handed over by the French police which is on the file of the criminal case against him before the *Audiencia Nacional*. It is also attested to by the various Spanish press articles about him. Furthermore, he claims that it emerges from the Government's observations that the French authorities knew that he would be deprived of his liberty and taken to Madrid to be charged, on the orders of a judge of the third *Audiencia Nacional* investigative tribunal.

The applicant claims that he has been the victim of a disguised extradition in breach of the relevant principles of international law. He asserts that a deportation order cannot be used to effect a disguised extradition and employed by one State in order to deliver someone up to the authorities of another State. According to him, section 27 *bis* of the 1945 Ordinance purely and simply forbade the French Government to deport him to Spain, since, on the facts, there was a real threat to his liberty in that country.

As regards section 26 *bis* of the 1945 Ordinance, he argues that the authorities' ability automatically to enforce a deportation order does not relieve the Government from their responsibilities, particularly the responsibility to follow lawful procedures and not to expel a foreigner to a country where his life, his physical safety or his freedom will be at risk. Accordingly, the power automatically to enforce the deportation order did not, in law, give the French authorities any right to hand him over to the Spanish security forces or to carry out a "disguised extradition" in relation to him.

The Commission, having undertaken a thorough examination of the evidence, has found nothing to support the applicant's argument that his removal to Spain was made for any reason other than to enforce the deportation order against him when his imprisonment in France came to an end. In particular, it has not been demonstrated that the applicant was deported to Spain because of a request to that effect from the Spanish authorities.

The Commission therefore considers that there is no substantial evidence to support the applicant's complaint of a breach of Article 5 of the Convention taken as a whole. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 27 para. 2 of the Convention.