



ECHR endorses Spanish authorities' decisions refusing to transfer terrorism accomplice to prison closer to home

In its decision in the case of [Fraile Iturralde v. Spain](#) (application no. 66498/17) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned a complaint brought by an accomplice in the offence of terrorism about the refusal of his request for a transfer to a prison closer to his family.

The Court found that the authorities' justification for their refusal had been legitimate and any interference with his rights under **Article 8 (right to respect for family life)** had been limited, in accordance with the law, and proportionate.

In particular, they had based their decisions both on an individual assessment of his situation, which showed that he had maintained regular contact with his family, as well as on general prison policy, which dispersed prisoners convicted of terrorist offences over various facilities in order to avoid security concerns and sever links with their criminal organisation.

Principal facts

The applicant, Jorge Fraile Iturralde, is a Spanish national who was born in 1970. He has been serving a 25-year prison sentence since 1998 for collaboration with a terrorist organisation, the Basque separatist movement ETA. He has been held in Badajoz Prison since June 2010.

In 2016 the applicant lodged a complaint with the domestic courts about a decision to maintain his placement in Badajoz Prison under a close custody regime. He complained in particular that the prison authorities had refused to allow him to serve his sentence nearer to his family's place of residence, in Durango. He submitted that the 700 kilometre trip from Durango to Badajoz was difficult for his wife and five-year-old daughter. His parents, who were advanced in age, were unable to visit him at all.

His complaints were dismissed the same year after being examined at two levels, namely the Central Supervision Court at first instance and the *Audiencia Nacional* on appeal.

The courts found that a departure from the general rule that prisoners should be held in facilities close to family and friends had been justified by general prison policy on convicted terrorists. This policy dispersed ETA prisoners over various prisons as a means to sever their links with the terrorist organisation and avoid security concerns. Concentrating ETA prisoners in certain prisons had led in the past to the group exercising control over its members in prison and prison staff being targeted.

The courts also took into account the applicant's disruptive behaviour in prison, for which he had been disciplined on many occasions, and the fact that he had continued to follow instructions from the group in prison.

They further found that, according to prison reports, he had in any case been able to regularly telephone and exchange letters with close relatives and friends, as well as have frequent visits from his family.

An *amparo* appeal with the Constitutional Court was declared inadmissible in 2017. Endorsing the lower courts' findings, it held that the case did not disclose any appearance of a violation of the rights subject to such appeals.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 1 September 2017.

The applicant complained that the refusal of his request for a transfer to a prison closer to his family had breached his rights under Article 8 (right to respect for family life).

He also relied on Article 6 § 1 (access to court) to complain that the Constitutional Court decision had been arbitrary and excessively formalistic.

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

Vincent A. **De Gaetano** (Malta), *President*,
Paulo **Pinto de Albuquerque** (Portugal),
Dmitry **Dedov** (Russia),
Branko **Lubarda** (Serbia),
Alena **Poláčková** (Slovakia),
María **Elósegui** (Spain),
Gilberto **Felici** (San Marino),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

Article 8 (right to respect for family life)

The Court reiterated that the European Convention did not grant prisoners the right to choose their place of detention, and the fact that prisoners were separated from their families was an inevitable consequence of their imprisonment. It was, however, an essential part of prisoners' rights that the authorities assist them in maintaining contact with close family.

In the applicant's case, the Court found that the decision that he should remain in Badajoz Prison far from his family had interfered with his right to respect for his family life. However, that interference had had a basis in domestic law, the General Prison Act and the Prison Regulations, which had been accessible and foreseeable, and had provided specific safeguards. In particular, those laws provided for an individual assessment of cases in decisions on prison transfer and any subsequent judicial review. The Court was therefore satisfied that the interference had been "in accordance with the law" within the meaning of Article 8 of the Convention.

Furthermore, the Spanish authorities' justification for refusing a transfer had been legitimate, as it had aimed to ensure discipline in prisons and to implement their policy in respect of ETA prisoners.

Moreover, the refusal had been based both on an individual assessment of his situation as well as general prison policy.

In particular, the domestic courts had cited reports, which the applicant did not contest, showing that he had maintained regular contact with his family. There was no evidence to show that the journeys his close friends and family had had to make had raised any particularly difficult problems.

As for the prison policy, it had been limited in scope, as it had only applied to those convicted of terrorist offences, and had taken into account the circumstances at the time, namely that ETA had not yet disbanded.

In that context, the Court concluded that the limitations on the applicant's right to respect for his family life had not been disproportionate to the aim of prevention of disorder and crime and the protection of the rights and freedoms of others.

The Court therefore rejected the applicant's complaint under Article 8 as manifestly ill-founded.

Article 6 (access to court)

The Court found that the Constitutional Court's decision had not been a disproportionate hindrance to the applicant's right of access to court. That court's role and the special features of the proceedings before it meant that the conditions of admissibility of an appeal on points of law were stricter than for an ordinary appeal.

In addition, the applicant's case had already been examined at two levels, without any appearance of arbitrariness or manifest unreasonableness. It was sufficient for the Constitutional Court, when declining to admit a complaint, to refer to the legal provisions governing its procedure if the questions raised were not of fundamental importance or if the appeal had no prospect of success.

The Court therefore also rejected the applicant's complaint under Article 6 § 1 as manifestly ill-founded.

The decision is available only in English.

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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.