



## Restrictions on freedom of expression imposed on former leader of Basque separatist organisation when he was released on licence were justified

In today's **Chamber** judgment<sup>1</sup> in the case of [Bidart v. France](#) (application no. 52363/11) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 10** (freedom of expression) of the European Convention on Human Rights.

The case concerned the obligation imposed on Philippe Bidart, in the context of his release on licence, to refrain from disseminating any work or audiovisual production authored or co-authored by him concerning the offences of which he had been convicted, and from speaking publicly about those offences.

The Court found in particular that the impugned measure was limited in time and concerned only the offences committed by Philippe Bidart. He had also been able to have the measure reviewed by the courts. Also taking into account the context of the measure, the Court found that the domestic courts had not overstepped their margin of appreciation.

### Principal facts

The applicant, Philippe Bidart, is a French national who was born in 1953 and lives in Béziers (France). He is the former leader of the Basque separatist organisation Iparretarrak.

In custody from 1988 onwards, he received a number of convictions, in particular for conspiracy to commit a terrorist attack, premeditated murder in connection with terrorist activity and armed robbery.

In a judgment of 1 February 2007 the Sentence Execution Division of the Paris Court of Appeal granted his release on licence from 14 February 2007 to 14 February 2014. His release was conditional upon a number of general obligations, mainly to notify any changes of address or employment and to obtain authorisation for any travel abroad. There were also some special obligations, such as to continue payments to the compensation fund for terrorism victims and not to possess or carry a weapon.

On 24 December 2007 Philippe Bidart participated in a peaceful demonstration in front of Agen prison in support of Basque prisoners being held there. This was reported by the media. As a result, the Paris Sentence Execution Court, in a judgment of 14 May 2008, decided to impose on him certain additional specific obligations: to refrain from appearing in front of any prison to express his support for individuals detained for the commission of terrorist acts, from disseminating any work or audiovisual production authored or co-authored by him concerning, in whole or in part, the offences of which he had been convicted, and from speaking publicly about those offences. That judgment was, however, quashed by the Criminal Division of the Court of Cassation on 10 June 2009 on the ground that only the Sentence Execution Judge, not the Sentence Execution Court, had the power to alter the obligations attached to the release on licence.

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](http://www.coe.int/t/dghl/monitoring/execution).

The public prosecutor referred the matter to the Sentence Execution Judge of the Paris *tribunal de grande instance*. In a judgment of 28 June 2010 that judge decided to impose on Philippe Bidart an obligation to refrain from disseminating any work or audiovisual production authored or co-authored by him concerning, in whole or in part, the offences of which he had been convicted, and from speaking publicly about those offences. That judgment was upheld by the Paris Court of Appeal on 31 August 2010, which observed that this obligation did not constitute a disproportionate measure in relation to the need to protect public order. In a judgment of 30 March 2011 the Criminal Division of the Court of Cassation dismissed Philippe Bidart's appeal on points of law.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant complained about the restriction of his freedom of expression that had been imposed on him in connection with his release on licence.

The application was lodged with the European Court of Human Rights on 16 August 2011.

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

Josep **Casadevall** (Andorra), *President*,  
Angelika **Nußberger** (Germany),  
Boštjan M. **Zupančič** (Slovenia),  
Vincent A. **de Gaetano** (Malta),  
André **Potocki** (France),  
Helena **Jäderblom** (Sweden),  
Síofra **O'Leary** (Ireland),

and also Milan **Blaško**, *Deputy Section Registrar*.

## Decision of the Court

### Article 10 (freedom of expression)

The Court found that the obligation imposed on Philippe Bidart to refrain from disseminating any work or audiovisual production authored or co-authored by him concerning the offences of which he had been convicted, and from speaking publicly about those offences, constituted a restriction of his freedom of expression within the meaning of Article 10 of the Convention.

The Court was concerned by the fact that, when he had imposed that restriction, the Sentence Execution Judge had based his decision on hypothetical rather than actual remarks or writings of Philippe Bidart. It also found it regrettable that the domestic judge had not weighed up the interests at stake and had not fully established the existence of the risk to public order.

That being said, the Court found that the decision to impose that type of restriction on freedom of expression as part of the obligations attached to release on licence was a judicial decision and that the convicted person – as had been the case here – had the right to appeal against it, including on points of law. Philippe Bidart had therefore been able to have the measure reviewed by the courts and had enjoyed genuine guarantees against abuse.

The Court also noted that the measures available to the judge in that context were limited in three respects. They were limited in respect of the individuals on whom such measures could be imposed (only those individuals who had been convicted of certain specific major offences), but were also limited in time (until the end of the period of release on licence) and in terms of subject matter (only affecting freedom to talk about the offences committed). Philippe Bidart had thus still been able to express his views on the Basque question, as long as he did not mention the offences of which he had been convicted.

Lastly, the Court could not ignore the context in which the restriction on Philippe Bidart's freedom of expression had been imposed, namely the fact that it had been decided in connection with the early release of an important and well-known figure of a terrorist organisation, who in particular had been sentenced to life imprisonment for murders committed in a terrorist context, and that his early release had caused much ill-feeling among the local population.

All those factors led the Court to acknowledge that, in imposing on Philippe Bidart, in the context of his release on licence, an obligation to refrain from disseminating any work or audiovisual production authored or co-authored by him concerning, in whole or in part, the offences of which he had been convicted, and from speaking publicly about those offences, the domestic courts had not overstepped their margin of appreciation.

Accordingly, there had been no violation of Article 10 of the Convention.

*The judgment is available only in 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.