



## Excessive length of pre-trial detention of ETA terrorists breached the Convention

In today's Chamber judgments in the cases of [Berasategi v. France](#) (application no. 29095/09), [Esparza Luri v. France](#) (no. 29119/09), [Guimon Esparza v. France](#) (no. 29116/09), [Sagarzazu v. France](#) (no. 29109/09) and [Soria Valderrama v. France](#) (no. 29101/09) which are not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**A violation of Article 5 § 3 (right to a fair trial within a reasonable time or to be released pending trial) of the European Convention on Human Rights.**

The five cases concerned the length of the pre-trial detention, which had been extended several times, of prisoners accused of belonging to the terrorist organisation ETA.

### Principal facts

In these five cases, four of the applicants – Ismael Berasategi, Felix Ignacio Esparza Luri, Jose Candido Sagarzazu and Inocente Soria Valderrama – are Spanish nationals and one – Laurence Guimon Ezparza – is French. They are all members of the Spanish Basque organisation *Euskadi Ta Askatasuna* ("ETA") and are being held in different prisons in France and Spain.

Following an investigation lasting several years, the applicants appeared before the Paris special Assize Court on 23 January 2007 on a number of serious charges relating to the preparation of acts of terrorism.

The applicants' pre-trial detention was extended several times during the course of the investigation.

The first trial hearing took place on 9 December 2008 and the applicants were convicted by the Paris Assize Court on 17 December 2008.

### Complaints, procedure and composition of the Court

Relying on Article 5 § 3 (right to a fair trial within a reasonable time) of the Convention, the applicants complained that the length of their pre-trial detention had been excessive.

The application was lodged with the European Court of Human Rights on 25 May 2009.

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<sup>1</sup> 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)

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

Dean **Spielmann** (Luxembourg), *President*,  
Karel **Jungwiert** (the Czech Republic),  
Boštjan M. **Zupančič** (Slovenia),  
Mark **Villiger** (Liechtenstein),  
Ann **Power-Forde** (Ireland),  
Angelika **Nußberger** (Germany),  
André **Potocki** (France), *Judges*,

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

## Decision of the Court

### Article 5 § 3

The Court noted that on the face of it, pre-trial detention of between four years and eight months and five years and ten months appeared to be unreasonable and there had to be particularly compelling reasons for it.

In refusing to release the applicants, the courts were duly able to rely on the continuing suspicions against them, the serious and continuing prejudice to public order on account of the gravity of the offences, the considerable damage that the offences had caused, the need to ensure that they remained at the disposal of the judicial authorities, the risk of unlawful collusion between the co-defendants or pressure on any of them or on the witnesses, and finally, the preservation of evidence. They also relied on the absence of sufficient guarantees and the risk of repeat offending. The Court acknowledged that throughout the investigation, those reasons, in particular the risk of absconding, had remained both relevant and sufficient.

In previous cases the Court had ruled that pre-trial detention of more or less five years constituted a violation of Article 5 § 3. However, the Court was aware of the context of this case which concerned terrorism in the Basque Country. It reiterated that the right of an accused in detention to have his case examined with particular expedition must not hinder the efforts of the courts to carry out their tasks. In the five cases under consideration, the Court noted that there had been no period during which the authorities had not been gathering evidence or carrying out investigative formalities and the length of the pre-trial detention at issue was found, essentially to have been attributable to the complexity of the cases. The considerable number of expert reports prepared attested to the need for the numerous investigative measures in these cases.

There remained however one period of inactivity attributable to the judicial authorities lasting from 23 January 2007, the date of the order for committal to trial, and 17 December 2008, the date of the Assize Court's judgment, namely a period of approximately two years during which the pre-trial detention was extended only "as a result of the workload of the specially constituted Assize Court". The Court reiterated that it was for the States to organise their legal systems in such a way that their courts could meet the requirements of Article 5 (right to liberty and security).

The Court therefore considered that the judicial authorities had not acted with all the requisite promptness. It concluded in the five cases that the excessive length of the applicants' pre-trial detention had breached Article 5 § 3.

## Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that France was to pay each applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,000 in respect of costs and expenses.

*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.