



## Two members of the terrorist organisation ETA sustained inhuman and degrading treatment after their arrest

In today's Chamber judgment<sup>1</sup> in the case of [Portu Juanenea and Sarasola Yarzabal v. Spain](#) (application no. 1653/13) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights, in its substantive and procedural aspects.**

The case concerns allegations of ill-treatment sustained by Mr Portu Juanenea and Mr Sarasola Yarzabal when they were arrested in 2008 by officers of the Guardia Civil and at the beginning of their incommunicado police custody.

The Court found in particular that the injuries described in the certificates presented by Mr Portu Juanenea and Mr Sarasola Yarzabal had been caused while they were in the hands of the Guardia Civil. It took the view that neither the national authorities nor the Government had provided any convincing or credible arguments to explain or justify those injuries, which it also found to constitute inhuman and degrading treatment.

The Court then observed that the Supreme Court had confined itself to dismissing the applicants' version without considering whether the use of physical force by the officers during their arrest had been strictly necessary and proportionate, or whether the most serious injuries subsequently sustained by Mr Portu Juanenea were attributable to the officers responsible for his detention and supervision. Those omissions had prevented the domestic court from establishing the facts and all the circumstances as fully as it should have done.

### Principal facts

The applicants, Igor Portu Juanenea and Martin Sarasola Yarzabal, are Spanish nationals who were born in 1978 and 1977 respectively. In May 2010 they were convicted and sentenced as perpetrators of the Madrid-Barajas Airport Terminal 4 bombing on 30 December 2006. They are serving their prison sentences in Cordoba and Jaén (Spain).

On 6 January 2008 Mr Portu Juanenea and Mr Sarasola Yarzabal were arrested in the Basque Country by counter-terrorism officers of the Guardia Civil. According to the applicants, during the journey they were kicked and punched as they were being taken in the respective vehicles to the Intxaurreondo police station, and on the bank of a river where the vehicles stopped on the way. Allegedly they were also beaten by the agents of the intelligence group which took charge of them later.

On 7 January 2008 the applicants were examined by two doctors from the Basque Forensic Institute, who immediately admitted Mr Portu Juanenea to the intensive care unit. He left hospital on 11 January. Mr Sarasola Yarzabal was taken by car to Madrid where he was held incommunicado until 11 January 2008. During his transfer and detention, he was allegedly subjected to threats and

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).

beatings. Various medical reports noted numerous visible injuries on several parts of the applicants' bodies. Mr Portu Juanenea received treatment for 27 days, including five in the hospital. During the 22 days he was not hospitalised he was unable to perform his daily routine. Mr Sarasola Yarzabal needed 14 days to recover.

On 8 January 2008 and 12 February 2008 Mr Portu Juanenea and Mr Sarasola Yarzabal each made a statement to investigating judge no. 1 of San Sebastián, complaining of having been ill-treated. A judicial investigation was opened against the officers involved. On 30 December 2010 the *Audencia Provincial* handed down various sentences to four of the officers, in particular for serious offences of torture, based on evidence which included the medical reports.

On 2 November 2011 the Supreme Court quashed the judgment and acquitted the four officers. It took the view, among other things, that the applicants' injuries had been caused by the violence of their arrest and that their statements had been dictated by the terrorist organisation ETA, whose policy it was to make false claims of torture against the Spanish police.

## Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of torture and inhuman or degrading treatment) and 6 § 1 (right to a fair trial) of the European Convention on Human Rights, the applicants complained that they had been victims of torture and ill-treatment during their arrest and at the beginning of their incommunicado police custody; they also complained that the officers of the Guardia Civil whom they accused of being responsible for the ill-treatment had been acquitted. The Court decided to examine their complaint under Article 3 alone.

The application was lodged with the European Court of Human Rights on 4 January 2013.

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

Helena **Jäderblom** (Sweden), *President*,  
Branko **Lubarda** (Serbia),  
Luis **López Guerra** (Spain),  
Helen **Keller** (Switzerland),  
Pere **Pastor Vilanova** (Andorra),  
Alena **Poláčková** (Slovakia),  
Georgios A. **Serghides** (Cyprus),

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

## Decision of the Court

### [Article 3 \(prohibition of inhuman or degrading treatment\)](#)

#### **1. Substantive aspect**

Taking the view that the applicants' statements had been untrue, the Supreme Court attributed no evidential value to the forensic medical reports from the Basque Forensic Institute on which the *Audencia Provincial* had based its judgment, excluding them on the ground that they had been based on a false premise. It moreover found that the applicants' lack of sincerity did not enable the courts to establish any evidence for the origin of the injuries or to determine whether excessive force had been used during the arrest. The Court found, however, that the forensic pathologists had also examined in their reports the version put forward by the police officers to the effect that the applicants had violently resisted arrest, and had concluded that this version was not compatible with most of the injuries found. As regards more specifically the most serious wounds alleged by Mr Portu Juanenea, the Supreme Court had not engaged in any assessment of how or when they had been

caused. However, according to the judgment of the *Audiencia Provincial*, all the experts had agreed that Mr Portu Juanenea's ribs had been fractured gradually, throughout the day of the arrest, and that these fractures had probably been caused by the movement of the vehicle and by the applicant's sitting position when transferred to Intxaurrondo. In any event, and regardless of this discrepancy between the judgment of the Supreme Court and that of the *Audiencia Provincial*, it was clear to the Court that the former had merely dismissed the applicants' version without determining the origin of the injuries sustained, as established by the medical reports, in the light of their arrest and detention by officers of the Guardia Civil, or seeking to ascertain whether those officers were liable. Even supposing that the Supreme Court's version as to the origin of the injuries at the time of arrest could be accepted, that court had nevertheless refrained from assessing whether the use of physical force by the officers during the arrest had been strictly necessary and proportionate or whether the injuries sustained by Mr Portu Juanenea, after his arrest according to the Supreme Court, were attributable to the officers responsible for his custody and supervision, as he had still been in police custody and therefore in the hands of the Guardia Civil. In addition, the Government had not shown the exact circumstances of the applicants' arrest or established that the force used by the officers involved in the operation had been proportionate. As to any injuries which could have been caused subsequent to the applicants' arrest and transfer to Intxaurrondo, the Government had merely argued that their complaint of acts of torture did not relate to any events that could have taken place after their arrival on the premises of the Guardia Civil, whereas the applicants' complaint before the domestic courts had also concerned ill-treatment allegedly inflicted on them after their arrest.

Consequently, the Court found it sufficiently established that the injuries described in the certificates produced by the applicants, and the existence of which had not been denied either by the Supreme Court or by the Government, had been caused while they were in the hands of the Guardia Civil. It took the view that neither the domestic authorities nor the Government had provided any convincing or credible arguments which could serve to explain or justify the injuries sustained by the applicants. The Court thus found that the injuries described had to be attributed to the State. In addition, since the applicants had not alleged that the injuries in question had had any consequences for them in the long term, and in the absence of any conclusive evidence about the aim of the treatment, the Court was of the view that the treatment sustained by the applicants could not be characterised as torture. That being said, it was sufficiently serious to be regarded as inhuman and degrading treatment. There had thus been a violation of Article 3 of the Convention in its substantive aspect.

## **2. Procedural aspect**

The Supreme Court had re-examined certain documentary evidence on the basis of the case file, such as the various forensic medical reports and the document seized from the leader of ETA which allegedly proved that the applicants' statements were contrived. Moreover, the Supreme Court had not merely interpreted the documentary evidence differently, it had also reassessed the credibility of the statements of the two applicants as complainants in the domestic proceedings, and those of other witnesses who, according to that court, had links of varying degrees with the applicants or with the ETA. That fresh assessment of evidence of a personal nature, without any direct assessment by the Supreme Court and contradicting the findings of the first-instance court, which had had the opportunity to hear the applicants, the defendants and all the witnesses at a public hearing, had been decisive in the acquittal of the Guardia Civil officers. In that connection the Court pointed out that in accordance with the case-law on Article 6 § 1 of the Convention, where appellate courts re-examined personal evidence such as the testimony of witnesses or defendants and reached conclusions that contradicted those of the court below, the requirements of a fair trial might render indispensable the holding of a public hearing before the appellate court, so that the latter could gain direct and immediate knowledge of the relevant evidence.

In any event, the Supreme Court had confined itself, in quashing the judgment of the court below, to dismissing the applicants' version without seeking to ascertain whether the use of physical force by the officers during their arrest had been strictly necessary and proportionate, or whether the most serious injuries subsequently sustained by Mr Portu Juanenea – according to the establishment of the facts by the Supreme Court – were attributable to the officers responsible for his detention and supervision. Those omissions had prevented the domestic court from establishing the facts and all the circumstances as fully as it should have done, in accordance with its obligation to subject the case before it to the strict scrutiny required by Article 3 of the Convention. Accordingly there had been a violation of Article 3 in its procedural aspect.

#### Article 41 (just satisfaction)

The Court held, by four votes to three, that Spain was to pay 30,000 euros (EUR) to Mr Portu Juanenea and EUR 20,000 to Mr Sarasola Yarzabal, in respect of non-pecuniary damage.

#### Separate opinion

Judges Keller, Pastor Vilanova and Serghides expressed a joint partly dissenting and partly concurring opinion. This opinion is annexed to the judgment.

*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.