[Arrozpide Sarasola and Others v. Spain (no. 65101/16 and others)](http://www.prisonlitigation.org/?email_id=91&user_id=140&urlpassed=aHR0cDovL2h1ZG9jLmVjaHIuY29lLmludC9lbmc%2FaT0wMDEtMTg3MTky&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions" \t "_blank)

Facts

The three applicants were members of the terrorist organisation ETA. They were arrested in France between 1987 and 1992, and were given prison sentences by French courts for offences committed in France. Once extradited to Spain, between 1996 and 2000, they were convicted and sentenced for attacks and/or murders which had been committed by the ETA in Spain before their convictions in France.

In 2014 the applicants asked the Spanish courts to take account of the length of sentences handed down and served in France for the purposes of calculating their new term of imprisonment within the maximum thirty-year term in Spain. Their request was based on [Framework Decision 2008/675/JHA](http://www.prisonlitigation.org/?email_id=91&user_id=140&urlpassed=aHR0cHM6Ly9ldXItbGV4LmV1cm9wYS5ldS9lbGkvZGVjX2ZyYW13LzIwMDgvNjc1L29qP2xvY2FsZT1lbg%3D%3D&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions) of the Council of the European Union of 27 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.

Those requests were upheld at first instance, but subsequently dismissed by the Supreme Court.

Law

Article 7: The application of the maximum term of imprisonment prescribed by the Criminal Code was a measure which concerned the scope of the sentences imposed on the applicants. The impugned decisions of the Supreme Court, refusing to grant their requests to take account of time already served in France for the purposes of applying the maximum term in Spain, also concerned the scope of sentences and thus fell within the provision in the last sentence of Article 7 § 1 of the Convention.

At the time when the applicants had committed the criminal offences and at the time when the decisions were taken to calculate the total length and/or the ceiling of their aggregate prison sentences, the relevant Spanish law, as a whole (including case-law), did not provide, to a reasonable extent, for time already served in another State to be taken into account for the purposes of calculating the term of imprisonment in Spain.

The three applicants had sought the combining of their sentences with those already served in France, on the basis of the above-mentioned EU Framework Decision, only after the delivery of Supreme Court judgment no. 186/2004, in March 2014, in a case where that court had been called upon for the first time to interpret the Framework Decision. Even though it observed that it was in favour of taking account of time already served in another EU State for the purposes of combining sentences, it pointed out that there was no domestic legislation transposing the Framework Decision or any regulations expressly governing this matter. In accordance with that approach, some Sections of the Criminal Division of the Audiencia Nacional had combined sentences served in France with sentences handed down in Spain for the purposes of calculating the prison term. But all those decisions, except for three isolated cases, had been annulled by the Supreme Court following the introduction of appeals by the public prosecutor on points of law and the delivery of the leading judgment no. 874/2014 in January 2015 by the plenary formation of the Criminal Division of the Supreme Court. That judgment had dismissed the possibility of taking into account sentences handed down and served in another EU member State for the purposes of calculating the length of prison sentences to be served in Spain within the maximum term.

Under Spanish law, case-law was not a source of law and only precedent established in a reiterated manner by the Supreme Court could complement statute law. Judgment no. 186/2014 was not accompanied by any jurisprudential or administrative practice which had become consolidated over time, and which could have given rise to legitimate expectations as to a stable interpretation of the relevant criminal law. The present case could be clearly distinguished from Del Río Prada v. Spain where, in view of the previous practice concerning the interpretation of the criminal law and the scope of the sentence, the Court had taken the view that the departure from precedent by the Supreme Court (the “Parot doctrine”), as applied to the applicant in that case, could not be regarded as foreseeable, and there had therefore been a violation of Article 7 of the Convention.

In the present case, the discrepancies between the various courts concerned, as to the possibility of combining the terms of prison sentences served in other EU member States with the sentences to be served in Spain, had lasted for only about ten months, until the delivery by the Supreme Court – the highest Spanish court in criminal matters – of its leading judgment no. 874/2014. The solutions adopted in the applicants’ cases had merely followed that judgment.

Accordingly, having regard to the relevant domestic law at the time when the applicants had committed the offences, when the decisions on the calculation of the length and/or ceiling of the prison terms were adopted, and when the applicants had requested that the sentences served in France be taken into account, the impugned decisions had not changed the scope of the sentences handed down. The maximum length of the time to be served had always been set at thirty years, as a result of the combination and/or ceiling of individual sentences imposed on the applicants by the Spanish criminal courts, without taking account of the sentences handed down and served in France. The impugned decisions of the Supreme Court had not therefore led to any change in the scope of the applicants’ sentences.

Conclusion: no violation (unanimously).

[...]

(See Del Río Prada v. Spain [GC], [42750/09](http://www.prisonlitigation.org/?email_id=91&user_id=140&urlpassed=aHR0cHM6Ly9ldXItbGV4LmV1cm9wYS5ldS9lbGkvZGVjX2ZyYW13LzIwMDgvNjc1L29qP2xvY2FsZT1lbg%3D%3D&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions), 21 October 2013, [Information Note 167](http://www.prisonlitigation.org/?email_id=91&user_id=140&urlpassed=aHR0cDovL2h1ZG9jLmVjaHIuY29lLmludC9lbmc%2FaT0wMDItOTIxOA%3D%3D&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions); see also Borcea v. Romania (dec.), [55959/14](http://www.prisonlitigation.org/?email_id=91&user_id=140&urlpassed=aHR0cDovL2h1ZG9jLmVjaHIuY29lLmludC9mcmU%2FaT0wMDEtMTU4MTE3&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions), 22 September 2015; and Koprivnikar v. Slovenia, [67503/13](http://www.prisonlitigation.org/?email_id=91&user_id=140&urlpassed=aHR0cDovL2h1ZG9jLmVjaHIuY29lLmludC9mcmU%2FaT0wMDEtMTU4MTE3&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions), 24 January 2017, [Information Note 203](http://www.prisonlitigation.org/?email_id=91&user_id=140&urlpassed=aHR0cDovL2h1ZG9jLmVjaHIuY29lLmludC9lbmc%2FaT0wMDItMTEzNjY%3D&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions))

 © Council of Europe/European Court of Human Rights