EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 66498/17
Jorge FRAILE ITURRALDE
against Spain

The European Court of Human Rights (Third Section), sitting on 7 May 2019 as a Chamber composed of:

Vincent A. De Gaetano, *President,*
Paulo Pinto de Albuquerque,
Dmitry Dedov,
Branko Lubarda,
Alena Poláčková,
María Elósegui,
Gilberto Felici, *judges,*

and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 1 September 2017,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Jorge Fraile Iturralde, is a Spanish national who was born in 1970 and is serving a prison sentence in Badajoz. He was represented before the Court by Mr I. Goioaga Llano, a lawyer practising in Bilbao.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. The applicant was convicted of causing destruction, possession of explosives, storing weapons and collaboration with a terrorist organisation (ETA). He was sentenced to twenty-five years' imprisonment. He has been

imprisoned since 1998, and has been held at Badajoz Prison – located roughly 700 km from his family residence – since 3 June 2010.

2. On 11 December 2015, the General Secretariat of Penal Institutions (*Secretaría General de Instituciones Penitenciarias*), a body which forms part of the Ministry of the Interior, decided to retain the applicant under the category 1 (close custody) regime in the light of his behaviour, his ties with the criminal activities of a terrorist organisation (ETA) that had not yet disbanded, and his extensive criminal record. The authorities decided to maintain the applicant's placement in Badajoz Prison. The decision expressly stipulated that the applicant could lodge an appeal with the Prison Supervision Court against the decision to maintain his category 1 classification and that he could lodge an administrative appeal (*recurso de alzada*) with the Ministry of the Interior against the decision to maintain his placement in Badajoz Prison, as provided for by sections 114 and 115 of Law 30/1992. He did not do so.

3. On 16 February 2016 the applicant lodged a complaint with the court responsible for the execution of custodial sentences and overseeing prisons (the Central Prison Supervision Court – *Juzgado Central de Vigilancia Penitenciaria*) regarding the effect of the decision to continue his placement in Badajoz Prison – namely the authorities' refusal to allow him serve his prison sentence in the prison nearest to his family residence. The complaint only contested his placement in Badajoz Prison (and not the decision to maintain the applicant's category 1 classification). He alleged that a number of fundamental and penal rights had been breached, including his right to respect for his family life. The applicant referred to the distance (700 kilometres) between Badajoz Prison and his family residence in Durango (in the province of Biscay), and submitted that the long distance meant that travelling to see him was very burdensome for his wife and five-year-old daughter and that his parents were unable to visit him in prison owing to their advanced age and for health reasons.

4. On 18 April 2016, the court dismissed the complaint. Referring to the case-law of domestic courts (see paragraphs 12 and 13 below), the court firstly clarified that under section 79 of the General Prison Act and section 31 of the Prison Regulations (see paragraphs 9 and 10 below), authority to decide on the destination or transfer of prisoners to different prison facilities lay exclusively with the General Secretariat of Penal Institutions. This decision was in any case subject to judicial review by administrative courts. The court, however, noted that the applicant had failed to exhaust the available administrative remedies against his transfer. Notwithstanding this, the court noted that it had jurisdiction to safeguard the rights of prisoners (section 76 of the General Prison Act), and that it could therefore exceptionally review a decision on prison transfer if it were to be shown that that decision had clearly breached the prisoner's fundamental or

penal rights and that that breach could be remedied by way of a prison transfer.

In this connection, having regard to the limited scope of the proceedings and following an examination of the applicant's individual circumstances (particularly in respect of his contact with close relatives and friends), the court concluded that the alleged violations of his rights had not been shown to have occurred, and that the fact that the applicant had to serve a prison sentence in a facility different to the one of his preference did not amount to inhuman or degrading treatment. The court based its decision on the following grounds:

> "... In relation to his communication [with the outside world] and in the light of the prison report, [the applicant] maintains regular written and oral communications, [both] of a special nature and by telephone. Thus, [the prison report states]:
>
> 'The prisoner in question has maintained a smooth relationship with his relatives, friends and requested professional [advisors] over the last two years ...
>
> - Letters: during the period of time in question [the applicant] has regularly received or sent more than 100 letters, especially from his wife ...
>
> - Ordinary [contact]: according to our case file, [the applicant enjoys contact] three times per month on average.
>
> - Special [contact]: every month [the applicant receives visits] the two times per month authorised by the current Prison Regulations. He enjoys one conjugal visit from his wife and one family [visit]. As regards contact with his family, in addition to his wife and daughter, [he is also visited by] siblings, brothers-in-law, nieces and nephews, parents-in-law, etc. In addition to the two aforementioned special visits, this prisoner enjoys one special visit [for the purposes of] cohabitation every three months [from] his wife and daughter.
>
> - Lawyers: in the last two years, this prisoner has communicated with the lawyers entrusted with his defence, without any type of incident [arising], every time he has requested [to be allowed to do so].
>
> - Telephone: [the applicant] normally exhausts the number of phone calls authorised per week (currently ten), so he has made around 800 phone calls within the two-year period in question.'
>
> ..."

5. The applicant lodged an appeal against the above-mentioned decision. The *Audiencia Nacional* dismissed it by a decision of 7 June 2016. The court firstly referred – in the same terms as those used in the wording of the first-instance decision – to the limited scope of the judicial review of prison transfers in such proceedings, noting that the Central Prison Supervision Court had jurisdiction to safeguard the fundamental rights and prison benefits of the prisoner concerned.

The court noted that the prison authorities had the exclusive authority to decide on the initial destination and transfer of prisoners – without prejudice to any subsequent judicial review – on the basis of the particular circumstances in respect of the organisation of the country's prisons and the

prisoner's personal circumstances. Factors such as the material availability of prisons, their characteristics and the general prison-policy guidelines at any given time (depending on the circumstances) should be taken into consideration, in so far as the decision was issued in accordance with "the guarantees [under], and within the limits of, the [relevant] law, regulations and court judgments" (section 2 of the General Prison Act). The court observed that the Spanish legal system did not grant prisoners the right to be placed in or transferred to a particular prison or to serve their sentences in facilities close to their own or their family's place of residence. It held that any decision not to transfer a prisoner had to be duly reasoned and state the reasons on which it was based; it furthermore reiterated that no final administrative decision refusing the request for a prison transfer had been issued in the instant case, the applicant having failed to exhaust administrative remedies.

The court found that there had been no violation of any fundamental rights or any breach of the Court's case-law. The court dismissed the applicant's complaints, referring mainly to his records and the information already cited by the first-instance court – notably that relating to his communication with and visits received from close relatives and friends (see paragraph 4 above). The court furthermore rejected the applicant's allegation that his situation existed within the "framework of a collective political treatment". It pointed out that the rules governing the enforcement of sentences mandated the "individualised treatment" of prisoners. The court observed that the applicant had engaged in regular disruptive behaviour in prison and had continued to follow instructions from the terrorist organisation, noting as follows:

> "We are in the presence of a prisoner sentenced to twenty-five years' imprisonment for causing destruction [*estragos*], possession of explosives, storage of weapons and collaboration with a terrorist organisation (ETA). [He] has been in prison since 1998, is classified as category 1 [*primer grado*], [and] has not enjoyed any leave [*permisos*], except for the extraordinary leave [granted to attend] the childbirth of his wife in February 2011. [He] has been in Badajoz Prison since 3 June 2010 ... [He has shown] a negative attitude – in contravention of the rules – with many incidents and hence disciplinary proceedings, [as a result of his] following guidelines and instructions that prisoners receive from the management structure of the terrorist group by way of controlling prisoners who, in prison, continue to be part of the terrorist organisation, a structure that has not yet been dissolved [and] has not handed over the weapons or explosives at its disposal ...
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> ...
>
> ... while it is true that according to constitutional principles the enforcement of terms of imprisonment seeks reintegration, and thereby [such enforcement] [requires] a treatment on an individual basis [with that aim]; ... only if the enforcement [of a sentence] in a nearby prison contributes to or is aimed at reintegration would it be necessary for the relevant authority (the General Secretariat of Penal Institutions) to agree to the appropriate transfer ... [However,] ... the reverse situation can arise – that is to say that the aim constitutionally pursued is incompatible with the enforcement

> [of the sentence in question] in the prison requested, as in the case of the situation that arises with regard to prisoners convicted for offences of a terrorist nature or related to ETA for as long as their disengagement from [the terrorist organisation] is not demonstrated, in so far as the breaking of links is precisely what it is aimed at or is entailed in their reintegration; [that] situation has not occurred in the present case."

The court also made reference to the Court's case-law as regards the placement and transfer of prisoners – in particular the cases of *Khodorkovskiy and Lebedev v. Russia* (nos. 11082/06 and 13772/05, 25 July 2013) and *Vintman v. Ukraine* (no. 28403/05, 23 October 2014). The court noted that although the general rule was that prisoners were to be placed in the prison facilities closest to their residence – as follows from section 12 of the General Prison Act, which notes the need to prevent the social uprooting of those convicted – there could be reasons justifying prisoners' placement in other facilities. In cases relating to organised crime or terrorism – such as the instant case – any departure from the general rule was justified by the need to prevent the excessive concentration of members of the same organisation in the same prison, in the event that such a concentration would allow that organisation to continue exercising control over its members.

Lastly, by way of conclusion, the court reiterated the existing links between the applicant and the terrorist organisation ETA and stated the following in relation to prison policy in respect of those convicted of terrorist offences:

> "... an initial policy of concentrating terrorist prisoners in certain prison facilities ... prompted [those prisoners] to establish strong links and cohesion with each other, exerting pressure on each facility's management to impose a certain regime [within their respective premises]; in the year 1987 the prison [authorities] initiated the policy of dispersing terrorist prisoners over various Spanish prison facilities, which has continued until the present day. The main purpose of this policy of dispersal was to break the links between the members of terrorist organisations with both [the organisations themselves] and related associations and groups ..., thereby facilitating their abandonment of the terrorist organisation and, eventually, [their] social reintegration, by allowing them to break links [with them] ...
>
> At present, in view of social developments such as the [the terrorist group's] definitive cessation of armed activity (while not disbanding or completely ceasing [its] actions), this policy has been modified, allowing a sort of controlled regrouping [*reagrupamiento controlado*] of some of those prisoners who have broken their links with the terrorist organisation ..., [provided that] they '[acknowledge and render] reparation to victims and [undergo] social reconciliation', thus facilitating their access to prison benefits, on the basis of section 72.6 [of the General Prison Act], [by contrast with those] prisoners who have decided ... to continue with the ideas [*postulados*] [of the terrorist organisation], not acknowledging [their] victims and thus not breaking with their criminal past, as has been proved to be the case in respect of [the applicant] ... [F]urthermore, the prison itself ... [considers] such a request [to have been made] within the framework of a collective strategy designed by the management of the terrorist organisation ETA, [as] previously announced in the media ...

...

... in general, prison policy acknowledges the need for prisoners to reside in the facilities nearest to their family and friends, as that frequently, although not always, means preventing their social uprooting. But this general rule is often limited by diverse considerations, [including the need to accord] due respect for the dignity of victims, which would be breached if their victimisers [*victimarios*] resided in nearby facilities. [Prison staff's] right to security (in the past they were targeted by actions staged by the terrorist organisation ETA) and prisoners' right to resocialisation – particularly those who express a serious will to distance themselves from the terrorist leadership's dictates – may also be affected.

... [C]oncentrating ETA prisoners in certain prisons would frequently disturb [those prisons'] security and obstruct the social reintegration of [those prisoners] who have opted to [cut links with that terrorist organisation] ... Hence, their placement in different prisons is justified by the requirements of penal treatment ... The massive concentration of [prisoners] convicted of organised crime ... rarely facilitates resocialisation; quite the contrary, as demonstrated by the initial policy of regrouping in this case ...

..."

6. The *Audiencia Nacional*'s decision contained a dissenting opinion of one judge (of a six-judge panel), who held that the applicant should have been placed in the prison nearest to his family residence or in a prison located within a reasonable distance of their place of residence. In short, the dissenting opinion was based on the following grounds: (i) prisoners have a right to serve their sentences in a prison located as close as possible to the family residence; (ii) in the absence of any legal basis, the prison authorities cannot systematically and universally move prisoners of a certain category away because of the nature of the offence that they committed; (iii) the applicant's placement far from his family violated his right to respect for family life, as enshrined in the European Convention on Human Rights; and (iv) such a placement cannot be considered to constitute treatment that is aimed at rehabilitation and social reintegration.

7. The applicant lastly lodged an *amparo* appeal with the Constitutional Court, invoking a breach of Articles 15 (prohibition of torture), 18 (right to personal and family privacy) and 25 (principle of legality) of the Spanish Constitution. By a decision of 10 March 2017 the Constitutional Court declared the appeal inadmissible, given the "manifest absence" of a violation of fundamental rights within the scope of the *amparo* appeal, in accordance with sections 44(1) and 50(1)(a) of the Organic Law on the Constitutional Court.

B. Relevant domestic law and practice

8. The relevant provisions of the Constitution read as follows:

Article 25

"...

2. Punishments entailing imprisonment and security measures shall be aimed at rehabilitation and social reintegration and may not consist of forced labour. While serving their sentence, convicted persons shall enjoy the fundamental rights set out in this Chapter, with the exception of those expressly limited by the terms of the sentence, the purpose of the punishment and prison law. In all circumstances, they shall be entitled to paid employment and to the corresponding social-security benefits, as well as to access to cultural activities and the overall development of their personality.

..."

9. The relevant provisions of the General Prison Act (Organic Law 1/1979 of 26 September) (*Ley Orgánica General Penitenciaria*), as in force at the relevant time, read as follows:

Section 1

"Prison institutions ... have the rehabilitation and social reintegration of [convicted persons] ... as a primary purpose, as well as the holding and custody of detained [persons], prisoners and convicted [persons].

..."

Section 2

"Prison activities shall be carried out [in line with] the guarantees [under], and within the limits of, the [relevant] law, regulations and court judgments."

Section 3

"Prison activities shall be conducted [in a manner that respects], in all cases, the human personality of [persons] confined in prison and [those of their] rights and legal interests [that are] not affected by their sentence ..."

Section 12

"1. The location of [prison] facilities shall be set by the prison administration within the designated territorial areas. In any event, it shall be endeavoured [to ensure] that each [territorial area] has enough [facilities] to meet the penal needs and to prevent the social uprooting of [those] convicted.

..."

Section 72

"...

6. ... the classification under or progression to category 3 [of prison regime] of persons convicted for terrorist offences ... or [offences] committed within criminal organisations shall require, in addition to the requirements stipulated under the Criminal Code and compliance [with their obligations in respect of] civil liability ..., that [offenders] unequivocally demonstrate [that they] have abandoned terrorist purposes and methods, and furthermore have actively cooperated with the authorities ..., which may be attested by an express statement repudiating their criminal activities

and renouncing violence and an explicit appeal to the victims [of their offences] to forgive them, as well as by technical reports showing that the prisoner [in question] has actually disengaged from the terrorist organisation and the environment and activities of illegal associations and groups around it and [is cooperating] with the authorities."

Section 79

"The management, organisation and inspection of [prisons] lie with the General Secretariat of Penal Institutions ..."

10. The relevant provisions of Royal Decree 190/1996 of 9 February approving the Prison Regulation (*Reglamento Penitenciario*), as in force at the relevant time, read as follows:

Section 3

"...

3. ... life in prison shall take life in freedom as a reference, minimising the adverse effects of imprisonment [and] encouraging social links, collaboration, the participation of private and public entities, and access to public benefits.

..."

Section 4

"1. Prison activity shall be conducted [in a manner] respecting inmates' personality and [those of their] rights and legal interests [that are] not affected by the sentence, ...

2. Consequently, inmates shall have the following rights:

...

c) The right to exercise civil, political, social, economic and cultural rights, except where incompatible with the purpose of their detention or the serving of their sentences.

..."

Section 31

"1. Under section 79 of the [General Prison Act], the management body [*centro directivo*] has exclusive authority to decide ... the categorisation and destination of prisoners in the different prison facilities, ...

..."

Section 42

"Inmates' oral contact [with the outside world] shall comply with the following rules:

...

... Difficulties in relatives' journeys shall be taken into account when organising visits.

..."

Section 74

"1. The ordinary regime shall apply to convicted [persons] classified under category 2, to [those] not classified and to detained [persons] and prisoners.

2. The open regime shall apply to convicted [persons] classified under category 3 who are capable of continuing their treatment under a semi-open regime [*régimen de semilibertad*].

3. The closed regime shall apply to convicted [persons] classified under category 1 owing to the extreme danger [that they pose] or to their manifest [failure to adapt] to the above-mentioned [ordinary and open] regimes ..."

11. Article 90 of the Criminal Code (as amended by Organic Law no. 1/2015) regulates release on licence. Paragraph eight of that provision is drafted in similar terms to those of section 72(6) of the General Prison Act. It stipulates that prisoners convicted of terrorist offences can only be released on licence if they have unequivocally demonstrated their disavowal of terroristic aims and means and have actively cooperated with the authorities. This could take the form of a statement expressly repudiating the offences that they committed and renouncing violence, together with an explicit appeal to their victims to forgive them, or technical reports showing that the prisoner has actually disengaged from the terrorist organisation.

12. Constitutional Court judgment no. 138/1986 of 7 November 1986 established that the authority to decide on the transfer of prisoners lies with the General Secretariat of Penal Institutions. Such decisions are accordingly subject to administrative remedies and, once exhausted, to judicial review by administrative courts (as opposed to the *Juzgado de Vigilancia Penitenciaria*). The Conflicts-of-Jurisdiction Court (*Tribunal de Conflictos de Jurisdicción*) has held on several occasions that since the prison authorities have the authority to organise prison facilities, manage their activities and set their location, it is part of their function to distribute prisoners among those facilities, particularly considering that due regard must be given by the prison authorities to the characteristics of the prison facilities and their availability (see, for example, judgments of 5 December 1986, 8 July 1991, 15 October 2002, 13 October 2004 and 29 May 2012).

13. The Administrative Chamber of the High Court of Justice (*Tribunal Superior de Justicia*) of Madrid reiterated in judgments of 24 July 2013 (nos. 599/2013, 600/2013 and 607/2013), 8 March 2013 (nos. 347/2013 and 348/2013) and 22 January 2014 (no. 51/2014) that the Spanish legal system does not grant prisoners the right to be placed in or transferred to a particular prison or to serve their sentences in facilities close to their own or their family's place of residence. Any decision in this connection lies with the prison authorities; those authorities should have regard to the particular circumstances regarding the organisation of the prisons and the prisoner's personal circumstances. The court pointed out that each prisoner's treatment had to be determined on an individual basis.

COMPLAINTS

14. The applicant complained under Article 8 of the Convention that his placement in a prison located in Badajoz – more than 700 km from his place of origin and family residence in Durango (in the province of Biscay) – amounts to an arbitrary and disproportionate interference with his right to respect for family life. He claimed that such long travel was very burdensome for his wife and five-year-old daughter – who had been born after he had already started to serve his prison sentence – and meant that his parents were unable to visit him in prison owing to their advanced age and for health reasons. The applicant furthermore maintained that that interference with his right to respect for family life was not provided for by law, and that in order to guarantee his right to respect for family life he should have been transferred to a prison as close as possible to the family residence. In his view, his links with the terrorist organisation ETA posed no danger to the State because ETA had ceased its armed activity in 2011.

15. The applicant also complained under Article 6 § 1 of the Convention that the decision of the Constitutional Court declaring his *amparo* appeal inadmissible had been arbitrary and excessively formalistic. In his view, the Constitutional Court had arbitrarily applied the rules on the submission and admissibility of appeals and its interpretation thereof had excluded the appeal's examination on the merits, in violation of his right of access to a court.

THE LAW

A. Alleged violation of Article 8 of the Convention

16. The applicant complained of a violation of his right to respect for family life on account of the refusal of his request for a transfer to a prison closer to his family residence. He relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1. Whether there was an interference with the applicant's Article 8 rights

17. Any detention entails by its nature a limitation on a prisoner's private and family life (see, among other authorities, *Khoroshenko v. Russia* [GC], no. 41418/04, § 106, 30 June 2015; *Vintman v. Ukraine*, no. 28403/05, § 77, 23 October 2014; and *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 835, 25 July 2013). It would be fundamentally wrong to analyse each and every case of detention following conviction from the standpoint of Article 8 and to consider the "lawfulness" and "proportionality" of the prison sentence as such (see *Khodorkovskiy and Lebedev*, cited above, § 835, and *Labaca Larrea and Others v. France* (dec.), no. 56710/13 and others, § 41, 7 February 2017).

18. The Convention does not grant prisoners the right to choose their place of detention, and the fact that prisoners are separated from their families (and at some distance from them) is an inevitable consequence of their imprisonment (see *Vintman*, cited above, § 78; *Rodzevillo v. Ukraine*, no. 38771/05, § 83, 14 January 2016; and *Polyakova and Others v. Russia*, nos. 35090/09 and 3 others, § 100, 7 March 2017). Nevertheless, detaining an individual in a prison which is so far away from his or her family that visits are made very difficult or even impossible may in some circumstances amount to interference with family life, as the opportunity for family members to visit the prisoner is vital to maintaining family life (see *Vintman*, § 78, and *Rodzevillo*, § 83 – both cited above). It is therefore an essential part of prisoners' right to respect for family life that the prison authorities assist them in maintaining contact with their close family (see, *inter alia*, *Messina v. Italy (no. 2)*, no. 25498/94, § 61, 28 September 2000; *Vintman*, cited above, § 78; *Rodzevillo*, cited above, § 83; and *Polyakova and Others*, cited above, § 81).

19. Hence, placing a convict in a particular prison may potentially raise an issue under Article 8 if its effects for the applicant's private and family life go beyond "normal" hardships and restrictions inherent to the very concept of imprisonment (see *Khodorkovskiy and Lebedev*, cited above, § 837; *Polyakova and Others*, cited above, § 81; and *Klibisz v. Poland*, no. 2235/02, § 355, 4 October 2016).

20. The Court notes that in *Labaca Larrea and Others* (cited above), the Court was provided with no specific details of the applicants' difficulties in maintaining links with their families, and it found that there had been no interference with their right to respect for their family life. The applicant's complaint is that he wanted to be close to his family and because the trip to Badajoz for his wife and his 5 year old daughter was difficult. Moreover, his parents were unable to visit him in prison owing to their advanced age and for health reasons (see paragraphs 3 and 14 above). The Court finds there has been an interference in the present case which calls to be justified under Article 8 § 2 of the Convention.

2. Whether the interference was justified under Article 8 § 2

(a) Whether the interference was "in accordance with the law"

21. The wording "in accordance with the law" requires the impugned measure both to have some basis in domestic law and to be compatible with the rule of law, which is expressly mentioned in the Preamble to the Convention and is inherent in the object and purpose of Article 8 of the Convention. The law must thus be adequately accessible and foreseeable, that is it must be formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct. For domestic law to meet these requirements it must afford adequate legal protection against arbitrariness and accordingly indicate with sufficient clarity the scope of the discretion conferred on the competent authorities and the manner of its exercise (*Polyakova and Others*, cited above, § 91, and the authorities cited there).

22. The applicant – imprisoned since 1998 – has been held at Badajoz Prison since 3 June 2010. On 11 December 2015, the General Secretariat of Penal Institutions decided that the applicant should remain in the category 1 regime (strict regime of imprisonment), and that he should remain in Badajoz Prison. The decision on the applicant's placement was taken pursuant to section 79 of the General Prison Act and section 31 of the Prison Regulations, which provide that the prison authorities decide on the placement and transfer of prisoners. Those laws were accessible and foreseeable, and they provided specific safeguards. In particular, domestic law provided for appeals against a decision on placement, namely an administrative appeal to the Ministry of the Interior (see paragraph 2 above). Although the possibility of challenging the decision was explicitly provided for in the decision of 11 December 2015, the applicant did not make such an appeal and has failed to provide any justification for not doing so. An appeal could have been judicially review by the administrative courts (notably the High Court of Justice) pursuant to Law 29/1998 on judicial proceedings in administrative matters. Within such proceedings, a prisoner had a right to an individual decision on his case on the basis of the relevant Spanish law: that prison activity has to be carried out in accordance with the guarantees under the relevant law, regulations and court judgments (section 2 of the General Prison Act); that prisoners should be assigned to prison with a view to preventing the social uprooting of those convicted (section 12 of the General Prison Act); that life in prison should take ordinary life outside prison as a benchmark, minimising the adverse effects of imprisonment and encouraging social links (section 3 of the Prison Regulations); and that difficulties in travelling encountered by prisoners' relatives are to be taken into account when organising visits (section 42 of the Prison Regulations). Any decision not to transfer a prisoner must be duly reasoned and state the reasons on which it is based (see paragraph 5 above). The court decisions

rendered at first instance can be reviewed by the Supreme Court and the Constitutional Court.

23. A further set of safeguards is provided by the possibility for a prisoner to lodge a complaint – as occurred in the instant case – with the relevant Prison Supervision Court. Prison Supervision Courts have jurisdiction to safeguard the rights of prisoners (section 76 of the General Prison Act). The instant case was thus examined at two levels of jurisdiction, namely the Central Prison Supervision Court at first instance and the *Audiencia Nacional* on appeal (see paragraphs 4-5 above). In addition, the Constitutional Court could review the courts' decisions.

24. In this connection it should be reiterated that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law. Save in the event of arbitrariness or manifest unreasonableness, it is not for the Court to question the interpretation of the domestic law by the national courts (see, among other authorities, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018). Accordingly, the Court finds that the impugned measure had a basis in domestic law, which provides for an accessible and foreseeable framework in which decisions on prison transfer were taken on an individual basis. The law afforded a degree of legal protection against arbitrary interference by the authorities, and provided for extensive safeguards to ensure that individual cases would be considered by the domestic authorities on the basis of relevant criteria.

25. The Court is satisfied that the impugned measure was "in accordance with the law" within the meaning of Article 8 of the Convention.

(b) Whether the interference pursued a "legitimate aim"

26. The Court reiterates at the outset that enhancing discipline and encouraging good behaviour in prison constitutes a legitimate aim when restricting an applicant's rights under Article 8 of the Convention, particularly when refusing a request for a prison transfer – thus keeping a prisoner far from her or his family (see *Vintman*, cited above, § 98). In the instant case, the *Audiencia Nacional* found that the applicant's transfer to a prison closer to his family would have strengthened his ties with the terrorist organisation ETA. It noted that the applicant had engaged in regular disruptive behaviour in prison – in respect of which he had been disciplined on many occasions – and had continued to follow instructions from the terrorist organisation. This has not been disputed by the applicant; the Court sees no reason to doubt the domestic courts' findings. In addition, referring to prison policy in respect of those convicted of terrorist offences – which had the effect of dispersing ETA prisoners over various prison facilities – the *Audiencia Nacional* held that a departure from the general rule that prisoners should reside in facilities close to their family and friends was justified by the aim of respecting the dignity of victims – who would be offended if convicted terrorists remained in facilities close to them. The

policy aimed at cutting the links between the prisoners concerned and the terrorist organisation. The court also noted that concentrating ETA prisoners in certain prisons in the past had given rise to security concerns and allowed the terrorist organisation to continue exercising control over its members in prison. This had led to prison staff being targeted (see paragraph 5 above).

27. The Court considers that the Spanish authorities' aim in maintaining the applicant's placement in Badajoz Prison was to ensure adequate discipline in prisons and to implement their policy in respect of ETA prisoners. It accepts that the interference pursued legitimate aims such as the prevention of disorder and crime and the protection of the rights and freedoms of others.

(c) Whether the interference was proportionate to the legitimate aims

28. The Court again notes that the applicant's request for a transfer to a prison closer to his family residence was refused on the basis of an individual assessment of the applicant's situation and the relevant prison policy. While the Court has accepted that the domestic authorities must enjoy a wide margin of appreciation in matters relating to the execution of sentences, the distribution of the prison population should not remain entirely at the discretion of the administrative bodies. The interests of prisoners in maintaining at least some family and social ties must somehow be taken into account (see *Khodorkovskiy and Lebedev*, §§ 836-838 and 850, and *Rodzevillo*, § 83 – both cited above). The margin of appreciation left to the respondent State in the assessment of the permissible limits of the interference with private and family life in the sphere of the regulation of the visiting rights of prisoners has been narrowing (*Khoroshenko*, § 136, and *Polyakova and Others*, § 89 – both cited above).

29. The Court first notes that it is apparent from the reports cited by the domestic courts (which the applicant does not contest) that applicant has maintained regular contact with close family. In particular, in the last two years he has enjoyed frequent visits from his family (three ordinary visits per month on average from family and friends; one conjugal visit per month from his wife; one family visit per month from his wife, daughter, siblings and other family members; and at least one cohabitation visit once every three months from his wife and daughter). He has also received or sent letters on a regular basis (more than 100) and has made ten phone calls per week (around 800 within the period of two years referred to above). The case file also shows that the applicant enjoyed "extraordinary" prison leave when his wife gave birth in February 2011.

30. There is no evidence that the journeys that his close relatives had to make had raised any insurmountable or particularly difficult problems (see, *mutatis mutandis*, *Labaca Larrea and Others*, cited above, § 45). The Court observes that the applicant has not substantiated when the last time was that he saw his parents (contrast *Vintman*, § 80, and *Polyakova and Others*, §§

43 and 82 – both cited above) and has not claimed to have received fewer visits in number from friends and family members than he would have received had he been located closer to his family residence (contrast *Khodorkovskiy and Lebedev*, cited above, § 838).

31. Against this factual background, the Court must determine whether the relatively limited interference with the applicant's right to respect for his family life was compatible with the aims set out above. It notes that the prison policy that gave rise to the applicant's not being detained close to his family was a policy which applied to a limited group of prisoners only, namely those who had been convicted of terrorist offences (see paragraph 5 above). The policy was designed to cut the links between the prisoners concerned and their original criminal environment, in order to minimise the risk that they would maintain contact with terrorist organisations (see, *mutatis mutandis*, *Messina* cited above, §§ 66-67, and *Enea v. Italy* [GC], no. 74912/01, § 126, 17 September 2009). Furthermore, the Court notes that the domestic courts referred to the prison policy having regard to the circumstances at the time – namely that ETA had at that time not disbanded, handed over its weapons or completely ceased its actions, as ETA only announced the complete dismantling of all of its structures by a statement of 3 May 2018. In this connection, the Court takes account of the changes in prison policy arising from ETA's cessation of armed activities – as pointed out by the *Audiencia Nacional* (see paragraph 5 above) – and the authorities' continued assessment of further developments in that regard. Lastly, the Court observes that the applicant has failed to renounce terrorist organisation ETA. Only individual prisoners who renounced their links with terrorism could be classified under the category 3 regime (section 72 of the General Prison Act).

32. The Court concludes that given the limited scope of the policy considerations which were applied in the applicant's case, together with the lack of evidence that the applicant's links with his friends and family suffered to any significant extent, and bearing in mind the margin of appreciation enjoyed by Contracting States, the Court finds that the limitations on the applicant's right to respect for his family life were not disproportionate to the aims pursued.

33. It follows that the complaint is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 6 § 1 of the Convention

34. The applicant complained that the decision of the Constitutional Court declaring his *amparo* appeal inadmissible was arbitrary and excessively formalistic, in violation of his right of access to a court. He relied on Article 6 § 1 of the Convention, the relevant parts of which read as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

35. The Court refers to the general principles on access to a court, as recently set out in the case of *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-82, 5 April 2018).

36. Turning to the facts of the instant case, the Court notes that the applicant's case was examined by two national judicial levels exercising full jurisdiction in the matter prior to the proceedings before the Constitutional Court, namely the Central Prison Supervision Court at first instance and the *Audiencia Nacional* on appeal. The judicial decisions do not appear to be arbitrary or manifestly unreasonable. The Court also notes that the Constitutional Court's role and the special features of the proceedings, already examined by the Court in the case of *Arribas Antón v. Spain* (no. 16563/11, 20 January 2015), allowed for the conditions of admissibility of an appeal on points of law to be stricter than for an ordinary appeal. The Constitutional Court found that the matter complained of did not disclose any appearance of a violation of the rights subject to *amparo* appeal, thus endorsing findings of the lower courts which had dismissed the applicant claims.

37. The Court reiterates that for national superior courts – such as the Constitutional Court – it suffices, when declining to admit a complaint, simply to refer to the legal provisions governing that procedure if the questions raised by the complaint are not of fundamental importance or if the appeal has no prospects of success (see *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 41, 20 March 2009; *Arribas Antón*, cited above, § 47; concerning the Federal Constitutional Court of Germany, see also *Greenpeace E.V. and Others v. Germany* (dec.), no. 18215/06, 12 May 2009; *John v. Germany* (dec.), no. 15073/03, 13 February 2007; and *Teuschler v. Germany* (dec.), no. 47636/99, 4 October 2001). This is applicable when, as in the present case, the Constitutional Court declares an *amparo* appeal inadmissible by reference to the Organic Law on the Constitutional Court (see *Arribas Antón*, cited above, § 48; *Almenara Alvarez v. Spain*, no. 16096/08, § 27, 25 October 2011; *Varela Geis v. Spain* (dec.), no. 61005/09, § 38, 20 September 2011; and *Rupprecht v. Spain* (dec.), no. 38471/10, § 17, 19 February 2013).

38. In the light of the foregoing considerations, the Court finds that it cannot be said that the Constitutional Court's decision amounted to a disproportionate hindrance of the applicant's right of access to a court under Article 6 § 1 of the Convention.

39. It follows that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 May 2019.

Stephen Phillips
Registrar

Vincent A. De Gaetano
President