IN THE EUROPEAN COURT OF HUMAN RIGHTS
REFERRAL TO THE GRAND CHAMBER

DEL RIO PRADA

V

SPAIN

SPEAKING NOTE OF ORAL SUBMISSIONS BY MARK MULLER QC
ON BEHALF OF
MS. INES DEL RIO PRADA ('THE APPLICANT")

Mr. President I will address you on what we say this case is about and how the applicant meets the Government's principal points of appeal. Mr. Swaroop will then address you on Article 7 followed by Mr. Ivers on Article 5 and 46.

But let me begin with this preliminary observation. Ms. Rio Del Prado did not choose her final sentence. It was selected and imposed on upon her by the Spanish authorities. All we ask is that her sentence is respected and implemented in accordance with the rule of law. Nothing more – nothing less. We make no special pleading on her behalf.

For what this case concerns is the legality of an increase in the length of a sentence imposed upon Ms. Del Rio Prada as a consequence of the so-called Parot doctrine, which redefined the penalty to which remission applied.

It ruled that remission was to henceforth apply to the individual sentences originally imposed upon the applicant and not to the combined sentence of 30 years that was fixed and notified to her at the end of a sentencing procedure under Article 70(2) and 100 of the 1973 Criminal Code, which governed multiple offending.

In doing so it overturned thirty years of administrative, prison and judicial practice, resulting in the applicant losing nine years remission without enquiry.

Unsurprisingly she appealed to this Court where the Third Section unanimously concluded that Spain had violated Articles 5 and 7 of the Convention. The redefinition of the penalty (for the purposes of calculating remission) led to a retroactive extension in the scope of the penalty, inconsistent with the quality of law, which was unforeseeable when the applicant's sentence was combined, fixed and notified to her.

It follows it is for the Government to demonstrate why this Judgment is wrong and involves important points of law that affect the operation of the Convention.

We submit the Chamber's treatment of the facts and application of jurisprudence is entirely proper. And that - stripped bare of the surrounding politics – this is a very simple case – albeit one that strikes at the heart of the rule of law.

What this case is not about is politics or the applicant's political affiliation. Neither is it about terrorism or the ability of the state to deal with new "social realities." Rather it is about the universality of the rule of law and the lawful circumstances in which a state is permitted to deprive a person of his or her liberty.

The Applicant's case can be summed up by a single maxim uttered by Thomas Jefferson 240 years ago: "It is more dangerous that even a guilty person should be punished without the forms of law that he should escape." This principle of legality underpins all civilized systems of justice and it is one that Europe jettisons at its peril.

Articles 5 and 7 both prohibit, without qualification, any form of punishment or infringement of liberty without forms of law. They stand as bulwarks against state

arbitrariness and procedural confusion. Their norms articulate how rights must be interpreted. The entitlement to be sentenced to a fixed, final and clearly defined legal penalty is a principle that applies in every member state. If ever a court was brought into existence to uphold Jefferson's maxim it is this one. That is why we commend the Section Judgment to this Court.

The Government's case would appear to have three strands to it.

As regards Article 7, it submits that the Chamber failed to distinguish between penalty and execution, thereby trespassing upon the right of states to set their own remission and parole policies. The 2006 Ruling merely clarified and applied rules relating to remission as opposed to the imposition of the penalty. Accordingly Article 7 should never have been invoked.

To that we say the ruling did not just clarify rules relating to remission. It redefined "the penalty" to which those rules applied. It switched a fixed, combined, notified, ***unitary term*** of 30 years imprisonment (to which remission ***singularly applied***) – for eight separate penalties that operated consecutively, and to which, as a consequence, remission applied consecutively. This switch extended the scope of the penalty, as all possibility of remission is lost for any multiple offender sentenced to more 46.5 years. [see43GoS]

That is why the Chamber held (58/59) that even if it accepted that the calculation of remission fell outside the scope of Article 7, "the way in which the provisions of the Criminal Code of 73 ***were applied*** went beyond this." The new means of calculating remission "***not only*** concern the execution of the applicant's sentence. The measure also had a decisive impact on the scope of the sentence imposed…."

Mr. President, Mr Swaroop will develop this point but it is important to note at the outset that the last sentencing court judicially accumulated all the individual cases together after concluding there was a sufficient nexus between the offences in accordance with the 1973 Code. As a result it fixed and notified the applicant of a final combined sentence of 30 years, which the Supreme Court's own 1990 Order identifies as "the penalty" to which rules concerning execution apply.

The 2008 Ruling in question therefore either (1) applied remission to a penalty not notified to the applicant when she was finally sentenced or (2) redefined the penalty retrospectively. Either way Article 7 is invoked.

Further, where the penalty and rules relating to execution are so intertwined, the first test to apply is the legality test. The Chamber held (59) "the distinction between the scope of the sentence imposed on the applicant and the manner of its execution was not immediately apparent" (within the meaning of Kafkaris 148). It therefore sought to ascertain whether "the penalty" was sufficiently clear, ascertainable and foreseeable as to satisfy the "quality of law."

The "redefined penalty" was not foreseeable given the admitted thirty-five year long administrative prison and court practice of applying remission to the combined sentences notified under the 1973 Code (19GoS). Thus while the Chamber agreed with the Government that Spanish law was sufficiently formulated within the meaning of Kafkaris (para.150) when the decision to combine the sentences were pronounced, it concluded: "that it was difficult, or even impossible, for the applicant to foresee the Supreme Court's departure from precedent". (63)

Boiled down the Government's case rests upon the assertion (50GoS) that the applicant "knew she had to serve the imposed penalties successively in order of

severity." She did not and could not know this at the time she was finally sentence, even with appropriate legal advice, for the reasons cited by the Section in its Judgment.

In reality the execution point has little relevance as the measure falls at the first hurdle for not satisfying "the quality of law." Even if it doesn't, not one of the cases relied on by the Government are analogous as the 2008 ruling manifestly alters the penalty notified to the applicant. The complaint about misapplication of case law therefore bears no weight.

More devastatingly, the execution distinction is irrelevant to Article 5. All that need be established is that the infringement of liberty was not "prescribed by law." This is akin to the quality of law test. The Government's failure to engage with Article 5 is deafening and determinative of the case, irrespective of its points under Article 7.

In conclusion, the imposition of a further 9 years imprisonment breached ***both*** Articles as remission was either applied to a penalty not previously fixed, notified or prescribed by law or one rendered so unforeseeable by the "departure from precedent" as to no longer satisfy the quality of law.

Mr. Swaroop will deal evidentially with Government's next argument that the applicant cannot rely upon any legitimate expectation because up until 1993 ETA did not allow its members to seek remission. I simply note the remission system was not discretionary but applied automatically to all prisoners who came within its terms. And that the test of "foreseeability" relates to the penalty imposed for the act committed and not to the policy of an armed group towards its execution.

That leaves the allegation that the Chamber improperly interfered with precedent and the ability of courts to "adapt" the "interpretation of law" to deal with "new social realities." This submission is unsupported by any facts or law. Left unbounded it

strikes at the very core of the rule of law. The role of the court is to apply and interpret law. It is not to adapt the interpretation of previously settled case law to deal with new social realities which society has failed to legislate for. That is the preserve of the legislature and the executive.

In this case Parliament brought in a new Code in 1995 that abolished remission for future multiple offenders but left undisturbed the previous practice for those sentenced under the 73 Code - no doubt having regard to the general prohibition on retroactively applying harsher criminal penalties. What the Parot ruling did was legislate through the backdoor of precedent what the executive failed to do through the front door of Parliament.

The Government cannot point to a single case where a court has been permitted to do the same. In every case it cites the change in remission occurred by way of legislative or executive order. Even if some "new social reality" existed, by itself this couldn't justify the reinterpretation of the law so as to apply retrospectively to penalties or for it to breach the Scoppola edict to apply the most lenient sentencing regime. Even when combatting terrorism, the UN 2005 Global Strategy makes clear measures should not be introduced that breach fundamental principles of justice. The ICJ's intervention says it all.

The simple question is whether the Spain was entitled to impose an additional nine year term of imprisonment on the applicant by retroactively using the original (and harsher) sentences for the purposes of calculating remission, when those "penalties" were neither foreseeable, fixed or notified to the applicant at the time her individual sentences were combined by the last sentencing Court in accordance with the 1973 Code.

To that we submit the answer is manifestly "no" for all the reasons we cite in our address and pleadings.

Oral Address: Mr Michael Ivers

Article 5

1. As Mr Muller indicated in his opening Article 5 was not addressed at any length by the Government in its pleadings notwithstanding the fact it is freestanding of Article 7.

2. Article 5 makes clear that deprivation of liberty can only take place in accordance with a procedure 'prescribed by law'.

As stated in Van der Leer 'only a ***narrow interpretation*** *is consistent with the purposes of this provision'* - See Van Der Leer § 22

3. The exception relied upon in the Applicants case is Article 5.1(a) *the* ***LAWFUL*** *detention of a person after conviction by a competent* court.

4. In M v. Germany;

'Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from ***arbitrariness'***.

5. Arbitrariness is precisely what has been visited upon the Applicant when one considers firstly the realities of the shifting sands concerning the critical issue of her remission and the consequent, we say, arbitrary deprivation of her liberty.

6. [Although there must be a causal connection between the conviction and the deprivation of liberty, the government wrongly suggest that once the link is established there can be no further complaint! This firstly wholly ignores the other requirements of the Article, and secondly, in any event as was stated in M v. Germany; *'with the passage of time the link between the initial conviction and a further deprivation of liberty gradually becomes less strong….a detention that was lawful at the outset can be transformed into a deprivation of liberty that was arbitrary, and hence, incompatible with Article 5…'* }

7. We assert that the redefinition of the penalty and the resultant extension in its scope infringes Article 5 as set out by my colleagues in their address. It lacked legality for all the reasons previously cited.

8. Moreover, and independently, the failure to grant the remission to which she **was entitled** in law, or the lack of legality in its application, infringes Article 5 independent of any considerations concerning the penalty/execution thereof.

9. Whilst Article 5 § 1(a) doesn't guarantee a prisoners early release **it has been found to guarantee such release where, as here, there is no discretionary element in relation to the remission** and in this regard it is irrelevant whether it be termed a penalty or execution.

10. In **Grava** the Applicants arguments under Article 7 were rejected on the Penalty/Execution dichotomy but the court found an infringement of Article 5 since *'the Italian judicial authorities enjoy no discretion, but are forced to apply the remission to the extent provided by law*.' Thus, the failure to grant the remission, **to which she was entitled under law**, amounted, without more, to a clear infringement of Article 5.

11. The Government wholly ignore this and then submit in § 83 that the section judgment indicated that an infringement of Article 5 was dependent on an

infringement of Article 7. This misstates the judgment; look at it, it did no such thing; (merely indicating that 'similar considerations' apply).

12. In particular what the Government fails to recognise is that even if they were correct in their Penalty/Execution Dichotomy concerning Article 7; this does not affect Article 5, since remission decisions clearly concern questions of liberty; as **Grava** makes emphatically clear.

13. What Quality must law have in Relation to Article 5? I turn to Ammur v. France…..

"Quality of the law" in ***this*** *sense implies that where a national law authorises deprivation of liberty it must be sufficiently* ***accessible***, ***precise*** *and* ***foreseeable*** *in its application, in order to avoid* ***all risk*** *of arbitrariness'*

14. Moreover, as the section judgment made clear at (§ 74) in relation to Article 5 the question is not simply what is foreseeable at the time the offence was committed, as contended by the Government, but what was reasonably foreseeable **at the time the offences were consolidated and notified to the applicant**. Where, as here, there is a system in place to consolidate sentences where there is a nexus between offences it is wholly artificial to ignore the actual operation of the criminal justice system concerning multiple offending which was well defined and refined in Spain at that time and now.

15. As the section judgment, relying upon previous jurisprudence, states concerning **Article 5**

'the court must also verify that the effective duration of the deprivation of liberty, ***taking account [NOT IGNORING!!] of the applicable rules on remission*** *of sentence was sufficiently "foreseeable" for the applicant'.*

16. How could it be reasonably foreseen, even with the assistance of legal advice that the Supreme Court would;
    i. re-define the penalty.
    ii. effectively abolish the whole concept of remission for prisoners serving multiple sentences - the inevitable mathematical reality.
    iii. depart from its own practice of applying remission to the consolidated sentence – see the 1994 and 2005 judgments referred to in the dissenting judgment in 'Parot'. OR
    iv. That the legal and administrative practice of 30 years would be abandoned; not simply going forward but also retrospectively.

17. How can legality be sustained in these circumstances? Particularly where on the Government's own argument there were two sets of penalties co-existing, to which remission could attach.

18. Any justice system that plays 'cat and mouse' with a prisoner in this way offends legality. The essence of Article 5 concerns legality clarity. The evil it seeks to cure is procedural and legal. Indeed where there is no certainty, arbitrary power prospers.

19. The Government are left to assert, as remarkably they do, when its boiled down;

    a. That she wouldn't have reasonably foreseen any remission applying to her notwithstanding all the above indicators that it did – any lawyer practicing criminal law will inform you that what the SENTENCE MEANS in terms of actual release date is uppermost in the mind; but,

b. Should have or did foresee the ruling in 2006 which would jettison all that national jurisprudence and administrative practice that applied for 30 years until then! And replaced with a Scheme that entails performing literally thousands of years work to obtain any realistic reduction; IT sounds **kafkaresque**. Moreover in reality, as observed already, in effect, remission was abolished for prisoners such as her. If this **was** all so predictable why perform the work?

ARTICLE 46

20. It is now well settled that exceptionally, in order to assist a state fulfilling its obligations under Article 46, the court can indicate the type of measure that should be taken to put an end to the situation identified. Additionally where the nature of the violation found is such as to leave no real choice between remedial measures, the court may decide to indicate only one. It is upon that later ground that the Chamber considered it incumbent on the respondent state to ensure that the applicant is released at the earliest possible date.

21. But for the decision of the Supreme Court in 2006 the Applicant would have been released from custody in July 2008. Indeed the Government emphasise that it was this judgment which corrected the previously understood legal position; thus they place it at the centre of their submissions to this court. If, as domestically, three dissenting judges found, and the Chamber found, it offends the Rule of law, and consequently the Convention, she must be released. There is no middle ground. Indeed the **integrity of the Governments** submission concerning the 'Parot Doctrine' Judgement requires nothing less.

22. Let me deal with two points the Government make straight away; firstly they assert that the cases relied upon by the Court in the Chamber judgment concerning Article 46 are 'qualitatively different' to this case because none concerned a conviction after trial; Yet this is simply not the case; the Grand Chamber in Assanidze, found a violation of Article 5 § 1 and a continuing deprivation of liberty (for two years), since although that applicant had been convicted of an offence there had been an unenforced presidential pardon.

23. Secondly, the Government notes that no such order was made in two other cases cited; M v. Germany and Kafkaris. In M v. Germany it does not appear that the court were asked to consider Article 46. In Kafkaris the Court found a violation of Article 7 pursuant to 'quality of law' considerations but specifically did not find a 'retrospective imposition of a heavier penalty'. The Life sentence remained. There is a parole system of a discretionary nature in place and no finding of a violation under Article 5 § 1 was found. It was specifically these factors, which led the first chamber to reject the further application by that applicant in June 2011.

24. A glance at the other two cases cited to support the section 46 recommendation in the section judgement reveals they are far from 'qualitatively different'; of course there are factual differences but the principle, we say, is consistent.

25. The key issue under Article 46 is not so much what precise route led to the violation but what are the realistic methods of remedying the violation so as to achieve compliance with the convention.

26. The Applicant

27. Has served the **lawful** period of detention which in its infinite wisdom the Spanish state passed upon her.
28. Regret, Mr President is a wonderful thing; but it has no place in law.

29. Since Magna Carta a fundamental protection against arbitrary power has been the writ of habeus corpus..Which demands of the State 'bring me the body' .

THAT IS ALL WE ASK!

30. Mr President, The government suggest no alternate remedy; But its silence speaks volumes.

31. And if we here anything; it is the faint tap of liberty knocking on the door of the state which had ITSELF chosen the time of its opening.

IN THE EUROPEAN COURT OF HUMAN RIGHTS
REFERRAL TO THE GRAND CHAMBER

DEL RIO PRADA

Applicant

V

SPAIN

Respondent

ORAL SUBMISSIONS FOR APPLICANT
(final version)
By Sudhanshu Swaroop

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1. I will address the Applicant's claim under Article 7. I have three points to make.

(1) The Penalty/Execution Distinction

2. First, as indicated by Mr Muller, the Government's case in relation to the penalty/execution distinction is flawed.

3. The Government argues that there has not been any change to the "penalty" imposed on the Applicant, that the measures at issue concerned only the rules as to the execution of the penalty and that therefore there was no breach of Article 7.

4. This issue requires an analysis of Articles 70 and 100 of the Spanish 1973 Criminal Code.

5. Article 70 paragraph 2 provided, broadly speaking, that where, as in this case, multiple sentences were imposed, the maximum term to be served was thirty years.

6. Article 100 governed the question of remission. It stated literally that remission was applied only to "the penalty imposed". The Government itself makes this point in paragraph 14 of its Submissions[1].

7. From the time of the Applicant's offences, at the time of her convictions and at all times thereafter, at least until 2006, it was the practice of the Spanish Courts and authorities, in the case of multiple offences, to treat the 30 year "maximum term" provided under Article 70, as the "penalty imposed" and therefore the "penalty" to which remission applied under Article 100. That much does not appear to be in dispute:

   (1) As recorded in paragraph 41 of the Section Judgment:

   "*The Government of Spain admitted . . . that prior to the Supreme Court judgment 197/2006 it was the practice of the prisons and the courts to consider the 30-year time limit established in Article 70 paragraph 2 of the Criminal Code of 1973 as a sort of new, independent sentence to which prison benefits should be applied*".

   (2) I also refer to the facts and matters set out in the Applicant's Submissions at paragraph 23. These include:

      (a) The Supreme Court's 25 May 1990 Order, which determined that the combining of sentences under Article 70 paragraph 2, concerned not the execution but the fixing of the sentence, involving "*a decision on the final determination of the penalties*"[2].

   and

1 [I refer the Court to paragraph 14 of the Government's own most recent submissions, which quotes Article 100 as follows: ". . . *any person serving a prison sentence may be granted a remission of* ***penalty*** *in exchange for work done. In serving the* ***penalty imposed*** *. . . the detainee is entitled to one day's remission for every two days worked . . .*". In the same paragraph 14 the Government concludes: "*The provision literally expressed that the remission of sentence was applied on "****the penalty imposed****"*]

(b) The Supreme Court's 8 March 1994 Judgment, which held in terms that the combined 30 year sentence under Article 70(2) was "*just like a new sentence-resulting from but independent of the others, to which prison benefits should be applied*"[3]

8. Thus, in this case, on 30 November 2000, the Audienca Nacional notified the Applicant that the sentences from her eight separate proceedings were combined under Article 70 paragraph 2 of the Criminal Code and thereby determined the penalty applicable to her[4].

9. The 2006 Supreme Court Judgment sought to overturn the established practice and sought to redefine the concept of "penalty".

(1) It considered that the practice was contrary to the text of Article 70 and that, under Spanish law, the combined thirty year term was NOT the penalty imposed. It reasoned that "*from a purely literal point of view*", I quote " . . . ***the penalty*** *(pena) and the resulting term of imprisonment to be served (condena) are two different things . . .*"[5].

(2) The Court also considered that the practice was contrary to its understanding as to the purpose of Article 70. It reasoned that "*from a teleological point of view" . . . it would not be logical . . . for a copious criminal record to be reduced to a single new sentence of thirty years",*

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2 [See paragraph 24 of the Section Judgment and to Annex 1 of the Applicant's Submissions, which contains the May 1990 Order;]

3! See paragraph 25 of the Section Judgment]

4 [See paragraph 9 of the Section Judgment and paragraph 26(3) of the Applicant's Submissions].

5 [as follows, I quote: "*(a) . . . from a purely literal point of view, the Criminal Code by no means considers the maximum term of thirty years as a new sentence to which any reductions to which the prisoner is entitled should apply, quite simply because it says no such thing; (b)* ***the penalty*** *(pena) and the resulting term of imprisonment to be served (condena) are two different things . . .*".]

because that would be to apply Article 70, I quote *"in such a way that committing one murder is **punished** in the same way as committing two hundred murders*"[6].

(3) On this premise, the Court concluded that each of the original sentences constituted a separate penalty, to be served successively, starting with the most serious and that remission was to be applied accordingly and not based on the 30 year term as per the established practice.

10. Put another way, and using the language of the cases such as *Uttley v United Kingdom*:

(1) The nature of the 2006 Supreme Court Judgment, as applied retrospectively to the Applicant in 2008, was to redefine the "penalty" imposed under Article 70.

(2) The purpose of that redefinition, as expressed by the Supreme Court, was to punish offenders with multiple sentences more severely than they had been punished under the established pre-2006 practice.

(3) The effect of that redefinition, as applied to the Applicant in 2008, was to extend the length of her sentence by nine years.

(2) Forseeability arises in Two Senses

11. Secondly, the concept of "foreseeability" arises in two distinct senses under the Court's caselaw on Article 7. That distinction is overlooked by the Government, leading to an element of confusion in its analysis.

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6 ["*from a teleological point of view" . . . it would not be logical . . . for a copious criminal record to be reduced to a single new sentence of thirty years", with the effect that an individual who has committed a single offence is treated [without justification] in the same way as someone convicted of multiple offences. Indeed there is no logic in applying this rule in such a way that committing one murder is **punished** in the same way as committing two hundred murders*"]

1. In the first sense, the penalty incurred for an offence must be clearly defined by law and, therefore, must be reasonably foreseeable[7].

2. In the second sense, where the rules of criminal liability (or as to the penalty incurred) are "clarified" through judicial interpretation, any such development must itself be consistent with the essence of the offence and must be reasonably foreseeable[8].

12. The Applicant's case is that:

(1) The reinterpretation of the law, in 2006 with its redefinition of the "penalty") was a U-turn from the established practice prior to 2006 and was not reasonably foreseeable (that is foreseeability in the second sense identified above).

(2) Further or alternatively the "penalty imposed", under Spanish law prior to 2006 was never clearly defined and was not reasonably foreseeable (that is foreseeability in the first sense identified above). On the logic of the Government's position, this conclusion seems irresistible. The Government says that prior to 2006: (a) there was a practice to treat the 30 year combined term as akin to a new, independent sentence, to which remission was applied, but (b) that practice was contrary to the text of Article 70 of the Criminal Code; and (c) there was no binding case law on the point. It is difficult to see how the Government can also maintain that prior to 2006 the "penalty" was nevertheless clearly defined and reasonably foreseeable.

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7 That principle is also well established in the jurisprudence of the Court and is common ground between the parties. (see DRP Observations/para 37(3); GOS Observations/para 54). As stated for example in Kafkaris at paragraph 145, "*the Court must, in particular ascertain whether the text of the law, read in the light of the accompanying, interpretative case-law satisfied the requirements of accessibility and foreseeability. In doing so it must have regard to the domestic law as a whole and the way it was applied at the material time*".

8! That principle is well established in the caselaw of the Court (see eg *Streletz, Kessler and Krenz v Germany*) and is common ground between the parties (see DRP Observations/para 37(4); GOS Observations/paras 77 and 78).

13. It matters not, which of these is regarded as the Applicant's primary case and which is its alternative case. The Applicant must succeed on one of them

(3) Spain's Contentions as to what the Applicant actually foresaw

14. Third, the Government's case that, on the facts the Applicant had no subjective expectation of remission and that this somehow precludes a breach of Article 7 is bad, both in law and in fact:

(1) The point is irrelevant. As I have set out it was the penalty and/or the change to the penalty that was not foreseeable, whatever the position in relation to remission.

(2) The argument also fails because the test for foreseeability is objective. The question, as recognized by the Section is what could have been foreseen, not what was foreseen. That must be right. One of the purposes of the foreseeability test is to determine whether a penalty is "clearly defined by law". If a penalty is not clearly defined in an objective sense, the position cannot be altered by the subjective intentions of a particular individual.

(3) Finally, the argument fails on the facts:

(a) The Government's primary point is that the Applicant's failure to appeal the 2001 ruling indicated that she had no expectation of early release. However, the Applicant did not need to appeal the 2001 Order. Her entitlement to remission was automatic. Indeed in 2008 the prison authorities sought to apply the Applicant's 9 years accrued remission and to release her and, but for the 2006 Supreme Court Judgment, would have succeeded in doing so.

(b) The Government's other point, about an alleged ETA policy, until 1993, of "non-collaboration" is not supported by a shred of evidence, even though the Government is now seeking to change its original

position that the alleged policy ran until 2002, and even though that original position was itself not supported by a shred of evidence[9].

In summary, the Applicant's claim under Article 7 must succeed and the Government's submissions to the contrary are without foundation.

9! [see paragraph 66 of its January 2013 Submissions].