



CONSTITUTIONAL COURT OF SPAIN  
Cabinet of the President  
Press Office

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### THE CONSTITUTIONAL COURT CONFIRMS THE DECISION THAT DENIES LASA AND ZABALA'S RELATIVES THE COMPLEMENTARY COMPENSATION FORESEEN IN THE LAW ON INTEGRAL PROTECTION FOR VICTIMS OF TERRORISM

The Constitutional Court has rejected the amparo appeals submitted by the relatives of Mikel Goicoechea Elorriaga, Rafael Goicoechea Errazquin, Josu Muguruza Guarrochena, José Ignacio Zabala Sagastume and José Antonio Lasa Arostegui, who were killed in several terrorist's attacks. The challenged decision denied the compensation (which actually was an earn-out of what was already paid) foreseen in the Law 29/2011, 22 September, on Recognition and Integral Protection for Victims of Terrorism. There is a dissenting vote of the Vice-president Adela Asua, that has been adhered by Judge Fernando Valdés Dal-Ré.

In all cases, the Court denies that the challenged decisions violate the presumption of innocence (Article 24.1 of the Spanish Constitution) due to the refusal to grant the compensation according to Article 8 of European Convention on the Compensation of Victims of Violent Crimes. This article foresees the reduction or refusal of the compensation "*because of the victim's or the applicant's involvement in organised crime or his membership of an organisation which engages in crimes of violence*". All amparo appeals, except for the one submitted by Muguruza's relatives, are rejected because they were submitted after the deadline.

The appellants argue that ECtHR case law supports the violation of the deceased presumption of innocence in this kind of cases. The Court analysed this doctrine and concluded that the previous judgment arguments that denied the compensation do not violate Article 24.1 of the Constitution.

The Court explains that the ECtHR deems that to determine whether a judicial or administrative decision has violated the right to presumption of innocence, it is necessary to establish a link between the original criminal procedure and the procedure that supposedly causes the violation of the aforementioned right. In the cases analysed, this link does not exist, either because the criminal procedure never took place due to the death of the victim or because that procedure did not declared the acquittal but the dismissal (the ECtHR distinguishes between both situations).

In turn, regarding the status of the deceased as ETA members (following several police reports) "*is only taken into consideration in order to deny the requested compensation, but it does not deliver any judgement as to guilt that would oppose to the previous criminal procedure judgment that established their acquittal*". The arguments about the membership of the deceased of the terrorist organisation ETA "*do not manipulate the challenged*

*decisions*”; they keep with “*the technical language used by the Convention on the Compensation of Victims of Violent Crimes*” and explain why the compensation has been refused. “*Questioning the use of these expressions by the authorities would push to the absurd of prohibiting the implementation of the Convention itself*”.

Finally, the Court reminds that in those cases in which the exception of Article 8 of the European Convention applies, “*the appellant is responsible for proving that the information provided by the Administration is wrong or irrelevant to fund the refusal of the compensation*”. In these cases, police reports were “*deemed sufficient*” to establish the refusal foreseen in the Convention.

In their dissenting vote, Adela Asua y Valdés statue that Article 8 of the European Convention, which did not apply here, is not automatically executable—it requires its previous transposition to our legal system—, and the Law on Recognition and Integral Protection for Victims of Terrorism does not correspond to it. Furthermore, they believe that refusal of the compensation based on the exception of Article 8 of the European Convention (victim’s membership of a criminal organisation) has violated the right to presumption of innocence, given that in none of the cases outlined above is there a judgment that declares it as such.

Madrid, 17 March 2017.