

REPORT ON TORTURE DENUNCIATIONS IN SPAIN

**Dossier prepared by the Observatory on Violence from the
Basta Ya Citizens' Initiative Group**

¡BASTA YA!
— Iniciativa Ciudadana —

INDEX

DOSSIER OBJECTIVES	4
EXECUTIVE SUMMARY	5
INTRODUCTION	7
The Context: ETA and Human Rights	7
The Usefulness of Systematically Reporting Torture	7
Accusations and facts	8
1.- TORTURES	11
1.1.- Introduction	11
1.2.- Laws against torture	13
1.2.1.- Penal Code	13
1.2.2.- Articles of the law of criminal procedure	14
1.2.3.- International conventions	16
1.2.4.- Forensic examination – Protocol to incommunicado detainee	16
1.3.- ETA Manual	18
1.4.- Tortures in the Basque Country: ¿The truth or simple propaganda?	21
1.5.- Acase of torture?	26
1.5.1.- Unai Romano´s testimony	27
1.5.2.- Unai Romano case. Forensic Reports	32
1.6.- Report from European Union Commissioner Alvaro Gil-Robles	36
I. Introduction	36
II. General approach	38
III. On the practical causes of human rights violations in the Basque Country	39
IV. Other issues relating to protection of, and respect for, human rights raised	43
V. Final considerations	46
2.- THE DISPERSAL OF ETA PRISONERS	47

2.1.- History	47
2.2.- Doctrine	50
2.3.- Laws	52
2.3.1.- Prison regulations	52
2.3.2.- General penitentiary organic law	53
2.4.- Detention practices in nearby countries	53
2.4.1.- France rotates former ETA leaders in its jails in order to prevent escapes	53
2.4.2.- ETA had detailed escape plans to spring its prisoners from Spanish and French jails	55
2.4.3.- ETA calls for the third degree of imprisonment for its prisoners	56
3.- THE PRISON OFFICERS	58
3.1- The everyday situation	58
3.2 The Prison officers: ETA's victims	60
3.3.- Murdered prison officers	62
3.4.- Other Situations	63
3.5.- The privileges of ETA prisoners in their academic studies: a digest of articles	71
3.6.-ETA's Lawyers	83
CONCLUSIONS	89
RECOMMENDATIONS	90

DOSSIER OBJECTIVES:

Iniciativa Ciudadana Basta Ya presents this dossier in order to provide official organisms and NGOs dedicated to defending Human Rights basic information on the use of routine torture reported by the members of the terrorist group ETA in Spain and France. This documentation contrasts with the biased information submitted by sources belonging or close to the terrorist group, which is incomplete and in many cases absolutely false. The United Nations Special Reporter on torture used this biased information as the base to elaborate the Annual Report that has subsequently been repeated by groups and governments that collect the information and conclusions of the Reporter.

To:

United Nations Special Reporter on Torture.

Copy for: State Member Delegate Ambassadors of the UN General Assembly in Geneva, European Commission President, President of European Parliament, Council of Europe Committee of Ministers, President of the European Court of Human Rights, Corte Interamericana de los Derechos Humanos (OEA), Court Officer of the Prosecutor-International Criminal Court, NGOs and associations dedicated to fight against torture and other inhuman or degrading punishment that attempts against the dignity of human beings.

EXECUTIVE SUMMARY

Persecuting torture and degrading or inhuman behaviour inflicted upon people deprived of liberty is undoubtedly a basic requirement for any defence of Human Rights. Prisoners convicted for terrorist attacks should never suffer torture or ill-treatment in prison, not even when these terrorists have committed humiliating and vexatious acts towards their victims considered as blameworthy as those used by Governments that don't respect Human Rights.

Anybody who is sincerely against all forms of terrorism could never deny the universal right of any suspect to a fair trial and to be treated with dignity and respect, while he/she remains in police custody or, if convicted, in the prison where he/she is sentenced. The consequence of this moral, legal and political requirement is that all reports should be thoroughly investigated, without prejudice to the seriousness of the crimes the victim has been previously accused of or the sentence of the complainant. Nevertheless, the mere report on alleged ill-treatment without any supporting evidence, should not be accepted as an automatic imputation that forces the accused (police forces, magistrates, forensic doctors, prison officers, etc) to prove their innocence, often reversing the burden of proof.

However, there is a tendency in certain circles to give more credibility to the supposedly tortured than to the evidence against these reports submitted by the institutions accused of torture, particularly if the report comes from groups which are supposedly confronting the oppression of tyrannical governments.

Paradoxically, this is the case of torture reports submitted by the members of the terrorist group ETA against the Spanish and French authorities, which are accused alike of ignoring the rights of the Basque people. ETA intends to represent the Basque Country with exclusive and murderous pretensions by threatening half its non-nationalist population.

Basta Ya is morally, legally and politically against torture and degrading or inhuman behaviour that could be inflicted upon prisoners or suspects accused of belonging to ETA or to any other group. However, we feel its our obligation to attract the attention of authorities and organisations to whom this dossier is addressed to (see above) and in particular to the United Nations Special Reporter on Torture. We believe that the reports issued up to this date seem to be leaning favourably towards the terrorists and are not sufficiently contrasted with the information that questions these reports, issued by official sources and civil organisms, including the associations of victims of terrorism. We intend to offer a more balanced and objective version and vision on the tortures that have been reported by ETA and those who support them.

We have had access to the draft of the annual report issued by the United Nations Special Reporter on Torture. We think it is incomplete and insufficiently receptive to the information submitted by the Spanish Administration, the Judicature, the press and the union associations and civic groups which are involved in this matter. Your Annual Report is absolutely worthy of our respect, as it is for so many other organisations around the world that are fully committed to the defence of Human Rights. Therefore,

we are especially interested in offering you a different version of the facts as opposed to those you describe. In our opinion, they have driven you to incorrect conclusions could have serious consequences for the ETA victims as well as contributing to the moral legitimacy of the terrorist group. This situation is obviously completely unacceptable for us and incompatible with the principles of democracy and the Rule of Law anywhere in the world. We want to draw your attention to the fact that ETA, and not the Government, is the main source of systematic and deliberate violation of Human Rights in the Basque Country and the rest of Spain.

We hope that this dossier will be useful for you. If you need any more information on the subject please do not hesitate to contact us.

On “INICIATIVA CIUDADANA ;BASTA YA!”:

Civil Network founded in the Basque Country in 1999 aimed to demand the dissolution of ETA with no political compensation, actively support the victims of terrorism and divulge and defend the constitutive principles of the Rule of Law. Basta Ya is specialised in citizen mobilisations and reporting political violence. In the year 2000 they received the European Parliament’s Sajarov Prize for Human Rights and Freedom of Expression.

INTRODUCTION

The Context: ETA and Human Rights

ETA is currently the main source of violation of Human Rights in Spain, particularly in The Basque Country. This terrorist group has not only murdered 845 people ever since it was founded in 1959 (More than 800 after the re-establishment of Democracy) but has also carried out more than 3.000 serious terrorist attacks provoking thousands of more or less seriously injured. They have also kidnapped 48 times in order to obtain money or extort concessions from the Spanish Government, as in the case of civil servant Jose Antonio Ortega Lara, who was secluded in a 5 square-meter basement for 532 days, completely isolated from the world, until he was released by the Civil Guard.

Furthermore, ETA maintains different types of threats and extortion on approximately 42.000 people in the Basque Country alone. These people are part of the Spanish and Basque security or military forces, civil servants, businessmen, teachers, politicians, and militants of non- nationalist political parties, members of civic groups or associations of victims of terrorism. In those areas and regions controlled by organisations linked to ETA (such as Batasuna, illegalised in 2003) some people who are against these ideas are sentenced to a real interior exile. They have to put up with a police escort at all times, they have no personal liberty, and they cannot lead a normal professional life. ETA attempts against their property in some cases even burning their homes with *Molotov cocktails* or similar artefacts. They live under the permanent fear of being attacked and killed, or worst of all, seeing how their closest relatives are murdered in the attempt. Many have suffered unbelievable psychological torture such as harassment and systematic persecution, attacks to their homes, businesses and vehicles in the middle of the night. They are insulted or threatened publicly through posters or graffiti, or indirectly by the press that supports ETA. Some people have to give up their social life when ETA intimidates third parties, some are sacked from the job, their only source of income, etc.

This situation had become particularly serious between 1980 and 2003. It is improving thanks to the efficiency of the police force, citizen mobilisations in solidarity with the people affected and the legal measures that have been adopted to put an end to these barbaric aggressions, for example, by outlawing entities linked to ETA, as in the case of ETA's political branch, Batasuna. Consequently, the Basque Country is the only democratic region in the world where a terrorist group persecutes an opposition party instead of pursuing the regional government, in the hands of nationalist parties that close deals with ETA itself and its union and political branches and that take advantage of the social and political situation of the opposition parties.

The Usefulness of Systematically Reporting Torture

Current Legislation collected in International Treatises only contemplates violation of Human Rights committed by state representatives, who are exclusively investigated in the case of a torture report. Therefore this excludes tortures and inhuman acts committed by individuals and private organisations like ETA or other terrorist groups. This deficiency is not considered an obstacle in any way for detainees or suspects of

terrorism to have the right to submit reports of torture and ill-treatment, regardless of the magnitude or horror of the crimes which they are accused of, but the instrumentalism of torture reports by terrorist groups that systematically practice these illegal acts against their political enemies should not be accepted. In conclusion, in the case of ETA we should not only investigate torture reports presented by their activists, but also the torturing activities of the offended. ETA This can prove that systematic accusations of torture have become a mere routine procedure of many detainees who belong to ETA. ETA resorts to false torture reports because it is useful for their cause, increasing the credibility of some influential people and groups. We have to be extremely cautious on this issue, because ETA systematically manipulates these reports that describe the ill-treatment presumably suffered by the activist detainees and prisoners.

There are at least three reasons that justify this procedure:

- 1.- The complaint filed is innocuous for the detainee even if it turns out to be completely false. On the other hand, it will always cast serious doubts upon the respectability towards Human Rights of the accused institutions, seriously affecting their trustworthiness.
- 2.- These complaints produce a strong response amongst people that support the terrorist group or their political motives, and therefore contribute to legitimate terrorism when it is considered “defensive violence against the violence of the State”.
- 3.- Finally, the accusation justifies the detainee’s terrorist acts for his supporters and colleagues, that now believe he has been forced to recognise himself guilty under pressure. This would have never happened in respectful police interrogations.

Complaints filed by terrorists should be thoroughly investigated. *Iniciativa Ciudadana Basta Ya* agrees totally with the rest of the Human Rights organisations on this issue. Nevertheless we would like to demand the same rigour, which does not yet exist, when investigating false accusations that only want to give an illegitimate character to the legal persecution of terrorism. These complaints are part of terrorist propaganda and giving them credit in a rigorous investigation, as well as not penalising the false accusation, helps reinforce terrorist groups, mortify their victims and weaken the Rule of Law.

The mere suspicion that ETA members can be tortured while in police custody, or secluded in prisons exaggeratedly described as “extermination prisons” is a good enough reason for many supporters to justify terrorism as “defensive violence” against the brutality of the State. ETA and its branches naturally multiply these reports because they get a huge political benefit out of it. Some Human Rights defenders accept this fact, but they insist that terrorist malevolence does not absolve the State of these accusations and does not prevent them from being investigated.

Accusations and Facts

This dossier submits basic information regarding the dubious veracity of the systematic torture reports issued by ETA activists, organisations and branches, some of which are

trained for this cause and are supposedly dedicated to preserve Human Rights, but exclusively defend these to support their own activists.

We are convinced that cases of ill-treatment and torture inflicted upon terrorist suspects nowadays by the police force are rare and exceptional. In spite of this, we cannot deny the existence of authentic cases and therefore it would also be convenient to reinforce controls and warrants that ensure the physical and psychological integrity of the detainees.

Ill-treatment and torture were common in Franco's Dictatorship and were still practiced during the transition to Democracy. They found shelter in the GAL's murderous activities and other mercenary groups or special police forces until 1986. We know about these activities because militants of democratic parties or civic movements such as Basta Ya were tortured during Franco's time. Paradoxically, some of them were then killed by ETA, as in the case of journalist Jose Luis López Lacalle, murdered in the year 2000, or live now under the mortal threat of this terrorist group, such as ex-militants that escaped death sentences during the "Burgos Procedure" in 1971. Certain inhuman acts committed after Franco's time remained unpunished for years but were later legally condemned. Certain people were found responsible and guilty in the GAL acts, including Spanish Government officials who awaited trial and were then sentenced for terrible acts such as tolerance and complicity in the kidnapping and disappearance in 1983 of two ETA militants, José Antonio Lasa and José Ignacio Zabala.

However, all the efforts the Rule of Law has made to eradicate ill-treatment have not been recognised by ETA, but ironically terrorists deserve more credibility in certain circles than the Spanish authorities or associations of victims. Nowadays, grounded accusations based on reasonable evidence are legally analysed and investigated. Other reports that are not pursued due to lack of evidence or their obvious exaggeration are nonetheless divulged in certain unreliable media as cases of torture. False or exaggerated accusations of torture which supposedly have not been legally investigated include injuries produced during the struggle in the detainment or insults at the police station. According to forensic inspections, there are cases of self-inflicted injury in ETA detainees that are then presented as evidence of abuse. Allegations of *psychological torture* by means of humiliation and threat during police interrogations are practically universal. As a result of this, certain independent organisms give credit to these routine complaints even if they are unfounded, and question publicly the persecution of torture in Spain and the respect towards Human Rights in this country.

We cannot accept that torture is a common practice if we exclusively take into account the testimonies of the presumptive victims, but we can prove on the other hand, with contrasted data, that ill-treatment is not a common practice anymore now that police forces and legal instruction has become increasingly more efficient. In Franco's time most detainees accused of terrorism were absolved, due to lack of evidence. Today the situation is the opposite: a high percentage of the detainees which are then condemned undertake procedures that guarantee a fair trial and many of them identify themselves as members of the terrorist group the moment they are arrested. It would not seem sensible to identify yourself immediately as an active member if you thought that belonging to this group brought as a consequence indescribable abuse. Instead of this, we suspect that this prompt confession from ETA members seeks extra careful police treatment and a faster appearance in court.

Likewise, the permanent accusations of ill-treatment towards condemned prisoners that suffer abuse in prisons are not credible. The truth is, ETA prisoners enjoy privileges in prison that other prisoners condemned for regular crimes are not entitled to. They have the possibility of studying a university degree in privileged conditions. Documented evidence proves that professors of the Universidad del País Vasco visited their students in Spain and France without any problem. Last year, some of these mere tutorial sessions were proved to be a way of controlling the student's affiliation to the terrorist group. Furthermore, common students did not have access to certain privileges entitled to ETA prisoners, such as special stipends for books and studying materials, exceptional grading systems that favoured the prisoner, or the possibility of studying certain degrees which cannot be undertaken in prison. The documented evidence presented caused a public scandal, putting an end to these irregularities. Currently ETA prisoners can still study University courses, but under the same conditions as common prisoners.

According to many ETA victims, the truth is that terrorist prisoners have enjoyed incredible privileges, some achieved by threats and others caused by a legislation which favoured the passive rehabilitation of these prisoners over the justice their victims deserved. Up until the recent modification of the Penal Code in 2003, prisoners that were sentenced for multiple murder could benefit from rehabilitation into society and sentence reduction if they studied a University degree or did voluntary work even if they had been sentenced to a twenty-year confinement, even if they refused to collaborate with Justice, condemn terrorism, compensate their victims or admit they were guilty of criminal charges. Some terrorist prisoners have committed terrorist attacks after they were set free thanks to a crime reduction and benefiting from sentence reduction measures.

This report includes documented proof on all the facts mentioned above. We believe that torture accusations which are appropriately founded should be investigated and those responsible of the crime must be sentenced and condemned. On the other hand, we equally support the presumption of innocence of policemen, judges, forensic doctors and prison guards that fight against terrorism following legal procedures and respecting Human Rights.

We cannot continue to ignore the serious responsibility of ETA when they systematically violate Human Rights on a daily basis. It contradicts the credibility and attention given to their drawn-up reports, even the most untenable ones. We believe that a critical and balanced attitude surrounding these issues would be equally respectful towards Human Rights and would not justify police violence and ill-treatment in any way. A fair and integrating vision on this matter should also appreciate the efforts of the victims and the State to eradicate terrorism, in order to gain more respect and accomplish these Human Rights.

INICIATIVA CIUDADANA ;BASTA YA!

1.-TORTURES

1.1.- INTRODUCTION

ETA and their political satellites have drawn up constantly reports on torture suffered by their militants when they are captured by law-enforcement authorities. However, these accusations should be revised for various reasons:

1) Spanish legislation guarantees equal safeguarding rights to presumptive criminals as countries of their setting, if not more, applied from the very outset of custody, such as the right to immediate access to a lawyer and medical examination by a forensic doctor. Against what ETA and their closest circles conclude, there is no special anti-terrorist legislation in Spain. In order to prevent acts of torture, The Rule of Law puts the same tools in disposition of presumptive terrorists as for any other detainee: intervention of a lawyer, which can be officially appointed in the moment of the detention and the presence of a forensic doctor who is also officially appointed. The detainee can request a second forensic doctors if he wishes to. Therefore, acts of ill-treatment are highly improbable. Unfortunately, improbable situations can occur. Therefore, we have a law system and legal and political powers to guarantee that aberrant and inhuman behaviour does not remain unpunished. If we look into activities occurred in the past, as in the case of the GAL scandal, a Minister of home affairs, a secretary of state and heads of the police force were all found guilty and condemned for the illegal acts. This is what Citizens expect from Justice, immediate intervention when they receive torture accusations, no matter how absurd these may sound, in order to punish the people who are found responsible or guilty of such torture and ill-treatment.

2) The terrorist band ETA has handed out a manual to their militants in order to guarantee that ETA detainees draw up systematic and successful law reports. We have enclosed the first part of this manual, giving advice on how to proceed in case of arrestment. The document suggests that militants learn by heart the tortures described in the second part of the document, which will add credibility to their accusations. They openly suggest that their credibility will increase if they struggle when arrested, provoking physical marks that can then be considered an act of torture. It also incites the detainee to perform self-inflicted injuries.

3) The last report published in 2002 by the T.A.T (Torturaren Aurkako Taldea), an organisation belonging to ETA's circle, pointed out that out of 50 torture accusations against Spanish authorities, 20 cases were automatically dismissed, and the other thirty were in different phases of preliminary investigation. One of the members of this board, Iñigo Elkoro, explained that most of these reports were dismissed because judges had the strange habit of requesting evidence, and he was extremely offended by this procedure. He added: "*Most physical evidence disappears during the incommunicado detention period*". The Law of Criminal Procedure also applies for these defendants because there is no special law for terrorist cases. The detainee has the right to a lawyer who is officially appointed during incommunicado periods and

the visit of two forensic doctors, one by law and a second one if required by the defendant. Iñigo Elkoro and the circles linked to ETA beat about the bush, using dialectic manoeuvres: the law may exist but it is not applied because the judges are trained by the government to dismiss these investigations. Elkoro described it as follows: “*Forensic doctors of the National High Court do not respect international protocol to prevent torture*”, but above all, “*there are judges that do not investigate the accusations*”. These testimonies, described within the context they emerge in, can be found in the pro-ETA web site Basque Red Net.

Since 1999 The Supreme Court has issued three sentences that condemn torture, and all of them refer to crimes committed years before this date, the year ETA announces the end of the truce. ETA and its world arrive to the conclusion, and this is the way they describe it to those who want to believe them, that this is only the tip of the iceberg, of what is really happening, instead of accepting 1) that this is what is really happening because this has been established and evidenced when applying the mechanisms that the Rule of Law has put in our disposition, and 2) that although it is impossible to avoid 100% of the isolated cases of torture or ill-treatment in Spain, France, Germany, or elsewhere, in the same way that we can't prevent crimes from taking place, we do have a Rule of Law that provides all the legal tools to discover and punish these cases. Nevertheless condemning torture does not mean anything to ETA, they only need an open case, one is enough, to justify before international organisms these accusations of torture. It would be rather unusual that a group that believes in murdering their political opponents accepted the presumption of innocence of those who fight against them. And this is what is divulged by the media that supports them: torture apparently exists the moment a militant reports having suffered it. If this complaint is dismissed, and this is what usually happens, they try and convince the public that Justice serves the police, while justice and police serve a government that practices genocide against the Basque Country.

It is interesting to point out that the National High Court, number five, has filed on the 26th February 2004 the report on torture drawn up by Martxelo Otamendi, Director of *The Egunkaria* Newspaper. The Newspaper was closed down by court order on February 26th accused of ETA- financial related charges. Otamendi was taken in custody that same day. A few days later when he came out of prison he made a dramatic statement to the media reporting all sorts of humiliation and ill-treatment acts. After this, nationalist media gave for granted what seemed a flagrant violation of his rights. Acts and Demonstrations went on for weeks, complaining about the tortures the newspaper director had suffered. Otamendi went on a tour around several Spanish cities describing the tortures he had endured. In Barcelona he reported: “*I will go to the last judicial institution in the world in order to persecute the people responsible for these tortures*” and assured he was “*not following orders from any organisation*” “*I want this to be the last case of torture in the Basque country and in the whole state*” and claimed “*I am not going to pull back*” for “*my own personal dignity and the country and social dignity*” and concluded by saying he was supported by “*my people*”. Martxelo Otamendi's case aroused a worldwide interest in the media and was much more publicised than the Unai Romano case described in the following pages. The Supreme Court penalised what seemed to be a set-up, but Otamendi and his people will keep on saying no justice has been done.

1.2.-LAWS AGAINST TORTURE:

1.2.1.- PENAL CODE

Article 174. [Torture]

1. A public authority commits torture if, by abuse of his office and for the purpose of obtaining confession or information from any person or of punishing him for any act he has committed or is suspected of having committed, he subjects that person to conditions or procedures which by their nature, duration or other circumstances cause physical or mental suffering, entail the suppression or diminution of his faculties of conscience, discernment or decision making, or in any other way infringe his moral integrity. The person guilty of torture shall be liable to a term of two to six years' imprisonment if the infringement was a serious one, and a term of one to three years' imprisonment if it was not. In addition to the penalties mentioned, the penalty of general disqualification for eight to twelve years shall be imposed in all cases.
2. The same penalties shall be incurred, respectively, by authorities or staff of prisons or centres for the protection or correction of minors who commit any of the acts referred to in the above paragraph against detainees, inmates or prisoners.

Article 175. [public authority or official who infringes an individual's moral integrity]

Any public authority or official who, by abuse of his office in cases other than those included in the previous article, infringes an individual's moral integrity shall be liable to a term of two years imprisonment if the infringement was a serious one, and a term of six months' to two years' imprisonment if it was not. In addition to the penalties mentioned, the perpetrator shall in any case be liable to specific disqualification from public employment for a period of two to four years.

Article 176.[public authority or official that allows conducts of preceding articles]

The penalties established in the preceding articles shall be imposed on any authority or official who fails in the duties of his post and allows other persons to perform the acts described therein.

Article 177.[infringement of moral integrity results in injury of the victim]

If, in addition to the infringement of moral integrity, the offences described in the preceding articles result in injury or harm to the life, physical integrity, health, sexual liberty or property of the victim or of a third party, those acts shall be punished separately with the penalties attached to them for the offences or misdemeanours committed, except when the former is already specifically punished by law.

1.2.2.- ARTICLES OF THE LAW OF CRIMINAL PROCEDURE:

The right to defense, the lawyer's assistance and the treatment to prisoners and detainees

Rubrica modified art. 3 de Ley 53/1978, de 4 diciembre (RCL 1978, 2655).

Artículo 520.

1. Pre-trial or provisional detention must be practiced in the least prejudicial way for the detainee or prisoner individually, for his reputation, or his patrimony.

2. Pre-trial detention may not last longer than is strictly necessary to carry out investigations with a view to ascertaining the facts and, in any event, the detainee must be set free or placed at the disposal of the judicial authorities within 72 hours at the latest.

3. Any individual detained must immediately be informed, in a manner comprehensible to him, of the reasons for his detention and his deprivation of liberty, as well of his rights, especially the following:

a) The right to remain silent, he is not compelled to declare if he does not want to, nor to answer some or any of the questions he is posed, or to manifest he will only declare before the Judge

b) The right to not declare against himself and not confess his guilt.

c) Right to assign a lawyer of his own counsel and demand his presence to assist him in judicial and police procedures and to intervene in any identification examination he is subject to. If the detainee or prisoner does not assign a lawyer, he will be assigned an officially appointed one.

d) Right to communicate to a member of the victim's family or a person of his counsel the fact of detention and the place where he is held in custody at all times. Foreigners will have the right of communicating the circumstances mentioned above to the Consulate Office of his Country.

e) The right to be assisted by an interpreter, free of charge, when the detainee is a foreigner that does not understand or speak Spanish.

f) Right to be examined by a forensic doctor or legal substitute, or failing that by the person available in the Institution he is in or by any other dependent on the State, or the Public Administration.

3. If he is a minor or disabled, the authority that holds the detainee or prisoner in custody will refer the circumstances of section 2 d) to whoever practices the parents' authority, tutorship, and if they are not found this will be immediately

notified to the Citizen's Rights Charter. If the minor or disabled is a foreigner the detention will be notified to the home country's Consul.

4. Any public authority or official who holds in custody a detainee or prisoner will abstain himself of giving advice on the choice of a lawyer and will communicate and refer this to the Bar Association the name of the lawyer of his choice of counsel or the request of an officially appointed one. The Bar Association will notify the case to the chosen lawyer, who will manifest his approval or refusal. If the chosen lawyer does not accept the case, is not found, or does not make his appearance, the Bar Association will designate an officially appointed lawyer. The designated lawyer will make his appearance in the detention centre as soon as possible or in eight hours maximum time, counting from the moment it is communicated to the Bar Association.

If this eight hour period is over and no lawyer makes his appearance in the centre where the detainee or prisoner is held in custody, the detainee or prisoner can make his statement or be examined if he wishes to without prejudice to him if the designated lawyers do not fulfil their obligations.

5. Nevertheless the detainee or prisoner could renounce the mandatory assistance of the lawyer if he was exclusively detained for offences against traffic security.

6. The Lawyer's assistance will consist on:

a) Demand that the detainee or prisoner is informed of his rights in section 2 of this article and proceed to his medical examination as appointed in paragraph f)

b) Once this procedure in which the lawyer has intervened has finalised, the lawyer will demand from the public authority or official that has practiced it the statement or extension of the points he estimates convenient, as well as the consignments in the minutes of any incident occurred during its practice.

c) The lawyer has the right to have a private interview with the detainee once the procedure he has taken part in is over.

Modified, art. único de Ley Org. 14/1983, de 12 diciembre (RCL 1983, 2822).

Artículo 520 bis.

1. Any individual detained as suspect of participating in any of the offences mentioned in the 384th bis Art. will be put before a magistrate within 72 hours following his detention. However, this period will be subject to an extension for any necessary investigation to be carried out, up to a maximum of a further 48 hours, provided that the request for it is issued within the first 24 hours of his detention and it is in turn authorised by a pertinent magistrate 24 hours after this. Either the denial or authorisation of the request will be decided upon a grounded resolution

2. Once detained as suspect of having committed any of the afore mentioned offences, it will be possible to request the magistrate in charge to decree his incomunicado confinement, and this, will have to be decided within 24 hours

following solicitation, From the moment the incommunicado detention is requested, the detainee will remain isolated though this will in no case affect his right of defence as enacted in the 520th and 527th Arts. until the magistrate issues the requested resolution.

3. During detention, the magistrate will, at all times, have the legal authority to be informed, either personally or by delegating to a District law court magistrate where the detainee is kept, the actual condition of the detainee.

Añadido por art. 1 de Ley Orgánica 4/1988, de 25 mayo (RCL 1988, 1136)

1.2.3.-INTERNATIONAL CONVENTIONS

Spain has subscribed the following conventions against torture and ill-treatment

- 1) UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 10th December 1984 Entry into force: 26th June 1987.
- 2) European Convention for the Prevention of Torture and inhuman or Degrading treatment or Punishment, Strasbourg, 26 November 1987 Entry into force 28th April 1989.
- 3) Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 4th November 1993 Entry into force 11th November 1995.
- 4) Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 26th November 1993 Entry into force 11th November 1995.

1.2.4.-FORENSIC EXAMINATION - PROTOCOL TO INCOMMUNICADO DETAINEE

The Protocol of the Instituto Vasco de Medicina Legal starts with the evidence signed by the judge (it includes the Court information and the court case number) detainee identification (name, age) and appointed date and place. It then presents the following Sections:

I) Interesting facts:

1.-Detention Chronology:

- I) Place and description of premises.
- II) Region
- III) Date and Time
- IV) Violence: if it has occurred, specify type and localisation
- V) Witnesses: identification if there are any.
- VI) Observations

2.- Clothes examination, if they are the same clothes worn during detention: describe presence of biological and non-biological stains.

3.- General records:

- 1) Medical
- 2) Personal
- 3) Toxic Habits
- 4) Current Condition

4.- Treatments

5.- Detainee's accounts:

A.-Physical Ill-Treatment:

- a) Deprivation or Omission: Food (last meal, time, type; last drink, time, type)
- b) By action: specify mechanism (traumatism, exaggerated physical exercise, electricity, asphyctic mechanisms...) topography, antiquity...

B.-Psychological ill-treatment: specify type (threats, insults, vexations, humiliations)

6.-Physical Examination:

1.-Constitution, Height, Findings in the skin (Completely Nude, specifying type of injury, topography, size, form, coloration, antiquity, production mechanism, damaging agent).

2.-Photographic record of injuries, if they exist

3.-Examination by systems: General Neurological (cranial pars), Breathing (auscultation, ventilation), Cardiovascular (T.A., cardiac auscultation), Digestive-ORL, Genital-Urinary, Muscular-Skeleton and articular system.

4.- Mental condition.

7.- Proved injuries: Localisation, Specific features of injuries, possible coincidence with accounted injuries

8.- Ending time of first examination.

II) Forensic-medical recommendations

1.- Complementary test requests or hospital admission.

2.- Suggested treatment

3.- New examination: in 24 hours except in the case of incidents and the Judge demands it earlier.

III) Participating Forensic Doctors: name and signature of doctors who have participated in examination.

IV) New Examinations: include all the above mentioned protocol and pointed out in section n.1, careful watch over previous injuries and the new appearance of injuries. After the preceptive examination, include again what is mentioned in sections 2 and 3.

1.3.- ETA MANUAL

This literally transcript document was seized at the home of freed, active members of the “ARABA/98” terrorist cell, detained on March 19, 1998. This corresponds to procedures 1/98 from the 511th Command (Álava), and handed over to the Central Court of Instruction no. 1.

ON DENUNCIATIONS OF TORTURE

Why denounce?

This campaign has been, and should always be, the rule of thumb for any activist fighting for Euskal Herria (Basque Country) wherever (s)he might be, however (s)he might be participating in the struggle.

We think that we are not being prepared as we should for detention. Neither fear, nor the importance of who falls, nor the threats that we might receive should make us forget about this duty that each and every activist has. This obligation of every activist has, during several periods of time, been very strictly adhered to while less so in others. We should have a spot of self-criticism, as some activist has noted, sometimes we, the potential victims (which we are) have not gotten it enough into our heads, and so let it be on record that it is something that has to be corrected. All of us must always be very aware of it.

In denouncing torture, every time we are in the hands of the pigs [translator's note: in Basque, “txakurra” or “dog” is used, but “pig” is the English equivalent of the insulting term], there are several things that we should aim for:

To provide living and shocking testimonies of the repression that the people of Euskal Herria are going through without falling in the trap of playing the victim but expressing the suffering that we have been going through for over 30 years.

To come up with ways for international organizations to become interested in the problem of our people being denied their freedom, to internationalize it, and to let people know about the repression although the latter aim is not achieved by the use of an individual denunciation.

To make political parties, parliamentary organs and institutions and local groups aware of the infringement of the most elementary human rights. We must try and get those people to take part in the denunciation and the resulting follow-up.

To create tensions and contradictions among the “democratic” parties and get them to give a position on the question.

To wear down the military wing of the enemy by using any “legal thrashing” that we can. It is a proven fact that denunciations, even if they don't end up with convictions do cause damage to the ones in the trenches facing us. If some sentence does work out, it causes despair among them and, furthermore, it provides more fuel for our campaign.

To show the repressive character of antiterrorist legislation which is unbecoming of what they call a State where there is rule of law which legitimizes torture

What to denounce?

In any case of detention, however brief and insignificant it might be, even if you are released without charges being pressed, without bail nor any other repressive measures being used, torture has to be denounced.

It is very important that it should be denounced, whatever the colour of the pigs' uniform might be, moreover, we all know that they are used to employing violence as a rule against our people. The denunciation campaign should cover all of the Spanish state. Wherever there is a detention, (even if it is for a traffic offence), there has to be a denunciation and there should be no letup until we get all of them on the dock facing "His Honour".

Below are some ideas that we can give you which could be of some help although anything else that you can think up is all right too, but then don't forget to let us in on your idea so that others can use it too:

- Take particular note of the physical appearance of the pigs, that will lend truthfulness to the denunciation you'll make later on.
- Be beaten from the very moment you are detained and only for being from Euskal Herria. If the detention happens in the street, save the hitting for entering the police station or vehicle. However, in that case, shout your lungs out as if you were being killed, shout out your name, and jostle as far as you are able because we'll get witnesses later on for that and, furthermore, everything that you'll tell will be more believable.
- Take note of the description of the police stations because, as we said above, it provides real information for the denunciation.
- According to however the detention plays out (time, play, type of violence), try to get it so that there can be some effects that could be used to arouse the people and make them more aware, for instance: there should be a lot of bleeding, even if it is a nose bleed, talk about admissions to clinics and hospitals, tell about old people and children being injured, etc. All of this makes it easier for the media, lawyers, kale borroka (street struggle) to do their thing later on .
- Denounce as many pigs as you can, here there are no bounds to your imagination and you can hype it up as much as you want because you will never suffer from any reprisal for making a false denunciation; even if it can't be proven, we'll have achieved some of what we were after at no additional cost.
- Talk about the interrogations, beatings, the use of a bag over your head, the bath torture, the rack, psychological torture, etc. Read the rest of the documents that you've got, they're all necessary and complementary.
- Try to get some politician involved in the denunciation, that will result in more

repercussions and contradictions between parties will grow further.

- Always deny your faults and blame them all on traps that the pigs set (should there be things like weapons, documents, confessions of activists, etc.).

We could go on but you get the drift of what the most important thing is, the rest we leave to your imagination but don't forget to pass your ideas on to us.

How and where to denounce

Here anything goes and the more denunciations the better, we'll make sure that they are heard and taken care of.

Take advantage of contact with people not connected with the pigs in order to start denunciation proceedings, from the very first moment until you're set free or thrown into the clink (also denounce contacts with the jailers). Once you're in the clink, the group will let you know what strategy to follow at any given moment.

Before the Judge deny everything and only talk about torture, don't worry about being overbearing, we'll see the good coming out of all this in the very end.

The pigs will threaten you and will intimidate you so that you won't denounce anything. String them along while you are in their hands and then sock it to 'em. That is where it hurts them most, we have seen that with time, a denunciation, even it is only a strategy has sapped many enemies of their courage. We have to go on along these lines and exploit "the grandeur of democracy".

Echoes of your denunciation

After your denunciation, we'll the whole machinery going both against the judicial apparatus of the State as well as among the various Basque nationalist groups.

Any pressure that we can bring to bear is good and don't forget that you are the main actor and without you there is no movie.

Once you have made your denunciation, other groups will support your action and so everybody will be in the same boat. We'll go on until all of our objectives are reached. Don't forget that behind you are people from the press, local groups, youths, international groups (A.I., etc.), world committees against torture, the clink, and with any luck some opportunist and dubious party. As you can see, your contribution will never be for nothing.

**LONG LIVE THE FREE BASQUE COUNTRY! LONG LIVE A SOCIALIST
BASQUE COUNTRY!**

ON AND ON UNTIL VICTORY!

Basque land and Freedom (ETA)

1.4.-TORTURES IN THE BASQUE COUNTRY: ¿THE TRUTH OR SIMPLE PROPAGANDA?

ETA uses presumptive ill-treatment inflicted by the police over detainees to win supporters for their cause.

José Luis Barbería, *El País*, 5th February 2002

The last series of posters displayed all over the Basque country portray the swollen and disfigured face of someone whose gender cannot be determined. The person is wearing a surgical collar and is severely bruised, creating the effect of a black mask over the eyes. The balloon man gives the image of some sort of suffering Buda that can hardly open his eyes. This photograph was presented by the presumptive ETA collaborator Unai Romano Igartua on September 7th 2001, two days after being arrested in Vitoria by the Civil Guard Authorities. This is the photograph of his admission in Soto del Real prison, the same photograph included in his prisoners record.

The case of Unai Romano, who is currently on parole leave, and Iratxe Sorzábal, presumptive activist who reported having been tortured with electric shocks when she was being transferred to Madrid are included, due to their seriousness, in a report on Spain that Amnesty International is publishing next November. The European Committee to Prevent Torture, the prestigious CPT, offers detailed information on both cases.

Both organisms are familiar with the indictment by which judge Raimunda de Peñafort Lorente, in charge of investigating the torture accusation of Iratxe Sorzábal, denies the existence of crime evidence of the agents accused and establishes that the facts that were reported could only be “*constituent of a vexatious and threatening fault*”. According to legal sources studied by this newspaper, the forensic doctors that attended Unai Romano while held in the Civil Guards’ headquarters has declared to the judge instructor that, in his opinion, the serious bruises are self-inflicted and cannot be caused by a beating or several blows on the head reported by the detainee.

According to his professional judgement, Unai Romano’s swollen face respond to the consequences of a strong frontal blow, similar to the injuries caused in a traffic accident. Unai Romano recognises the injuries on his wrists were self-inflicted while in the prison cell. These tooth marks on his wrists appear in the first forensic report. The question that immediately arises is what could drive a prisoner to self-inflicted injury.

Suspicion

Spanish police authorities, alike other European law-enforcement forces, are not yet free from suspicion, in spite of the improvements in this field and no matter how convinced judges and attorneys may be, thinking this issue has been completely solved in Spanish Democracy. In the last report on torture issued on April 9th by the UN, Theo van Boven collects 58 complaints reported in Spain. It is quite common nowadays to find foreign journalists in grieving Euskadi who come and investigate the “barbaric tortures” suffered by ETA detainees. The Suspicion of ill-treatment practiced on terrorism detainees is widely spread amongst the public opinion in the Basque Country, despite the scarce moral and political legitimacy of the allegers and admitting that ETA activists report torture as a systematic procedure.

Any citizen would be shocked by the stories divulged in the *Gara* Journal, the posters and brochures, or the stage versions and simulacrum acted on the Basque streets representing all types of tortures: the bath, the plastic bag, electric shocks...As an example, these are some headlines and fragments of articles published in *Gara* on April 6th under the common title: "Tortures to the last detainees": "*Kristina Gete reports sexual abuse by Civil Guards, a vaginal and anal rape with a stick*", "*Civil Guards let Leire Gallastegui choose between a broomstick or a man*" "*Maite Pedrosa claims agents introduced their fingers and a gun in her vagina and anus amongst other brutal tortures*".

Attorneys, Judges and forensic doctors answer back without hesitating that all this is a huge lie orchestrated by ETA, an intolerable calumny. The four forensic doctors we interviewed, agree "*a rape with a stick leaves physical marks. It is impossible that somebody is raped while in custody without us detecting it in the daily medical check-ups we practice on the detainees*". A forensic doctor appointed by the National High Court adds "*It is sometimes embarrassing to read what Gara publishes when you know they are lying about facts you are perfectly familiar with*". An attorney with a turbulent past regarding investigated and sentenced cases during his jurisdiction affirms, "*Torture is obviously their last strategy. This is why every time there is a detention, Batasuna lawyers appear with more torture reports*".

Suspicion arises with one isolated case

The director of Human Rights in the Basque Country, Txema Urkijo, ex-member of the pacifist group Gesto por la Paz, acknowledges that the reality of ill-treatment is extremely dubious. Alike many people concerned with these issues, he believes that all the accusations are not necessarily true, but they do not all have to be necessarily false. "*Suspicion arises with one isolated case, and you begin to question everything*". José Luis Cuesta, professor at the Instituto Vasco de Criminología, cannot evaluate the extent of the problem either. "*I do believe judges pursue cases of obvious ill-treatment, but there are also sophisticated methods of abuse that do not leave a mark. It is difficult to determine the truth and seriousness of these cases. We have to mainly concentrate on preventing these acts*".

Reconstructing the absolute truth about the ETA detainees' reports becomes an impossible task, just like trying to put back together a broken mirror with missing pieces. In these cases, the missing pieces correspond to the five-day incommunicado period, two more days than what is established by the Constitution under normal circumstances. Compared to other countries, the Spanish system is rather safeguarding with terrorism detainees, taking into account that forensic doctors of the National High Court and the Regional Court visit ETA detainees daily and draw up updated check-up results and the complaints of the detainee to the judge. An Officially appointed lawyer is present when the statement is being taken, although he does not really give legal assistance. Apart from those who actively promote these campaigns, most people do not believe torture is a common practice, but nobody can deny the existence of isolated cases.

According to Juan Carlos Yoldi, Unai Romano's lawyer, ETA detainees issued a total of 67 complaints last year, and 15 in the incoming year up to this date. All of them have been proceeded and followed by previous enquiries, but most suits were filed when checking that the forensic reports did not back up the accusations. Only a few were taken to court and there are no sentences. Unai Romano's lawyer Juan Carlos Yoldi, an

ETA ex-activist and former Batasuna candidate to the Presidency of the Basque Government, complains 70% of the cases have not accepted the evidence alleged in the torture reports. Up to now none of the lawyers of the ETA detainees have taken these cases to the European Committee of Human Rights. According to Yoldi they are going to take the Zonotza case to the committee, now that the Supreme Court, twenty years after it happened, has confirmed and sentenced various civil guards for torture

Is there more to this than the legal truth? Experts of international organisations work from the supposition that a case without a sentence does not necessarily imply that torture or ill-treatment does not exist. *El País* has collected two testimonies: Unai Romano's own testimony and a police superintendent with a 24-year professional career and with a great deal of experience interrogating ETA detainees. The first statement is described as journey through hell, whilst the second one is a description of a non-violent panorama, using communication and psychological pressure techniques.

Arrestment

“After arresting me in my home at home on September 6th at four o'clock in the morning, they covered my head and took me to the Alonsotegui quarters, I think, I don't really know. After getting out of the car they didn't warn me there were some stairs there and I fell and hurt my knees. They started to interrogate me, if I knew this person and that one. More and more questions, more and more blows on the crown of my head and my face, I could not lie down, they didn't give me any food, only water that helped me recover slightly, I think it had something in it. I told the forensic doctors the first day he visited me, but he said it was too late to look into that. Although I told him I had been hit, apparently there was nothing there, he said. I could not see during most of the incommunicado confinement apart from when I was taken to the prison cell. I did not see any civil guards, but there were many and there was a woman too. They tortured me with the plastic bag, applied electric on my ear globes, penis and testicles. After destroying me physically, they tortured me psychologically. They said they'd arrested my mother and they were going to torture her, they said they had taken her to a dam. At the first I did not believe them. Why would they arrest somebody who hasn't done anything, but then I started to believe them. One of them was on the phone and pretended he was speaking to these colleagues who were with my mother. He suddenly shouted back and they all dropped silent, then they started to whisper something between them. One of them came up to me and said, 'Unai, your mother is dead'. They took me to the prison cell and I broke down psychologically, I bit my wrists. I was desperate, devastated, and my head was swelling up fast. They called the forensic doctors and they took me to the hospital. The doctor came with me and she held my hand during the whole journey”.

According to the medical report issued in the Hospital Clínico San Carlos in Madrid, after a complete medical check-up, Unai Romano was hospitalised with slight injuries, if complications did not arise. He had a facial bruise and a cervical muscular contraction. The magistrate of the Central Court n.1 of the National High Court, the forensic doctor Leonor Ladrón de Guevara described a black bruise over the eyes, oedema in the frontal area, incise-contuse injuries with tooth marks and a slight retro auricular zchymosis. Unai Romano, when questioned by this newspaper, said they applied low-voltage electrodes. *“This is what they play at, I could hear this twitching, they said, 'Unai we are going to switch you on to these electrodes, come on, say*

something, our chiefs are pushing us". Despite all the thorough medical examinations, neither the forensic doctors nor the hospital doctors could detect the wound on the crown of Unai Romano's head, still visible today, which he attributes to blows he was inflicted while in custody. *"That wound did not exist then, Unai Romano did not have it while he was under arrestment"*, is the laconic answer of the National High Court. The doctors did not find anything irregular in the penis and testicles either.

The same old story

"I do not believe a word of all that, the same old story, the same old clichés", says a police officer with 24 years experience in this job. *"of course tortures were common in the past, and it is not up to me to hide up those facts, but if they report them now it is only because they are following the ETA manual. Why do ETA detainees confess so quickly? In the first place, detentions are grounded on serious documentation or testimonial evidence and are thoroughly investigated. An ETA militant thinks he is a sort of visionary and lives in a fictitious world where the police, his persecutors, are the only people that constitute a real presence. Killing somebody is always a tough fact to deal with, however shielded they might feel it is a load they have to carry. In the interrogations, we try to make them aware of the atrocities they have committed. And we are in a situation of advantage, because we have seen dozens of them here, and as for them it is their first encounter with us. Each detainee is in a world of its own, but in general, as opposed to the grapo who are much more reserved, harder, ETA detainees need to justify themselves, relieve themselves in some way. I remember one of them, the moment he was arrested, said to me once, 'It was about time you caught me'. The other crucial element is the Stockholm syndrome, it exists, I can tell you. Some of these guys claim their militancy with pride, 'excuse me, I'm no thug, I'm an ETA militant'. Even if it is hard to believe, they are quite chatty. They come with these great prejudices, and they are funky, they are frightened because they believe all their own exaggerations on torture. We apply communication theory techniques, we send the same message insistently and we concentrate on it, without wasting time, without interrupting this strategy. We study the receptor's reaction, we study his psychological response, the external signs of his behaviour. You can gather out pretty fast who is more vulnerable, who is looking for a way to negotiate. In a group of four, one of them makes certain gestures, there are signs in their behaviour when they want to speak, to dialogue. You can gather this out be their attitude in general or just a detail, for example, if they ask for a cigarette, anything really. That is a crucial moment, and it precedes the moment of transaction. You have to establish a bond with the detainee and make a pact. 'Look, we are not asking you to tell us about the others, just tell us your story and forget about the rest' you say. You try to compensate them with small favours, a beer, clean clothes, a phone call to a relative to calm them down. As for the rest of them, you disarm them by telling them what the first one has said and what we know about them, of course. When their guards are low, you can expand the area of questions and you find out about things in another way, never through threat or violence, I would say. Trying to scare an ETA detainee is as stupid as playing the good and the bad policeman rolls, human relationships are not polarised. Coercion makes no sense, because, as I say, an ETA detainee is in the hands of his enemy and he feels pretty scared as it is, there is no need to scare him more. A good interrogator has to be empathic, to get under his skin, but the truth is, no matter how many courses you take up, to be good at this you have to have natural psychological skills, a special ability. If I had to describe my general relationship with these ETA guys after twenty-four years in the job I would*

say we have settled this as cordial enemies. After dealing with them closely for four days, we sometimes say goodbye shaking hands and I say to them 'you are really messed up, but good luck at the National High Court'. Further contact after does not usually work. Some of them say they would not mind if you paid them a visit in prison, but when you sometimes go you find them as cold as a stone, because they have been through their personal lawyers, they have re-established contact with their friends and they are part of their tribe again, and they justify themselves with all this torture business and so on".

In practice, forensic doctors are the only independent elements out of that forced criminal-police society established during the five days of incommunicado confinement. What is considered to be the true according to these independent professionals, whose testimony generally determines if the accusation should be further investigated? 'As for me, what the forensic doctor says is sacred' says more than one attorney, more than one Judge.

Forensic Doctors

Some forensic doctors in the Basque country used to dealing with the Ertzaintza and the National Police Force detainees believe that the current procedure is enough to safeguard detainees rights. "The moment somebody is taken into custody for terrorist acts, the National High Court sends an exhort to practice a medical check-up on the detainee. We practice this medical check-up, we open a medical record we see if he is under treatment and what are his medical needs. In the Basque country we normally go to the police station with a court clerk. It is difficult to practice physical ill-treatment without us noticing this, but it is true that psychological torture is also difficult to detect and the 'plastic bag' (to cover the detainees head with a plastic bag to stop him from breathing) does not leave any marks, although it does leave psychological symptoms, the same as low voltage electric shocks only produce a slight redness that disappears after a few hours. In any case, we have to take into account that the arrestment puts the detainees in a very fragile state of mind that affects some of them terribly while in custody. It does not only depend of the intensity of the stimulus but also on the receiver. The same happens in a train crash. Some of the people recuperate in two hours from the shock, others are keep the trauma for life. Nevertheless, after ten years working as a forensic doctor, I have never seen anybody who was physically exhausted because they had been forced to do press-ups or stay awake and I have not seen psychologically destroyed detainees either. It is true that as they cannot see the light of day and they are not allowed any watches or clocks in the prison cell they are quite disorientated with the time and some complain they do not get enough sleep because the beds are uncomfortable. In my opinion, the police have worked hard before taking the detainee into custody, and the truth is they don't bash their face, they don't beat them up, they don't destroy them. I have never seen this, but it would be foolish to say this never happens. This is the truth, at least my truth, after checking more than fifty suspects accused of terrorism, although I know many people want to think we just wink at all this or that we don't want take our job seriously".

The investigator of Amnesty International for Spain, Guillien Fleming, regrets that the Spanish government does not give a substantial answer on cases of torture (long-lasting ill-treatment) and ill-treatment (less serious and sporadic) that catch the attention of this organism. They say they do not accept that in the recommendation chapter we put them

down to the same level as ETA and they refuse to recognise anything apart from isolated cases. She says, *“we believe the five-day incommunicado confinement favours ill-treatment and we can see that the forensic reports are in many cases superficial, no photographs, no X-ray analysis. We also think that there is an operational problem with impunity because the government uses reprieve with those accused of torture and because the penalties, although they have been strengthened in Spain, are still more or less insignificant. It would also be convenient to record the interrogations as a preventive measure, to provoke an ‘Beware, radar’ effect and to allow arterial gasometry tests that detect the alleged ‘plastic bag’ tortures “.*

Jan Malinowsky, a secretary member of the CPT (Committee for the Prevention against Torture), an organism that by virtue of the agreement subscribed by Spain, has carried out unexpected inspections in Spanish police stations or prisons in various occasions, adds yet another recommendation. The officially appointed lawyer should be able to assist the detainee before making his statement. Malinowsky cautiously agrees that Spain has developed important safeguards, like a daily forensic examination in the cases of terrorism, but he also points out that the Madrid Government plays with a certain inertia and is reluctant to take some decisive steps. The last report issued by the CPT after a surprise visit in July last year has not been published yet and is awaiting for the executive to authorise its diffusion. It denies blatantly that efficiency has something to do with the way detainees are treated. Following the same line of the CPT recommendations it suggests Spain to elaborate a conduct code for the interrogations in order to cast light upon opaque areas, dissolve false accusations and free the police force of all suspicion. Malinowsky points out a positive fact that a specialist in fighting terrorism, Baltasar Garzón, also believes ETA suspects should have the same rights as the rest of the detainees. He says, *“honestly, there is no reason for it to be otherwise”.*

1.5.-A CASE OF TORTURE?

The Unai Romano case, a detainee who presumably suffered tortures in the police premises, has been divulged by ETA friends in the press and Internet. Likewise it has been present in the streets of the Basque country in different occasions: Posters with photographs of Unai Romano’s face have covered walls and shop windows. As always, ETA and their friends dictated the sentence before the case is taken before the National High Court. In their opinion it is obvious that Unai Romano was tortured. But the forensic reports give no evidence of the tortures he had supposedly suffered on his knees (violently forcing him to kneel down) nor the electric shocks applied on his testicles and behind his ears. None of these reports proves that the swelling of his face was a consequence of ill-treatment. One of the forensic doctors alleges the injuries on his wrists are self-inflicted, and Unai Romano himself confesses he bit his wrists but does not recognise he smashed his own face against a wall, as one of the forensic doctors may have pointed out during this preliminary phase of the case which is still being held at the moment. We also have to point out that none of the five Civil Guards involved in the Unai Romano case has been put on trial or sentenced.

1.5.1.-UNAI ROMANO'S TESTIMONY (Published on October 19th 2002, in the left abertzale's mouthfeet newspaper, *Gara* and collected in *La Haine* web page,).

Roundabout 4.00 on September 6th 2001, I am asleep when some noises wake me up. I go out into the corridor and see two civil guards arguing with my parents. I go up to them and they ask me if I am Unai Romano, and I answer back, yes (...) They tell me I am accused of "collaborating with armed group", and suddenly all these civil guards dressed casually and the clerk come up the stairs. They handcuffed me and say they are going to search the house.

We start with my bedroom. They look at every single paper, every book. My bedroom search is endless (...) Anything that catches their attention is left on the desk (...) They certify the search my bedroom and we go on to the next (...) The clerk is getting tired of this and the civil guard in charge tells them to hurry up.(...) When they have certified they have searched everything, and when it all seems to be over they remember the loft. While we are going in there they don't trust me and they cover themselves and they kept their hand on their holsters. When we go down to the house again they let me have a shower, get dressed and say goodbye to my relatives but without opening my mouth, the same as during the whole search.

They take me down to the lobby and put me in a corner while they discuss on how to get me out of there (...) Finally, they cover me up and they take me with them. The car drives up to a place which is not familiar. During the whole journey I have kept silent and with my head in between my legs. As soon as I get out of the car there are some steps, but they don't tell me this, so I trip over them and fall on my knees. They put me into a prison cell and make me wear a ski mask. I have breathing problems and the civil guard who was watching over me said I didn't have the right to breathe.

They put me into a van, after a while, and they take me to Madrid with no handcuffs on. They drive really fast, I gathered that out by the noise the engine makes. During the transfer somebody gets into the back and asks me why I think I have been arrested. He gives me some advice, as a friend he says, I ought to collaborate. He says that up to now they had been good to me, I ought to collaborate.

They take me to the police station, they frisk me, and they give me four important pieces of advice here: I have to obey, keep my eyes closed, avoid looking at them in the face and if I bump into a detainee, avoid looking at him too. I put me into a prison cell and I am forced to stand up all the time.

After a while the interrogations start. They ask me continually to collaborate, while they hit me on the head with some sticks covered with foam or sealing tape. Do I know this person, do I know this other person, did I exploded a car bomb, did I shoot somebody. They tell me I have done all sorts of things, and I deny it all. The moment I deny it they hit me three or four times with these covered sticks. Then they ask me again. When I am staggering they stop and ask me about my friends, about my relatives, where do I hang out and go for a drink in the old part of Vitoria, about the waiters, job issues, politics, *ikastolas* [in Basque: basque school], *gaztetxes* [in Basque: young's club]. When I calm down a bit and after drinking some water that makes me recover fast, I don't know, maybe there are drugs in it, they start again (...)

I go through the interrogations with a mask over my eyes (...) and on top of the mask they put a ski mask on. The interrogations get harder and they put up to three ski masks on me. I think this cushions the blows, but the oppressive feeling is awful, and I can't stop sweating.

Another thing they do to me is the bag. They put a plastic bag on my head and they close it up, maintain it like this until I start to lose my balance. All in all they do it up around eight times. Then again, when I am drowsy, questions about my way of life, where did I go, who did I go with, more water and they start all over again.

They also force me to do press-ups. I am standing up and they make me kneel down, they call this the «elevator». They make me do this for a long time, and I end up completely soaked in sweat, it is dripping down from my head, and all over my hands and arms. There comes a point in which they bring this paper for me sign for the Court, if I remember correctly, and I have to do it again because it is soaked in sweat, because the sweat from my head has dripped all over the paper (...).

During the interrogations I hear other people screaming with pain. I don't know who they are, if they produce them on their own, but they are horrifying (...) At one point after taking me out of an inquiry they have me standing up in a prison cell, one of them comes in and he only puts the mask on me (...) he takes me to a room with a woman in it. She identifies herself as a forensic doctor and shows me her card (...). She asks me about my health in general, and I tell her I am physically shattered and about all the bangs on my head. She asks me about the past operations and I tell her about my asymptomatic arrhythmia (...). The civil guards are behind the door and I suppose they can hear us, in the same way we can hear them.

They put me into the prison cell and a few minutes after that they make me wear this mask over my eyes and the ski mask, or ski masks. They take me somewhere else and ask me what I have told the forensic doctors. I start to tell them but one of them interrupts me, and starts to scream like crazy at me and says he already knows what I have been telling her. Just after that he starts hitting me about twenty times running, I think.

The interrogations start. These are even more brutal than before. The questions are the same, or similar (...) Every single time I say no, they hit me hard. I am standing up. They ask me constantly and the blows are stronger each time, but now they turn me round, a turn this way, another one that way, now this way...all this is followed by constant blows and questions. Two civil guards stand up on these chairs and start to hit me from above. They are getting more and more aggressive and the blows with the stick are unbelievable. They always hit me on the head and forehead. I don't know how long I have been there or what time it is (...)

They have me doing these press-ups, standing up, kneeling down, standing up...., but when I am on my knees they hit my head and I fall to the ground from the impact of the blow, but they always pick me up before I fall down completely (...) they let me rest and then they say I am the only “son of a bitch” that hasn't talked yet and that if I don't tell them anything I am going to end up like “that Lasa bloke”.

More water, more questions and we start again. Now they have me sitting down on a chair. I can't keep on my feet anymore and they hit me constantly. The questions are not as frequent anymore but the blows are constant. They have me sitting down on an armchair but I am sloping over the sides. They don't want me to faint, and when they see I can't stand it anymore, they control themselves a bit more. One of them whispers softly in my ear and asks me to say anything, no matter what, I can invent it, that is his job he says (...) Then he comes over and I say I haven't done it, he goes hysterical, and says that from now on I am going to beg him to kill me. Some of them hold me and hit me even harder on the head. They get tired and they take turns. They apply electric shocks with an electric stick on my genitals, the penis, on the top part of my ears and behind my ears too. They also put the bag on me and they continue to hit me.

I am shattered and they start to threaten me telling me my brother and my girlfriend are on their way and that they are going to do more than double of what they have done to me to them (...) and some of them start to say that they have arrested my mother and that she is on the way to the dam that is close to Vitoria. The blows continue. I beg of them to leave my mother alone, she has never done anything. They tell me they are doing "the elevator" to her, they tell me they are doing this to her in the dam, her feet tied up and in the water. I can hear phone calls, as if they are talking to the ones in the dam. One of them shouts and all of them drop silent. They sit me down on a chair and one of them informs me my mother has passed away (...)

They take me down to the prison cell and leave me there for about an hour. I am in a terrible state. My head is swelling up incredibly fast, and I can't see anymore. My mind plays tricks on me and I believe all that about my mother. My head is burning and I just want to get out of there. Suddenly one of them sees I am getting out of bed (...) my whole head burns, he feels it and it is exaggeratedly swollen, my eyes hurt and I feel my head is going to burst. All that about my mother makes me hysterical and I decide to hurt myself and bite my wrists. I have, or I feel some small marks on my wrists. First I hurt myself with my fingers and then with my teeth.

Suddenly one of them comes up to me and tells makes me go with him. He holds my hands behind my back and notices my wrists. They take me along the corridors, up the stairs and put me into a room. The forensic doctor is shocked, she asks what has happened to me, what have they done to me. The civil guard tells her about the wrists and leaves. They leave me with her, I am hysterical, I do not recognise the voice of this woman and I can't see her (...) she makes me sit down and asks me how I am feeling and I answer my head is going to burst.

It is September 7th, ten o'clock. She asks the civil guards to send a car urgently and we head towards the hospital. They want to take me to the military hospital but the doctor says no, we are going to some hospital «a university or somewhat... » on the way there I get hysterical, and I tell the doctor they have killed my mother and that she has to call home (...) we arrive at the hospital, we go through the emergency ward, I think. They sit me down on a wheelchair and they cure my wrists. The forensic doctors goes to talk to the doctors (...) then the forensic doctor comes back and she says she has called the judge and that nothing has happened to my mother. She continues to hold my hand and calm me down.

They start doing tests on me. She is worried they might have broken my skull, or, a cranial encephalic fracture (...) I don't know how long I am there for, but the doctor says they are keeping me in that hospital. She says she is in touch with the judge and he knows what has happened. Every time I have a test done she comes and says my skull is not broken. The pain is killing me alive and they don't want to give me anything until they have the results of all the tests. She continues to hold my hand. After a while they say I have no cranial encephalic fracture, and that I have an oedema and a muscular contracture in the neck. My head and my neck are really swollen. The forensic doctor says my head is bruised and I have two black eyes, this is normal in an oedema, she says. They want to put a surgical collar on me, but my neck is so swollen the ones they have there don't fit me, they are all too small on me and it takes them an hour to find one I can finally wear.

There comes a moment in which I tell the forensic doctor what they have done to me, and when I tell her about the electrodes, she looks at my ear and says it is burnt on the top part and that the back of it is swollen (...)

I get a complete medical check-up, with all sorts of coordination tests (...) The ophthalmologist still has to see me, because I can't open my eyes. The forensic doctors comes to tell me they are taking me to the prison infirmary, but that we have to go to the police station first, where I was before, and that after that they will take me to prison. I start getting really scared, but she says it is alright because the judge knows all about it so they won't do me anything (...)

They take me to the police station and put me in with the forensic doctor into a room. She asks them to bring the most comfortable chair they have and they bring one without arms. I sit down next to her. They bring me some ice and I put it on the different places I think convenient (...) They bring lunch, even though it is about 18.00. The meal consists on two yoghurts and a sandwich. The forensic doctor sits down next to me and feeds me the yoghurts. I can't bite the sandwich and I don't eat it. She has to go and she leaves me alone for about two hours. Meanwhile, two civil guards are outside the room, constantly looking and laughing at me. They take turns and laugh at the state of my face, and say all sorts of things, they say I'm a pig, a monster and that sort of crap. In the meantime I remain still and I only move to apply the ice. They seem as if they are going to come up to me but the don't dare put a finger on me while I am in that room. I am still in pain and only the ice and keeping still helps (...)

I can hear one shouting that they are bringing my supper and I hear them shaking the yoghurts and drinking them while they laugh. Time goes by and the pain starts to get worse again. I complain about the pain and some of them go and fetch the forensic doctor, but after a while nobody comes. Suddenly one of them appears with an ampoule and he says it is for me. But I don't trust them and I just give it a sip, and it tastes really awful, so when I hear them walking away I empty the glass in one of those cushioned chairs made of material I have next to me (...) the medication is strong and that little amount I drink makes me really drowsy, and I have to make a big effort not to fall asleep.

Approximately one hour after this I am put into a car and on the way there, wherever it is we are going, they start to fool around. They accelerate and then press down hard on the breaks, and zigzag while they drive. The music is really loud and they stop the car a

couple of times, the ones at the front get out of the car and pretend to open the door, but then we continue. In one of these occasions, because of all the swerving, I have to lean my head on the window to avoid banging it, and I notice a curtain.

There is a moment in which we stop and the civil guard sitting next to me asks me if I want to talk to the Civil Guard Authorities. I answer I don't and they take me out of the car. I start to hear noises, doors opening and closing all the time. I think I am in prison, but I don't trust them. They take two photographs and my fingerprints (...)

I am completely blind and a bit dizzy, so they take me to the doctors. They ask me some questions and they examine me superficially and they tell me I am going to get an assistant to help me, because I can't take care of myself, and they put me into a prison cell with two beds, a bath, a toilet [sic] and a shower. The assistant is a Colombian guy that helps me get into bed, urinate, and get out of bed. They give me more pills and I go to sleep for a few hours, according to the assistant. In the morning we talk and he says my face is all swollen and my eyes are black and all the rest is bruised, except for the tip of my nose and my lips, that have a normal colour. They change the assistant and substitute him for another (...)

I find Out I'm in jail on September 8th at about one in the morning. I am in Soto del Real, in the infirmary ward, in the isolated zone. Two hours after the second assistant arrives, I am informed I am in Incomunicado confinement and I can't have an assistant anymore. From now on I have to feel around to go to the bathroom, get into bed, eat (...)

Saturday 8th and Sunday 9th go by, that afternoon I take a shower and I can start to see something. At the beginning it is all blurry but then I can see better. The area around my eyes is black and the white part of my eye is full of blood, all my face is swollen and dark, and my neck and shoulders, down to my chest are darkish.(....)

I cannot sleep, 'cause when I lean my head on the pillow it hurts, and I tell the doctor to put up the medication doses. We agreed he would to give me two Nolotils but he gives me this green and white pill instead and it turns out to be too strong. I have nearly fallen over twice, fainting, and I tell him I don't want that anymore and that I just want two Nolotils.

He has me locked up in the infirmary cell for twenty four hours, and they don't want anybody to see me because my face is quite shocking according to the assistants, they see me when they give me food. I still sleep really badly.

On Monday, September 10th another medical surgeon comes from court (...) He takes notes on my condition, mainly the face and head and when I want to comment on something he says that all this is just a mere procedure to pass on to the judge. We agree that my condition is good enough to go and see the judge, I am still not recovered, but I agree. That night I'm informed they will wake me up at 7.00 next morning, September 11th.

They take me to Admissions, they give me some breakfast and then they pass me on to the Civil Guards that are going to take me to the National High Court. I inform the Civil Guard that is going to put on the handcuffs about my injured wrists and ask him not to

put them on, but he answers back at me asking me to show him the medical sheet that says that. I tell him I don't have it and he handcuffs my hands behind my back.

The trip to the National High Court is really hard, because I am still not feeling too well. Once I'm there they hand me on to the National Police, and one of them says to the other one that they have done "the octopus" to me. The clerk reads out my rights, I designate Iker Urbina as my chosen lawyer for counsel and I tell her I want to see the forensic doctors.

They take me to the prison cell and a while after they take me out to see the forensic doctors. I tell him I have new pains in the middle of my chest, that they get worse when I move and that I stop breathing for three or four seconds(...) I describe the tortures and he makes a note of them, but he tells me to tell the judge about that(...)They take me to the prison cell and after a while I am taken before the judge.

They take me from the prison cell up to the judge's office with a jacket over my head that prevents me from seeing anything. They start to take the declaration, I answer the questions and deny the accusations. When he asks me if I want to add something I talk about the tortures and ill-treatment I have suffered and I start to describe them. After half a minute, he interrupts me and says he has been working with the civil guards for years and that many people claim they have been tortured so he doesn't believe me. He also says that as there is no police report, I am not in the right place to complain about this. I am absolutely shocked, I look at the clerk and she nods her head. The officially appointed lawyer cannot stop staring at my face but she doesn't say anything either(...)

They take me down to the basement with the jacket on my head again and they put me into a Civil Guard van that takes me back to the prison. I was hoping to see my lawyer, but apparently they don't want anyone to see my face. Once I'm in prison I tell them I want to make the phone call I am entitled to now I am not in incommunicado confinement anymore and they say I cannot do this till the notification arrives.

They take me out of the isolation zone and put me into the men zone. Next morning the doctor comes to tell me I am going to remain in the infirmary until the marks on my face disappear (...) On the 14th of September my condition is good enough to be transferred to the prison ward, but they don't take me there until the 18th, the day the marks have disappeared, most of them at least (...)

It has taken me a long time to write this because each time I tried to describe what happened I got really nervous, so I had to do it a bit at a time. I forgot to say that during the interrogations I was naked for a long time.

Unai Romano's testimony is included in the report "Torture in Euskal Herria" referred to 2001. It has been published by Torturaren Aurkako Taldea (TAT).

1.5.2.- UNAI ROMANO CASE. FORENSIC REPORTS

1) JUZGADO GENERAL DE INSTRUCCIÓN NUMERO UNO HIGH SUPREME COURT

MADRID

FORENSIC MEDICAL REPORT

Madrid, September 7th 2001

The Forensic doctor Mrs LEONOR LADRON DE GUEVARA GUERRERO appears in court before the magistrate and me, the Court Clerk. The above-mentioned judge reads her obligation to the truth and the penalties inflicted for false testimony in the Penal Code. Her declaration is legal and states the truth of what she knows and is asked about. After being appropriately informed she alleges:

In compliance with what was demanded by your Lordship made her presence, at about 18. 45 on the 6th of this month in the Civil Guard general headquarters in order perform a medical examination on UNAI ROMANO IGARTUA, 24 years of age, and identified herself to him with her professional I.D. card, issued by the Ministry of Justice.

He refers to the following in his medical history: amigdalectomy, appendectomy, intervened on anal fistula (all this during childhood), a road accident with injuries on forehead (appreciated scars) and multiple contusions. Four years ago he was diagnosed a slight arrhythmia and has annual check-ups. He says not to be taking any medication, and not to be under facultative control. He says not to suffer recognised allergies Smoker, says he drinks alcohol at weekends and does not consume drugs.

He refers to his arrestment in his house, with no violence and he was transferred to Madrid in a police van, not handcuffed.

He will not answer questions about ill-treatment inflicted and says “*I have received bangs on the head and it is sort of swollen*”. He allows the examination. Recent signs of violence are not appreciated. TA 10/6.5 with 76 pulsations/minute. His pulse is firm and regular. Rest of parameters were normal.

Ratified and signed before the your Lordship. I, the clerk, certify

2) JUZGADO GENERAL DE INSTRUCCIÓN MADRID

Previous procedures 342/01

FORENSIC MEDICAL RECORD

Madrid, September 7th 2001

Forensic surgeon Mrs. Leonor Ladron de Guevara y Guerrero The appears in court before the magistrate and me, the court clerk. The above-mentioned judge reads her obligation to the truth and the penalties inflicted for false testimony in the Penal Code. Her declaration is legal and states the truth of what she knows and is asked about. After being appropriately informed she alleges:

In accordance to what was demanded by your lordship she made her presence, at about 9. 45 on the above date in the premises of the Civil Guard General Headquarters in order to perform medical examination on UNAI ROMANO IGARTUA

The patient presents:

- Black Haematoma in eyes with big palpebral oedema
- Oedema and inflammation in the frontal area, zygomatic and in nasal root
- Slight dark-coloured retroauricular bilateral ecchymosis
- Incise contuse wounds in both wrists with tooth marks.

All these injuries, were said to be provoked by the blows he received the night before, apart from the wrists which are self-inflicted wounds (he bit himself because they told him his mother was dead).

All the injuries are recent with a 4 to 8 hour data approximately.

He is taken immediately to the hospital where he is studied and is given medical leave at 15.15 approximately, with cervical contracture diagnosis, cranial-encephalic traumatism, slight haematoma in soft areas.

Parts of clinical record and the court report are enclosed.

The detainee is in no condition to remain in the prison cell or make a statement. He should be under medical observation and taken to the prison infirmary if he is not released. I enclose a full medical record that should be transferred to the centre where the detainee is taken.

Read, ratified and signed before your Lordship. I, the clerk, certify

3) NUMBER ONE HIGH SUPREME COURT

MADRID

PROCEDURE: D.P.342/01

FORENSIC MEDICAL REPORT

Madrid, September 10th 2001.

D. JUAN M. MONGE PEREZ, officially appointed forensic doctor appears in court before the magistrate judge and me the Judge Secretary. After juramentado legally says:

On the above date and accompanied by the secretary of this judged I have visited the Penitentiary Centre Madrid- Soto del Real in the prison infirmary, to do a medical check-up on UNAI ROMANO IGARTUA.

He says he has a burning feeling on his scalp, it hurts when he touches it. Back and neck ache. Does not observe fainting symptoms.

He alleges he cannot sleep well, he cannot lean his face and head on the pillow: He can eat, he had a shower yesterday with assistance and walks without any problems.

He has a cervical surgical collar. In the frontal area he presents evolved contusions with chromatic changes, more intense on right level, haematomas in both eye orbits with a blood sub-conjunctive haemorrhage in both external eye angles. Chromatic changes in face and neck, more intense in the right hemi face, compatible with the evolution of contusions and caused by blood migration as serious effect.

On both ventral sides of his wrists he has wounds in a healing phase, with no infection symptoms.

Eye mobility and appendages, present reflexes. He can read and does it correctly during the exploration. When these injured areas are superficially touched he expresses pain. Cervical movement maintained and limited (without forcing it) in his movements. He is conscious, orientated in time and space, he collaborates for exploration, no disturbance in the course or contents of thinking. He says he wants to make a legal statement. He says he is in an acceptable condition to do so.

He is currently wearing a surgical collar and he has been administrated:

Adolonta 1-1-1

Nolotil 1-1-1

Espirifen200 1-1-1

Ranitidina300 0-0-1

He is awaiting an ophthalmologic check-up and exploration within the next few days.

We can conclude from the above mentioned that from a legal- medical point of view, there is no reason why he should not be taken in a common vehicle to the High Supreme Court to declare.

4) This Forensic Doctor has read, agreed, ratified and signed with your Lordship what I, the clerk, certify:

Madrid September 11th 2001

D. JUAN M. MONGE PEREZ, officially appointed forensic doctor appears in court before the magistrate judge and me the Judge Secretary. After juramentado legally says:

At 10.45 of the above date, I have visited the prison cell of this High Supreme Court, to do a medical check up on UNAI ROMANO IGARTUA.

He declares he feels better than yesterday, he still has problems sleeping and he feels pain in the low level of his sternum when he turns his body.

He wants to manifest his detention in Vitoria was not violent, that after this he hurt his knees when they pushed him to the floor. In Madrid between the first and second forensic check-up he was hit with a stick which was covered with something on the head and the neck while he was forced to press-ups on his knees and sitting on a chair, in this last position he said he could not defend himself: that they applied electrodes on his testicles and the back of his ears, and they also threatened to hurt his relatives, especially his mother, and they made him think she was dead. During the second check-up the forensic doctor sent him immediately to hospital.

The injuries described in the last check-up have decreased in intensity, and they are evolving positively towards cure. When touched he has pains in the right frontal area and occipicio. No knee injuries.

T.A. 130/70, heartbeat frequency 78ppm, slight arritmia that was diagnosed as asymptomatic and in no need of treatment. He is conscious, orientated in time and space, coherent discourse. There are no reasons to prevent him from taking statement .

He will have to continue the assigned treatment until new diagnose.

After reading the present document he agrees, ratifies and signs with S.S and I the Judge Secretary, doy fe.

1.6.- REPORT FROM EUROPEAN UNION COMMISSIONER ALVARO GIL-ROBLES

REPORT BY MR ALVARO GIL-ROBLES, COMMISSIONER FOR HUMAN RIGHTS, ON HIS VISIT TO SPAIN AND THE BASQUE COUNTRY

5 - 8 February 2001, for the Committee of Ministers and the Parliamentary Assembly

Introduction

1. From 5 to 8 February 2001, on my own initiative, I visited Spain, and in particular Madrid and the Basque Autonomous Community. My visit was prompted by the continuing violations of human rights in this autonomous community caused by terrorist action.

In recent months, I have received several complaints concerning the sufferings of citizens throughout Spain, but particularly the residents of the Basque Autonomous Community, as a result of threats and terrorist action, and the urban violence termed “*kale borroka*”. This situation has deteriorated to such a point that it affects not only the fundamental rights of individuals but also the free exercise of certain civil and political

rights which are the basis and foundation of every democracy, as shall be developed below.

As Commissioner for Human Rights, one of my main tasks is to monitor the effective respect and full enjoyment of human rights in member states. I cannot, therefore, ignore such a situation, regardless of the country concerned, so long as that country is a member of the Council of Europe. This is not only a necessary gesture of solidarity with those who, in one way or another, are victims of human rights violations, but also essential to the exercise of my statutory powers which are inescapable obligations, contributing to the defence of democracy, freedom and the rule of law.

It is therefore clear that the exclusive aim of the visit should under no circumstances be misinterpreted as a form of interventionism or political mediation, which would be inappropriate in a member state which has a fully democratic system and which has appropriate institutional mechanisms to determine its political life in peace and freedom.

2. For this reason, I began by making the appropriate contacts at the Ministry of Foreign Affairs in order to prepare this visit and, once the dates had been decided upon, to draw up, with their help, the schedule of meetings. I would like to record my thanks to the Foreign Ministry for its co-operation; all my requests were taken fully into account and I was provided with the necessary logistical and security support throughout my visit. I would also like to express my particular thanks to Ambassador Kirkpatrick for his invaluable assistance in preparing the trip and for his presence in Madrid during the official talks.

3. During the visit which took place on 5 and 8 February in Madrid and on 6 and 7 February in the Basque Autonomous Community (the provinces of Guipúzcoa, Vizcaya and Álava), I held talks with the national authorities (the Minister of Foreign Affairs and the Minister of Internal Affairs, the speaker of the Congress of Deputies and the President of the General Council of the Judiciary) and the authorities of the Autonomous Community (the President of the Basque government, the regional Ministers for Internal Affairs, Culture and Justice), several organisations representing the victims of terrorism and other organisations grouping together citizens whose sole aim is to appeal for peace and denounce terrorism. I also met with organisations representing the families of those imprisoned for terrorist offences.

I was able to speak at length with the largest trade union in the Basque autonomous police force, representatives of political parties, at their request, the spokespersons of parliamentary groups in both the Congress of Deputies and the Basque parliament, the Bishop of San Sebastián and other entities and persons too numerous to mention here (but who are mentioned in the programme attached to this report).

The meeting with the President of the Basque University was of particular importance because many of his professors and lecturers are subjected to special persecution in the form of threats, physical aggression and even the planting of bombs. In certain cases, this situation has led them to temporarily give up teaching; others have been obliged to move away from the Basque Country in order to save their lives.

I was also able to visit, albeit quickly, Basauri prison in Bilbao and to speak with the Ararteko (Ombudsman) of the Basque Country, and with the media. This provided me

with direct, and I think fairly complete, information on the situation as experienced in this Autonomous Community.

During the visit I was accompanied by Mr Mika Boedeker, whom I wish to thank for his invaluable collaboration.

II. General approach

1. Having listened during my first evening in Bilbao to a group of people from various backgrounds (university professors, judges, journalists, doctors, municipal councillors, mayors, etc) with different ideologies, I was able to become aware of the enormous tension exerted on those who carry out an elective mandate, those who exercise a judicial function, and those who, in private (or even in public) have adopted positions which are favourable to the constitutional order in force, as well as those who have expressed in speech or in writing opinions critical of nationalism or opposed to the terrorist group ETA and especially, of course, those who belong to the state security forces.

2. All these people agree that the action taken by the terrorist group ETA (murders, hostage-taking, extortion of shopkeepers and companies) was not the only reason for the human rights violations experienced by a large proportion of the Basque population (more specifically those who do not consider themselves as militant nationalists, i.e. more than 50% of the population of the Basque country), and that the violence known as "*kale borroka*" which is carried out by groups of young people in the streets, was a decisive factor in maintaining the climate of terror to which the population, and in particular academics, officials of non-nationalist parties, civil servants and the state security forces, were subjected. According to the people with whom I spoke, it should also be borne in mind that these acts of aggression are carried out not only against the people accused of being "pro-Spain" or in favour of the current constitution, but also against their families and property. They reported that this violence took place in a climate of almost total impunity, because of the passiveness of the autonomous Basque police force (the "Ertzaintza") in containing effectively the action of these groups and carrying out the necessary investigations.

3. It is most revealing that the majority of people who attended this dinner, a dozen individuals or so, were accompanied by a police escort. Some of them said that they had had to move house in recent months; others had been obliged to stop their lectures at the University. Some of their friends who had been subjected to particular threats had been obliged to move abroad to save their lives. Although nobody mentioned it explicitly, it was obvious that it was essential to keep their names secret.

4. This dramatic account was rendered by citizens of an Autonomous Community, with a population of 2,098,628, governed by a statute granting autonomy (Law 3/1979 of 18 December) which provides for autonomous governmental institutions (the government and parliament of the Autonomous Community), which have a very broad range of exclusive powers (education, health, transport, roads, industry, culture and many others too numerous to mention in full, which are recognised in the constitution and statute, without forgetting the powers transferred in recent years by means of over 90 decrees). Moreover, this Autonomous Community, under an agreement with the central government, is authorised to levy its own taxes, have its own Basque autonomous police

force (the “Ertzaintza”), set up to cover all aspects of police work, and Basque public radio and television stations broadcasting in the Basque language, which has the status of an official language. Education is through the medium of Basque and Spanish, although in certain schools, including those which are subsidised, teaching takes place primarily through the medium of Basque. The net result is that this Autonomous Community today has more powers than a German land, to quote just one example of an advanced federal state.

5. It should also be noted that well-known Basque nationalist militants, who have had important public posts or who are currently occupying such posts, for example the Mayor of Bilbao or the Speaker of the Basque parliament, spoke to me with great clarity of their deep concern about the violence perpetrated in the Basque Country and the consequences of such violence. The president of the PNV (Partido Nacionalista Vasco - Basque Nationalist Party) categorically denied the existence of any pact with ETA.

III. On the practical causes of human rights violations in the Basque Country

Although it is impossible in this report to deal in depth with all the causes which have led to the current situation of violence prevailing in the Basque Country, I think, nevertheless, that it is possible at this stage to identify two major causes which have prompted the current spate of violations of the human rights of the Basque population. These are the direct action taken by the terrorist group ETA and the urban violence carried out by groups of people close to ETA, referred to as “*kale borroka*”.

1. There is no doubt that the action taken by ETA is a direct interference with the most fundamental of human rights - the right to life, and also the right to the freedom and safety of individuals (the criminal kidnappings are pure acts of torture for the victims, their families and their friends), the freedom of thought, assembly and association. The attacks on non-nationalist politicians and journalists have made it extremely difficult for those who are not nationalists to carry out political and party action or exercise the right to information, to such an extent that personal police protection is required for journalists under threat to be able to carry out their profession and for the municipal councillors and members of parliament concerned to fulfil their representative roles.

To give an idea of the extent of ETA terrorist action, according to official statistics, since 1968 and up to late 2000, this organisation has carried out 782 murders and assassinations, 709 of which took place after the adoption of the 1978 constitution (the Association of Victims of Terrorism -COVITE- puts this figure at 719 up to 1998, in the context of 2789 attacks causing 1867 casualties), i.e. since the democratic regime has been re-established, the autonomous communities instituted, and, of course, after the amnesty for all political crimes decreed at the advent of the new stage in Spanish democracy.

However, since the beginning of 2000 (according to figures relating to the period from 21 January 2000 to 26 January 2001 supplied by the office of the Regional Minister for Internal Affairs of the Basque government) the action taken by ETA has, with 25 murders (today this has risen to 27), become more targeted, focusing on elected representatives (municipal councillors and members of Parliament of diverse political parties, in particular the People's Party and the Socialist Party), journalists, university professors, newspaper editors, heads of companies who refuse to pay the money

demanded of them under threat of death, and of course military personnel, state security forces, and often the Basque autonomous police itself.

Following the murder of José Luis López de Lacalle, a journalist on the daily newspaper *El Mundo*, the organisation “Reporters sans frontières” carried out a study which stated that in the year 2000, in addition to this murder, threats and attacks had been carried out against nine other journalists throughout Spain and more than 10 newspapers and radio stations. The cruellest and most serious of these was the failed attack against Aurora Intxausti (a journalist with *El País*) and Juan Paloma (of the television channel Antena 3) when a bomb was planted outside their front door. Fortunately, it failed to explode as they were leaving their home to take their 1-year-old son to the nursery.

2. ETA action has also been directed against academics, professors and lecturers at the Basque University who are considered to be pro-Spanish, even though they have been Basque for several generations, simply because they do not support the radical nationalist and pro-independence (or, according to the term used in certain circles, “pro-sovereignty”) ideas. The President of the Basque University, a person of the utmost serenity, despite being under a death threat, acknowledged the difficulty of the situation, particularly after an incident where a bomb had been planted in the lift of the faculty where professor Eurne Uriarte gives her lectures. Her life was saved thanks to the perceptiveness of her police escort. Following this, other lecturers, also under threat, chose to stop teaching and others have even gone to foreign universities.

When I asked how many lecturers were in this situation and protected by police escorts, he asked me not to publish the figures he gave me. Naturally, I respect this request, understanding perfectly why it was made, although I do wish to underline the profound distress that I perceived when becoming aware of the very harsh reality which is a daily feature of the lives of students, professors and academics who continue to defend their freedom of thought, despite running this personal risk. I think that the recent act of solidarity by the 52 presidents belonging to the Conference of Presidents of Spanish Universities towards their colleagues in the Basque University is also a clear commitment towards defending freedom.

3. During my talks with officials of both the central state and the autonomous administration, I encountered a complete rejection and categorical condemnation of this terrorist action which is regarded as incomprehensible in a country where all freedoms, particularly the freedom of thought and association, are upheld and defended by the public authorities. In the Basque Country, amongst the seven parties represented in parliament, one -Euskal Herritarrok- widely regarded as ETA's political arm - advocates independence for what it calls Euskal Herria (a hypothetical territorial entity comprising the whole of the Basque Country, the Autonomous Community of Navarra and the French Basque provinces). Its officials and elected representatives (with the very rare individual exception) never condemn any terrorist act, but rather endorse the justification for terrorist action, which they view in terms of a political conflict between the Spanish state and Euskal Herria. This party puts itself forward at elections and has representatives both in the Congress of Deputies and in the Basque parliament, although they have refused to attend the sessions of the legislative chambers.

There is, therefore, no doubt that this terrorist action by ETA is directly and systematically the reason behind the violation of the fundamental rights of the direct

victims of its crimes, and of all others who, given the prevailing climate of terror, feel restricted in the exercise of their civil and political rights as citizens of a genuine democracy when they choose not to align themselves with terrorist options. To sum up, ETA deliberately turns to crime or individual extortion, in an attempt to create a general climate of fear, in which part of the population, which is not nationalist, and in particular its representative and academic components, feel threatened to such an extent that they give up exercising their rights and leave the Basque Country, or have to rely on police protection with all the difficulties this implies for carrying out political action, not to mention the personal and family anxiety this causes. Nor should it be forgotten that voting for non-nationalist options has become particularly perilous in the small towns where radical nationalists are in control of the municipalities. From this point of view, it is clear that terrorist action is directly targeted against the functioning of the democratic system and citizens' freedom.

4. However, it is today not enough to lay the blame for the many human rights violations in the Basque Country solely at the feet of ETA and its direct action.

Having listened to numerous people, organisations and representatives of the main trade union of the autonomous Basque police force, there is no doubt that the so-called “*kale borroka*” has also become a direct cause of human rights violations in the Basque Country.

Violence in the streets, which ranges from attacks on shops, the burning of buses and street furniture, attacks against municipal councillors, and members of parliament, journalists and their families, including the putting up in the streets of posters with the names of people denounced as pro-Spain and who, in many cases, have subsequently become victims of attacks, in certain cases fatal, is in itself a key factor for the (justified) feeling of insecurity in which many directly affected citizens live. (According to local estimates approximately 3000 persons are specifically targeted in this way). In all cases, this violence is also directly responsible for a part of the community being unable to exercise freely its civil and political rights.

The association “Gesto por la Paz” believes that the “*kale borroka*” violence has moved on from a diffuse phase to a “*clear and premeditated strategy of attacks against and persecution of certain people*”, targeted because of their ideology or the fact that they represent citizens. Consequently, “*there is no doubt that we are faced with genuine attacks against political freedom and democracy itself, because it is an attempt to restrict the expression of thought and political action of a certain sector of the community*”. For that reason, this association describes the “*kale borroka*” quite simply as “*violence of persecution*”.

The Catholic Church itself, through the very respected voice of Bishop Juan María Uriarte, has warned that “*there is a voice that people are trying to stifle and silence through threats and murder. It is the most serious attack possible against the freedom of speech. From all points of view, there can never be any justification for attempting to stifle someone's voice, even if what they say is extreme and prejudiced, by physically eliminating the speaker*” (pastoral letter, Renovarse y pacificar, adviento 2000 page 38).

5. I was thus able to see for myself the reality of urban violence perpetrated for political reasons, to persecute those who are not nationalists. Nobody would now deny that this

violence occurs, with the human rights of numerous Basque citizens being flouted on a daily basis. While this in itself is very serious, there is another fact that seems even more serious: I heard intellectuals, teachers, journalists, non-governmental organisations which defend human rights and others which represent victims of terrorism, municipal councillors and other elected representatives from various parties alleging that such acts of violence go virtually unpunished, as the autonomous Basque police force (the Ertzaintza) usually takes action belatedly or intervenes only when the violence has already finished. They allegedly make virtually no significant arrests and carry out no thorough investigations into the origins, membership and operation of these violent groups which clearly complement the activities of ETA, which seems to control or inspire their violence.

It is claimed that this police passivity has worsened during the latest truce declared by ETA, following the famous Lizarra accords or declaration, to which the democratic nationalist parties, together with the radicals and other nationalist groups, subscribed, some of which have close links with ETA.

6. The authorities responsible, namely the Regional Minister for Internal Affairs and the Lehendakari, and the President of the Basque government, when I asked them about this, vehemently denied this allegation, reaffirming the commitment of the Basque police to the defence of freedoms.

According to official figures, this self-contained autonomous police force has 7,182 members, of whom 4,323 are engaged in prevention, 1,540 in investigation, 232 in information activities, 71 in ordnance disposal, 524 in personal protection (i.e. providing escorts for persons under threat) and 429 in various other duties.

The difficulty of police activity is clear from the figures quoted for 1999 which saw 5,024 demonstrations, and 14,507 during the year 2000. Where incidents of urban violence are concerned, despite the difficulty of drawing up completely reliable statistics, the office of the Regional Minister for Internal Affairs nevertheless acknowledged that some 774 had occurred in 1999, and approximately 893 in 2000. In connection with these "*kale borroka*" acts, Ertzaintza had detained 97 persons (the municipal police force had detained another three, and the national police force, which answers to central government, another 18). The office of the Regional Minister for Internal Affairs states that, if "*to that number of detentions for sabotage we add those effected by Ertzaintza for other acts covered by the concept of urban violence (threats, joint action, public order offences), the total rises to 203*". Analysis of these latter figures in their context, however, reveals that there are arrests for acts of urban violence not necessarily linked to "*kale borroka*".

At all events, it is significant that it is Baltasar Garzon, judge at the National Court, who, with the support of the national police force, conducted the latest operation (on 6 March 2001) to arrest the leaders and officials of a youth organisation known as Haika, suspected of instigating or perpetrating urban violence and of acting as a "nursery" for future ETA terrorists.

7. ERNE, the trade union which represents the majority of Ertzaintza members, remains highly critical of the force's leaders, whom it accuses of failing to order action against "*kale borroka*", and asserts that most members of the force are engaged in providing

personal protection as escorts, while another 3,500 provide on-the-spot protection or give support to their personal protection colleagues; as they also deal with traffic and protection of the public in general, practically no time is spent on investigative action. The union representatives claim to be demoralised by receiving instructions (never in writing) not to play an active part in the action taken against “*kale borroka*” and say that many members of the force have been disheartened by hearing their superiors saying, over the past few months, that the important thing is to negotiate. They cite as an example of police inaction the fact that, although an excellent mobile brigade exists with specific training to deal with urban violence, it is allowed to intervene only on direct orders from the Deputy Regional Minister for Internal Affairs, inevitably delaying its action.

The union, in a document addressed specifically to the Commissioner for Human Rights, states that, “*in our opinion, the human rights situation in the Basque Country is deteriorating considerably*”, and that “*the Basque institutions' performance of their task of safeguarding freedoms in the Basque Country and protecting persons and property in Basque territory has clearly been ineffective*”.

These statements coincide with a complaint made to me by the President of the Basque University, who made a telephone call when violent incidents occurred on the university campus to request Ertzaintza intervention. He was told to fax his request, and was then forced to send his fax again after being told that it was “not clearly legible”. When the police arrived, of course, only traces of the violence that had occurred remained.

8. Although it is very difficult to prove that the lack of police reaction to “*kale borroka*” activities is premeditated, it is nonetheless true that the complaints that I have received, especially those from persons who have suffered from their effects and those from Ertzaintza's trade union itself, not forgetting the very low numbers of arrests in proportion to the numbers of public acts of violence, highlight an abnormal failure of the autonomous Basque police force to suppress and investigate such offences, which so seriously impinge on democratic life in the Autonomous Community.

This situation needs to be studied seriously as a matter of urgency by those in charge of the security forces concerned, so that the necessary steps are immediately taken to show the threatened population that the autonomous Basque police is still the efficient force committed to combating this kind of crime that they were -as those in charge of them acknowledge- in the past.

In the light of what has been said above, it is clear that the Basque government bears some responsibility for the failure to provide sufficient and effective protection of citizens' fundamental rights, but it must not be forgotten either that, in pursuance of Article 1 of the ECHR, the Spanish state is responsible for securing “*to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention*”, so it is also under an obligation to adopt or strengthen the measures needed to guarantee the fundamental rights of all Basque citizens.

IV. Other issues relating to protection of, and respect for, human rights raised by the organisations representing the families of detainees and prisoners accused in connection with acts of terrorism, and by their legal representatives

1. Representatives of the organisation known as Senideak expressed concern about the treatment of persons detained for terrorist acts or for collaborating with armed groups. These detainees are allegedly subjected to regular torture, against which guarantees are claimed to be inadequate. Senideak claims that imprisoned members of ETA should be allowed to serve their sentences in prisons in the Basque Country and has called for an end to be put to “administrative handovers” of detainees to the Spanish police by other countries.

It is clear from the preceding part of this report that the true human rights violations in the Basque country stem neither from the terrorists' detention conditions nor from their being kept in prison, but, in view of the claims made, the representatives have been asked to provide concrete facts and specific information enabling these to be accurately assessed. As of today's date, neither information nor documentation has reached my office.

2. During my trip, however, I myself visited Basauri prison, to evaluate detention conditions there, and I received no complaints of ill treatment or torture from the detainees I met on that occasion. In contrast, several warders complained of continuous threats from the terrorist organisation and its members within the prison, threats followed by attempts on the lives of staff members, with several officers having been murdered.

3. Where guarantees during the period of detention are concerned, Articles 520b and 527 of the Code of Criminal Procedure state that police custody in respect of collaboration with an armed group and of terrorism may (as in other cases) be for up to three days. It is nevertheless able to be extended for up to another two days if a decision giving reasons is issued within the first 48 hours. Police custody may be kept secret if the judge so decides, issuing a decision giving reasons within 48 hours. Anyone kept in police custody that is kept secret has the same rights of defence as those provided for other persons in police custody, except that the lawyer (during police custody) is officially assigned, and the detainee is not allowed to have a private conversation with him or her (as other detainees are allowed to do). Nor are the fact or place of detention communicated to a nominated relative or other person. An examination by a forensic medical examiner is provided for in the same conditions as for persons in police custody in general. The Spanish Constitutional Court has not declared this rule unconstitutional, nor has the European Court of Human Rights issued a judgment against Spain on this matter to date.

For its part, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf(2000)5) has examined these matters in depth and found that the 1995 Ley de Enjuiciamiento Criminal (Code of Criminal Procedure) “*has introduced a more developed framework penalising the offences of torture/ill-treatment and `violations of constitutional safeguards' by an authority or public official*”, and that, “*in the course of the visit, the CPT's delegation received no allegations of torture from persons interviewed who were or who had recently been detained by the Spanish law enforcement agencies*”. However, certain recommendations are made in this report about the possibility of cutting periods of detention to the minimum strictly necessary for the efficient conduct of the investigations, as well as about the practice of involving forensic medical examiners; these are eminently reasonable, and I back them.

Neither the Constitution nor the legislation on the prison system considers the serving of sentences in prisons in the Basque Country close to detainees' homes to be a right, but as an objective of prison policy with a view to promoting the rehabilitation of convicted persons. The Constitutional Court has on several occasions stated this, and the European Court of Human Rights has not interpreted the matter differently to date. Nevertheless, and assuming that this is not a reason for any violation of the rights enshrined in the European Convention on Human Rights (Articles 5, 6 and 7), I believe that, as far as possible, and provided that the rehabilitation process is genuinely advanced as a result, preference must be given to the serving of sentences at establishments offering the most facilities for attaining this target, and in this context, proximity to detainees' families and places of origin can and must be a factor to be taken into account by the responsible authorities.

4. Administrative handovers of detainees by other European Union countries to the Spanish authorities without the use of the traditional extradition procedure raise certain questions which ought to be taken into account. As a result of the traditional understanding of the sovereignty of states and the characteristics of the international community prior to the process of supranational integration, proceedings against presumed offenders who were outside the borders of the state of the judge or court dealing with the case were effected solely through the extradition procedure. Within the specific legal and political framework of the European Union, however, it is now possible to consider implementing other legal machinery to achieve an efficient solution to this problem, especially when the member states share common constitutional traditions and have all, what is more, ratified the European Convention on Human Rights, and are therefore subject to the jurisdiction of the European Court of Human Rights.

Thus we can now speak of a European area within which the same concept of human rights is applied, with the result that, in pursuance of the provisions of Article 6 of the Convention, the states of the area have in common not only substantive human rights, but also instrumental ones, those which provide the guarantees thanks to which the former are safeguarded. This is why the essential sameness of rights and guarantees is now the distinguishing factor of this area created in Europe, especially the one that exists within the European Union.

However, although, from the aforementioned viewpoint, the administrative handover of a detainee must not cause a substantive change in his or her status, for it neither diminishes his or her legal position, still distinctive through its own substance, nor interrupts the course of the procedure leading to his or her being placed at the disposal of the judge who issued the order by virtue of which he or she was detained where he or she was, I believe that the appropriate solution to the questions referred to about the use of such administrative handovers must be found through appropriate official recording of the legal mechanisms (at least in European Union member states) which are alternatives to the traditional extradition procedure.

One way of reaching this objective as rapidly as possible might be Community regulation of what are known as "European search and arrest warrants" or a similar instrument, especially in respect of the offences listed in Article 29 of the Treaty on European Union (organised crime, terrorism, trafficking in persons, offences against children, illicit drug and arms trafficking, corruption and fraud), and in accordance with

Article 34 of the same Treaty, for there is an urgent need to establish a legal means of overcoming the doubts or suspicions which might exist today about respect for detainees' rights.

V. Final considerations

Although in this, my first, and brief report, I only wished to look at the most serious issues relating to human rights violations as a result of terrorist and urban violence against the Basque population, there is no doubt that, during my visit, I heard and weighed up other information that deserves closer study, as it could underlie a number of manifestations of violence described above.

In practical terms, the use of means of transmitting culture and knowledge to foster in children and young people an approach to knowledge based on a legitimate concept of nationalist positions, but unfortunately involving the option of exclusion and aggression against those who are not nationalists, sometimes borders on the giving of encouragement to racist and xenophobic positions, and this is certainly incompatible with a democratic concept of society and carries within it the seeds of human rights violations.

Although the Basque government's Regional Minister for Education personally informed me of the efforts being made and campaigns being conducted in schools to promote values such as equality, it is nonetheless the case that the content of certain textbooks which are not exactly in line with the aim of promoting mutual understanding and conviviality ought to be examined, and certain programmes shown on Basque public television on which children are allowed to sing songs heaping scorn onto people who are pro-Spain should be dropped.

All these issues are so important that they must be further studied and followed up, something I am not in a position to do with the requisite rigour at the moment, so I have kept to the essential points I have made and the recommendations put forward.

2. THE DISPERSAL OF ETA PRISONERS

2.1- HISTORY

ETA usually bundles together its strategic proposals for the independence of the Basque Country, which sustain murder and violence against persons and property (839 murders and over 10,000 acts of violence and destruction), with tactical campaigns designed to keep society constantly in a state of mobilization. Both mainstays of its tactical campaigns have gravitated towards its prisoners and torture. When an ETA militant falls into the hands of the police, it is unbecoming to say that he or she has cracked under interrogation and that he or she has told on their comrades in arms. The grass roots supporters who idealize ETA militants would not understand and so in order for the idea of the heroic militant dedicated to the cause to live on, there is a need to say that he or she has been tortured until (s)he can no longer endure and only then did (s)he cave in to the police. Torture was a systematic practice during the Franco era and continued, albeit on a more isolated basis, until the mid 1980's and was tied to sections of the police involved in groups such as the GAL (Grupos Antiterroristas de Liberación or Anti-terrorist Liberation Groups) which practised state terrorism. In 1987, the socialist José María Jáuregui was charged with uncovering the GAL conspiracy when he was the Spanish Central Government delegate in the province of Guipuzcoa. Finally, those making up the GAL, as well as those that encouraged and covered up for it, were put on trial and convicted in 1997. It can be safely said that torture has disappeared from Spanish police stations and jails since 1987 save for the odd exception. Indeed, ETA paid Jáuregui back for his investigation by murdering him in July, 2000.

The other method for keeping the grass roots supporters that ETA uses riled up is by waging a campaign on behalf of its prisoners. A lot of money and effort have been waged on them. ETA has been paying a fixed amount of money for personal expenses to each prisoner which has been drastically cut back since 2002 thanks to the obstacles that the police and judiciary have put in the way of the terrorists. Likewise, ETA has, through its political network, promoted pro-prisoner associations in order to organize individual and collective visits and to call for all of them to be released. One of these associations which was the most senior and which emerged in the beginning of the 1970's, Gestoras Pro-Amnistia (Pro-amnesty agents) was outlawed in December, 2001 after it was proven that they were an extension of ETA. ETA's policy towards its prisoners alternated between demanding for their immediate release (Presoak kalera, i.e. prisoners out) and calling for the prisoners to be regrouped in jails near the Basque Country or in jails in the Basque Country itself (Euskal Presoak Euskal Herrira, i.e. Basque Prisoners to the Basque Country). ETA and their henchmen -- nowadays they are bereft of legal political representation since the courts have shown that its different organizations (HB [Herri Batasuna or National Unity], EH [Euskal Herritarrok or We People from the Basque Country], Batasuna [Unity], etc.) formed a part of ETA and were thus outlawed -maintain that the policy of keeping the terrorists dispersed in Spanish prisons is not only a policy that is cruel for the prisoners' families but it is also a

policy of political genocide since they count the road accidents that 13 people from the prisoners' families have suffered as state murders.

Thus, for ETA and its henchmen, the bad thing about the dispersal, or at least what they wish to depict as bad, is the distance that the prisoners are away from their birthplace. However, this has not been, nor is it an obstacle to visits. It is more of a question of visiting active ETA members in France rather than visiting prisoners. For these visits, the families receive no financial aid unlike what occurs with visits to prisoners in Spain. Indeed, the distances are hardly small because, once France put an end to the so-called French sanctuary, the members of the terrorist band had to hide out in places far away from the Spanish border. However, the distances that the prisoners found themselves posed no problem in the past. In 1987, there were 435 ETA prisoners in Spanish jails. 73% were kept in jail near Madrid: Herrera de la Mancha and Alcalá-Meco. The rest were scattered about in 13 centres. Why did ETA fail to complain that the distance was an act of cruelty for the families? The answer is because most of the prisoners were bunched together. That was the only thing that interested ETA because as long as they were together, they would be subject to ETA's tyranny, euphemistically disguised as the need to carry on the struggle. In 1989, when the Spanish state started the policy of dispersing prisoners in order to break up the links that ETA was able to create, thereby allowing each prisoner to decide for himself about his future by condemning the armed struggle and agreeing to terms for reintegration into society, ETA began to rail against such a dispersal since it was being seriously harmed by the policy. Between 1989 and 1995, 112 ETA prisoners opted to reintegrate themselves back into society after declaring their break with the terrorist group.

The years 1983-90 were no easy times for ETA which saw more of their terrorist cells fall than they could set back up. That is why ETA needed for its militants to close ranks and not find a personal way out. The murder of the former ETA militant, Yoyes, took place in 1986 and served as a warning to active ETA militants as well to prisoners. In an internal communiqué that responded to the policy of dispersal, ETA warned that the prisoners were to subject themselves to the decisions adopted by the assemblies or else *“they would be placing themselves outside the group with all the resulting consequences”*. The threat could not be more forthright. At the same time, ETA declared prison officials to be military targets which in layman's terms meant that they could become potential victims of its gunmen. ETA was to murder six prison officials. In collective visits to prisoners organized by “Gestoras Pro-Amnistía” and suchlike organizations, the prisoners' families openly wrote down the license plate numbers of the cars of prison officials in a bid to both intimidate them and to pass information on to ETA. When ETA declared its truce in 1998, and unlike what happened in previous attempts to negotiate with the Spanish government, ETA came out with a programme of maximal goals contemplating independence but washing their hands entirely of the prisoners despite the fact that the Government was sounding them out in the matter by attempting to reach an agreement. However, for ETA in 1998, the prisoners were a low priority item when it was aspiring to nothing less than independence.

This was the case even after it had been plugging so hard for the prisoners. In 1996, ETA kidnapped the prison official José Antonio Ortega Lara. Ortega Lara was abducted to pressure the Spanish government and to gain the objective of bringing ETA prisoners to jails that were closer to their hometowns. This was a demand that, from the very onset of the truce and under the banner of Euskal Presoak Euskal Herrira (Basque

prisoners to the Basque Country), was present in every act of protest conducted by political circles close to ETA. According to their supporters, it was a non-political and purely humanitarian question. However, the subhuman conditions that the prison official was subjected to during his long captivity unmasked ETA's true character and its "humanitarian" claims since he was cooped up for 532 days in solitary confinement in a squalid, closed and humid space under the floor in an industrial factory, unable to enjoy the company of anyone whatsoever, unable to get the least amount of exercise or get a breath of fresh air or even see natural light. Nationalist terrorism denied its victims elementary rights which its own prisoners enjoyed. That is why the liberation of Ortega Lara by the Civil Guards was a serious setback for the terrorists and brought them great discredit. Nevertheless, and in order to cover up for their failure and to regain their credibility in Basque nationalist circles, the terrorist group decided to stoop even lower in the same line of particularly odious acts of violence as evidenced by the kidnap and murder of the young Ermua councilman Miguel Angel Blanco which took place shortly afterwards.

ETA kidnapped Miguel Angel Blanco in the name of its prisoners. It demanded that its 500 militants be brought closer to the Basque Country within 48 hours or else it would murder Blanco. The end result is well-known: ETA murdered Miguel Angel Blanco and unleashed, without realizing it, the greatest mobilization of rejection ever seen in the Basque Country and throughout the rest of Spain. Basque nationalism came to fear being overwhelmed by it all and instead of working on finishing off an ETA that was at rock bottom, it was to make a secret pact with ETA. In August 1998, the PNV (Basque Nationalist Party), EA (Eusko Alkartasuna or Basque Solidarity), and ETA signed a secret pact that declared the Statute of Gernika to be dead, and stated that the political interests of the three organizations had a common goal and committed the PNV and EA to exclude the "constitutionalist" (i.e. those supporting the 1978 Spanish constitution) parties from Basque politics, as they were literally deemed to be "*forces whose objective is the destruction of Euskal Herria (the Basque Country) and the construction of Spain*". In exchange for that, ETA was to declare an indefinite ceasefire. In accordance with this agreed-to script, ETA declared a halt to its assassination campaign on September 16, 1998 which it later reversed on November 28, 1999. Throughout that period of time, the terrorist group continued to commit extortion and kept open "other fronts of struggle", particularly the "kale borroka" (street struggle) front or low-intensity terrorism. Above all, it took advantage of the period to reorganize its rankled ranks and regain part of the "prestige" it had lost. The increase in street violence, i.e. *kale borroka*, aimed exclusively at "constitutionalist" supporters, was met passively by the Basque Government, which allowed ETA to keep up the pressure and, moreover, to select young recruits to form new commando cells with activists that had no police records.

The pact between PNV-EA and ETA -which ETA itself saw fit to leak to the press with supporting documents despite the denial of PNV and EA about its existence- came to fruition in the Lizarra agreements which were nothing but a commitment to advance towards de facto independence by substituting the powers of the Spanish state with a local authority that would gradually be established from town to town until a constituent assembly would declare independence for the Basque Country. The Lizarra agreement nonsense did not last very long since ETA and its henchmen demanded that the PNV, EA and other signers such as IU (Izquierda Unida or United Left) should adopt more and more radical steps at an ever quicker pace which they were unable to do. The net result was that ETA went back to doing the only thing it knows how to do: murder.

However, after the signing of the Lizarra accords, the PNV also began to demand an end to the policy of dispersal of prisoners even though it had unambiguously supported such a policy in the period immediately before that when the Ajuria Enea Pact was in force, a pact signed in 1988 by the PP (Partido Popular or People's Party), PSOE (Partido Socialista Obrero Español or Spanish Socialist Workers' Party), PNV and EA in order to put up a common front against terrorism with the conviction that terrorists should not gain any political advantage in exchange for a cessation of violence and that ETA could be defeated by military means. The journalist Santiago González pointed out in his book *Palabra de Vasco* (the Basque's word of honour) that the spokesman for the PNV until recently, Joseba Egibar, received members of ETA prisoners' families that gathered before the PNV's headquarters in Bilbao -Sabin Etxea- with the cry "Presoak Euskal Herrira" (Prisoners to the Basque Country) together with cries of "Presoak Dinamarkara" (Prisoners to Denmark) echoed by 100 members of EGI, the PNV's youth group which accompanied him.

In conclusion, one can say that ETA has been constantly using its prisoners. When it is in its interest, it calls for the right of prisoners to serve their sentences in full which means 1) that it looks down on the social integration of its prisoners and wishes to keep the body of prisoners away from any temptation of leaving the terrorist group and 2) in showing that the prisoners and members of their families suffer -hence all of the literature about extermination jails and incessant denunciations of mistreatment-, i.e. that their own people are suffering, ETA feels legitimized to make others suffer in their strategy which they call socializing the suffering, that is, they have extended terrorist attacks to society as a whole and not just to the police, members of the military -their usual victims- but also to journalists, teachers and professors, judges, and ordinary people who are not just opposed to ETA and its henchmen but also to so-called democratic Basque nationalism. That is to say, ETA considers itself legitimized to attack -thereby unleashing its violent young people to carry out such a persecution- those it considers members of the pro-Spanish community. This strategy of socializing the suffering was approved as the "Oldartzen" (Basque for "attacking, confronting") tendency within the ETA-Batasuna conglomerate in 1995. The second weighty argument is the fact that throughout the time during which the truce that ETA declared in 1998 was in effect, their prisoners disappeared on the radar screen of their demands. The Spanish government was ready to sit down and negotiate with ETA about the fate of their prisoners. It even moved some prisoners held in the Canary Islands over to the Iberian Peninsula and brought a few closer to their hometowns. However, at that moment, ETA was only interested in negotiating independence. Throughout the time that the year-long truce lasted, there was no talk about prisoners. Not even ETA's satellite organizations talked about the matter. In ETA's November 23, 1999 communiqué which put an end to the truce, the prisoners are not mentioned a single time. The prisoners went back to being a part of ETA's strategy as soon as it started the new cycle of violence.

2.2.- DOCTRINE

In the 2000 report drawn up by the Commissioner for Human Rights, Álvaro Gil-Robles

says: “As for serving out the sentences in penitentiary centres in the Basque Country close to the detainee's home town, this measure is not contemplated in the (Spanish) Constitution nor in prison-related legislation as a right. It is rather an objective of the penitentiary policy to favour reintegration of the convict back into society. The Constitutional Court has ruled on it on various occasions and up to this moment the European Court of Human Rights has not made any interpretation contrary to this. However, and based on the fact that this cause is not in the origin of any violation of rights contemplated in the European Convention on Human Rights (articles 5, 6, 7), I believe that, as far as it is possible and on condition that this might truly help the process of reintegration into society, the serving out of sentences in centres that might offer more facilities to attain this objective should be promoted and, in this sense, the proximity of the members of the family of the prisoner and his/her place of origin can and must be an element to be taken into account by the competent authorities”.

With respect to this, the president of the Basque Institute of Criminology, Antonio Beristain¹, points out in the article “International society and the Basque prisons”, which is included in the book *Enough is Enough, in opposition to an obligatory nationalism*, that no democratic country proclaims the social reintegration of those condemned to be the only objective. No country grants the right to serve out one's sentence in a centre that is closest to the prisoner's usual place of residence. Beristain recalls that the goal of penitentiary institutions is twofold: reintegration into society of those condemned and their custody. Such a custody is likewise carried out as security within the detention centres, a circumstance that makes it undesirable for 500 like-minded delinquents to be held in the same centre. Beristain also points out that although the German *Länder* have autonomous control over prison matters, it is the courts that may determine which institution might be best suited for each detainee. Although it is usually the case that the prisoner is incarcerated in the *Land* where he or she resides, there is nothing that could impede him from being transferred to any other detention centre within the Federal Republic. On December 9, 1992, the European Commission of Human Rights ruled in favour of the British Home Office which had refused to transfer a prisoner condemned for terrorist offences to a detention centre that was closer to his family on ground of security and discipline.

2.3.- LAWS

¹ In the words of Dr, Heinrich Jescheck, President of the International Association of Penal Law and Emeritus director of the Max Planck Insititute of Foreign and International Penal Law in Freiburg, “*the basic elements of Professor Beristain's scientific study, which allow for them to be characterized as unlike that of any other work written about penal law or criminology, are a deep, incisive look into Penal Law and the theory of criminal offence from the core demands of Christian ethics as well as a passionate zeal for reform supported, to a large degree, by his religious experience. Another thing which could be said about him is his objectivity in presenting the different problems, especially that dealing with treating the positions of others, the forcefulness of backing up his own opinions, ample documentation, and his taking into consideration results coming from other branches of knowledge which, in this particular case, is from the empirical social sciences*”

2.3.1- PRISON REGULATIONS:

Article 4. Rights of the detainees.

1. Penitentiary policy will be carried out with respect for the personality of those held and their legitimate rights and interests regardless of the sentence in which no discrimination of any kind on grounds of race, gender, creed, opinion, nationality or any other personal or social condition or circumstance shall be allowed to prevail.

2. Consequently, the inmates shall have the following rights:

a) The right for the prison administration to look after their lives, their integrity and health and may not, under any circumstance, be subjected to torture, mistreatment whether through word or deed nor may they be an object of unnecessary strictness in applying the regulations.

b) The right to preserve their dignity as well as their privacy without jeopardizing measures demanded by an orderly prison life. In this sense, they have the right to be addressed with their own name and that their condition is reserved with respect to third parties.

c) The right to the exercise of civil, political, social, economical and cultural rights except when they are incompatible with the object of their detention or the serving of their sentence.

d) The right of prisoners to penitentiary treatment and measures programmed for them with the goal of assuring the successful outcome thereof.

e) The right to have contact with the outside world as foreseen by legislation.

f) The right to a remunerated job within that which is allowed by the prison administration.

g) The right to have access to and take advantage of public grants that might be forthcoming to them.

h) The right to prison benefits as foreseen in legislation.

i) The right to participate in activities of the detention centre.

j) The right to formulate petitions and present complaints before prison and judicial authorities, the ombudsman and the Attorney General's office as well as to contact competent authorities and to use the means of defence of their legitimate rights and interests as stipulated in chapter V of Title II of this Regulation.

k) The right to receive personal and updated information of the situation of their legal proceedings and their penitentiary status.

2.3.2.- GENERAL PENITENTIARY ORGANIC LAW

Article 12. 1. The location of prison centres shall be determined by the penitentiary administration within the territorial areas which may be designated. In any case, there shall be an attempt for each one to have a sufficient number of those in order to meet penitentiary needs and in order to prevent the prisoners from losing their social roots.

2.4.- DETENTION PRACTICES IN NEARBY COUNTRIES

Neither does France have a law that stipulates that prisoners have to serve their sentence near their hometowns. In the case directly concerning ETA, France keeps the prisoners as dispersed as possible in order to avoid close-knit groups from consolidating. Moreover, the prisoners are not kept at the same place on a permanent basis for fear of possible escapes since ETA members have already tried to do so many times, sometimes successfully. Below is a news item taken from the newspaper *El Diario Vasco* on February 9, 2004. One should be aware that with ETA's cells being constantly broken up by the police, the terrorist group, which badly needs cadres, is trying to seek them out among its old militants in exile or in jail and that is why it makes plans to spring them from jail.

2.4.1- France rotates former ETA leaders in its jails in order to prevent escapes

'Susper' is serving two months in penitentiary isolation in reprisal for his escape from the Bayonne police station. "The goal is to prevent them from organizing or preparing for an escape".

FERNANDO ITURRIBARRIA/DV. PARÍS

The General Office of the French Penitentiary Administration, which comes under the Ministry of Justice, has established a jail rotation system for those ETA prisoners that pose a high risk of escape by former leaders of the organization. The presumed ex-head of the military operations wing, Ibon Fernandez Iradi, alias Super, spent his second month serving a sentence of solitary confinement in reprisal for his escape from the Bayonne police station.

The latest examples of the jail change policy are the transfers, which took place at the end of January, of Julen Atxurra Egurrola, alias Pototo, ex-head of logistic operations, and of Jesus Maria Puy Lekunberri, ex-leader of illegal commando cells. Both were evacuated from the French maximum security prison of Moulin-Yzeure after their cells and visitors were subjected to a rigorous search, backed up by sniffer dogs in bid to find explosive substances.

The extraordinary measures of control on visits in the visitor's area took place on the weekend of January 3 and 4 by order of the French Attorney General's office. The

transfers of Poroto to Rouen (Normandy) and of Txuma (i.e. Jesus Maria) to Strasbourg (Alsace) were decided in Paris by the General Office of the French Penitentiary Administration. *“If there was an escape plan, he wouldn't tell him because there are things you don't tell”*, declared Richard Bauer, the prison warden at Moulins, to this newspaper,

The prison officer, who has been running this penitentiary for a year and a half, recalls that the ETA leaders are usually sentenced in France to long periods of time and once they are released, they are extradited to Spain where they run the risk of continuing to remain jailed for a long time for other reasons.

“They're people who have particular reasons for wanting to escape because their prospects of getting out are quite remote”.

“Although the combined action of the Spanish and French police is especially effective at neutralizing terrorism, ETA still exists”, observes Bauer. *“That's to say, those dangerous prisoners are apt to get logistic support from accomplices on the outside”*, he says without revealing concrete facts that would back up his suspicions.

With a bank robber

In this context, the Moulins warden states that *“we are therefore obliged to take this potentially dangerous possibility into account when dealing with the Basque terrorist prison population”*. Such a preventative policy is especially translated into *“regular rotations so as not to give them any chance to get organized and to draw up well-structured escape plans”*, Richard Bauer says in conclusion.

The only ETA prisoner that has managed to escape from a French jail is Ismael Berasategi Escudero, who escaped from the La Santé prison in Paris in August, 2002 when he was substituted by his brother Joxean during a visit at the visitors' area. After he was rearrested a year ago in the southeast of France, he was held in solitary confinement for four months.

The same thing happened to Susper, who, at the end of 2002, escaped from the Bayonne police station through a ventilation duct in a cell designed for intoxicated prisoners. Since he was jailed two months ago, he has been isolated from the rest of the prisoners at the Fleury-Mérogis prison (on the outskirts of Paris). The measure, which lasts for an extendible three month period, was adopted by the prison warden on account of his escape.

The alleged ex-head of the recruitment network and collection of funds shares the jail section with other "especially watched" prisoners such as Yvan Colonna, the presumed murderer of the prefect of Corsica, Claude Erignac or the bank robber Antonio Ferrara who had a spectacular escape with the help of accomplices armed to the teeth with explosives and military weapons. Like them, he is being held in solitary confinement for 22 hours a days in a cell.

El Diario Vasco, February 9, 2004

2.4.2- ETA had detailed escape plans to spring its prisoners from Spanish and French jails

The information, encrypted on a CD, was found in the possession of Gorka Palacios

ETA planned a spectacular move to show up the French and Spanish authorities and stiffen the morale of its gunmen. A CD, found in the possession of the ring leader Gorka Palacios, contained escape plans for members of the terrorist group being held. As soon as they became aware of this, prison administrations in both countries adopted urgent measures. The ETA ringleaders being held in France were transferred to other prisons while in Spain there was a rigorous search of the cells of ETA prisoners.

J. M. Zuloaga / R. L. Vargas - Madrid.-

When specialized agents managed to decode the CD, they were met with a surprise. ETA was working on a series of escape plans for its prisoners which, in the case of France, were more elaborated. As for our country, names of those prisoners who needed to be sprung from jails were listed. The reaction came at once. The French penitentiary administration transferred the main ETA ringleaders to other prisons and the cells they had been occupying were carefully searched. The measure affected at José Javier Arizcuren, *Kantauri*; Julián Achurra, *Pototo*; Ismael Berasategi, who had escaped once himself; Jon Bienzobas, *Karakulo*; Francisco Javier García Gaztelu, *Txapote*; Belén González Peñalba; Ignacio Gracia Arregui, *Iñaki de Rentería*; Jesús María Puy Lecumberri, *Txuma*; Ainhoa Música and Julia Moreno Mancuso, *Bombi*.

Truck bomb

The escape plans for some of these individuals were drawn up with some detail which shows that there had been an information gathering effort made by prisoners and, presumably, of those who had come to visit them. Among these plans there was one that was to free several prisoners from the La Santé prison in Paris. The gunmen were to blow up the wall of the prison with a truck bomb in order to gain access to the inside of the prison. According to the sources mentioned, one of the detainee in the recent operation against the “logistics wing” of the terrorist group, Luis Enrique Garate, was in charge of preparing this escape attempt. In Spain, the penitentiary authorities proceeded to conduct an overall search of the cells occupied by prisoners of the terrorist group although, according to antiterrorist sources consulted, but nothing suspicious was found.

The intention of the terrorist group, which finds itself in one of the worst moments in its history, was, according to the sources cited, to show an operational level that it does not have and, while they were at it, to boost the morale of their militants and of the organizations involved with them. They also wanted to show up the prison authorities in France and Spain.

The information on the escape plans was on one of the CDs found in the possession of the head of “military operations”, Gorka Palacios, detained last December near Pau. The content of the CD could not be decoded until just a few days ago. Up to now, the only ETA member that has been able to escape was Ismael Berasategui who escaped from La Santé prison after being replaced by his brother José Antonio who has a striking

resemblance to him. Both took advantage of one of the visits to which prisoners have a right.

La Razón, February 16, 2004

2.4.3- ETA calls for the third degree of imprisonment for its prisoners

L D (Agencies)

The leadership of ETA has, for the first time in its history, called for the third degree of imprisonment and a conditional release for a group of nearly 100 prisoners through its usual lawyers. The measure comes after several terrorist prisoners made their discontent to the ETA leadership known since they have been unable to take advantage of the prison benefits which in many cases would allow them to leave jail during the weekends. Faced with the danger of a division between the ETA prisoners that could deepen still further and dissidence which could grow more evident, ETA has given in to the demands of imprisoned terrorists.

Sources from those involved in the antiterrorist struggle told *Europa Press*, that with this decision, ETA is trying to pamper its prisoners, reduce pressure from said group, and probe the new judge of Penitentiary Custody of the National Tribunal, Javier Gómez Bermúdez. This measure, according to sources consulted, is not an individual initiative taken up by the prisoners themselves but is, instead, a measure adopted by the terrorist group itself which hitherto had rejected the idea of its prisoners asking to be classified as third degree detention prisoners and who were directly calling for their conditional release.

This rejection was in answer to the assumption that such a reclassification implied the acceptance that ETA prisoners were not political prisoners as they define them but were common prisoners that can gradually work their way up the penitentiary detention degrees as they accept and abide by the re-education measures. In order to reach the third degree detention status, ETA prisoners, like any other prisoner, have to fulfil a serious of requisites such as active repentance, to explicitly ask for forgiveness from the victims, and accept civil responsibility arising from their crimes in case they are sentenced for it. At the same time, the precepts for the Penitentiary Custody judge to grant a prisoner conditional release are that he or she should be classified as being a third degree detainee, to have three fourths of their sentence served, or in exceptional cases two thirds, and, finally, there should be a favourable prognosis of reintegration into society.

Among the prisoners included on the list are terrorists with blood-stained records such as María Inmaculada Noble Goicoechea, *Ana*, sentenced for the attack on Juan Bravo Street in Madrid, which took the lives of five Civil Guardsmen, and the murder of the military officer Ricardo Sáenz de Ynestrillas and the soldier Francisco Casillas. There is also Carlos Torrecilla, sentenced for more than two crimes, among which the murders of the vice-commissioner Ortiz de Urbina and of the retired general Luis de Azcarraga are the most noteworthy, or the ETA gunman Antonio Troitiño, sentenced to 2,232 years for the attack on the Plaza de la República Dominicana, in Madrid, which took the

lives of twelve Civil Guards.

Symptom of weakness

The Minister of Justice, José María Michavila, considers the decision of the ETA prisoners who are applying for penitentiary benefits to be a sign that the terrorist group is “weaker than ever” and recalled that the State has legal mechanisms to guarantee that sentences are served to their full extent. José María Michavila made these statements at the Ministry of Justice after meeting with the prosecutor of the International Penal Court, Luis Moreno Ocampo in answer to a question by journalists about such a decision.

Michavila commented that it is “*plainly evident*” the State with rule of law, the law itself, and Justice, together with police efficiency and international collaboration have managed to make the terrorist group “*weaker than ever*” and that the decision taken by ETA is yet “*another example*” of its weakness.

Libertad Digital, October 5, 2003

3.- THE PRISON OFFICERS

3.1.- The everyday situation

When prison officers are interviewed, the first thing that they agree on is that none of them wants to deal with ETA prisoners. There are several reasons, the main and most obvious one is that the mere fact of being a prison officer turns them into being an objective of the terrorist group, i.e., they are potential victims of a bomb attack or a shot through the back of the head. Moreover, it is also a question of dealing with troublesome prisoners. While the rest of the internees know that they have to stick to the regulations, the ETA prisoners, in their conviction that they are a part of a plot wrought by the Spanish state to wipe them from face of the earth as members of an oppressed people, may refuse to do simple things such as going into their cell when it is time to go into the cell. If there are attempts to force them in, that does not mean that violence is used but quite simply they are limited to grabbing them to get them inside. They resist, they kick, they bite but then they make denunciations of mistreatment although the only ones who are injured are the prison officers themselves. There have been many such cases which have later been dismissed.

The ETA members in jail make use of their criminal record and their forming a part of a group in order not only to intimidate prison officers with whom they have immediate contact but also those in positions of higher authority in the prison. At every given moment, they try to establish a correlation of forces that favour their interests. The outcome is that on many occasions they gain privileges that the rest of the internees cannot aspire to. If a lawyer or a family member comes to visit after visiting hours, they visit the prisoner as if they had come during established visiting hours. They usually oppose searches after visits. They have been able to take advantage of cells designed solely and exclusively for group meetings or to have lunches and dinners in them but not live in them. There have been cases in which a prisoner has had his own television set. In order to enjoy their privileges and to keep up the pressure on prison officers, ETA people have many organizations charged with hyping violations of their rights in the media and on the internet, violations that they consider to be a proven fact rather than an alleged charge even though they have no proof other than their own biased testimonies.

Three prisoner officers, interviewed by the magazine *Hasta Aquí* (Up to Here) (#8, January-February 2002), responded this way to the following question, **Do you believe that the group as such pressures the prisoners into not calling for social reintegration measures?**

Joaquín: It is not that we believe it, it is something that we can see before our very eyes. More than the group of prisoners, it's the people on the outside, namely the Gestoras [pro-Amnistía] people and groups of that ilk. They belonged to an organized group when they were outside, and inside, they're still members of it and so they have a

kind of military discipline instilled in them. If the group says "you don't have to accept the third degree of custody", they don't accept it and whoever does accept it is automatically expelled from the group. There have been cases in which some [prisoners] have realized their folly or that they have grown tired of being in prison and have decided to comply with the rules of the penitentiary system and, as a result, they are automatically expelled from the group.

And to the question: Can someone go from the second to third degree of custody without accepting penitentiary norms?

***Joaquín:** No, to be in third degree custody, you have to comply with certain requirements that no ETA prisoner, for now, would abide by. Moreover, people that say "those who have served three quarters of their sentence should be released" are dead wrong since not only is the time served an important factor but there are other requisites such as the certainty that he or she will not go out and commit a crime again. In fact, as the Law says word for word, there should be a "guarantee that he will live an honourable life". And ETA people are so convinced that they are committing no crimes that if they do get out, they'll go back to taking part in attacks. In the street, people talk very glibly, even the Counsellor of Justice does so, he must know something about the penitentiary law. A prisoner's parent can talk about it ... I think it's logical that they would take up for their son, but for someone in a position of responsibility to do so, someone who ought to know the law ...*

***Carlos:** I mean, inside they still belong to the same group for which they've gone to prison and they haven't renounced anything.*

***Lourdes:** And even then, the administration, which is very generous, sometimes grants third degrees of custody a few days before their conditional release so that the inmate is not forced to renounce the group. There are many ETA prisoners that are granted third degree custody without fulfilling the conditions as provided for by the law because the Board of Prisoner Treatment has noted that there are those who are alienated from the group although they will not come out and say it because one problem that exists is that they have to make sense of all the time that they have spent in prison and, on the other hand, when they are out, whether they receive a homecoming reception or not when they do get back to their home towns is not only important to them but also to their children. Many put up with it although they are at the margins of the ETA group as they await that day and so they won't have to offer another explanation to their children and people on the outside.*

When representatives from different international organizations visit the jails, ETA prisoners find a way to convince them that a kind of genocide is being waged against them (how many of them know that ETA members like Juana Chaos order champagne, and boast about it, to celebrate every time ETA commits a murder? In what kind of extermination jails do they allow champagne, and especially on such occasions?) and they write rivers of ink since they are aware of the enormous international repercussions that their false denunciations will have. It should be pointed out that up to the latest legal reform in 2003, prisoners sentenced to thousands of years in prison could commute their sentences by merely taking advantage of the right to study as contemplated by Prison Regulations. As ETA tries to push for a correlation of forces in every field, it has managed to gain privileges even in the field of academic studies

thanks to the complicity of professors who are ideologically inclined and to professors who have given in to the intimidation forced on them as we can see in section 2.5. As for the prison officers, no member of a fact-finding party from the EU or the UN has shown any interest in them, indeed it is more to the contrary, as they have always held the poor ETA prisoners to be the victims. Who has ever asked to see why they take their cars out of the parking lot every time family members of ETA prisoners pay a visit?

They are also ignorant of the fact that the minister of the Interior had to arm them when they are outside of the prison so that they could defend themselves in case they are attacked because there were not enough armed escorts to go around for them. The ETA underworld knows how to use every trick in the book to make themselves look like victims. One of the main ways is warping the principle of innocence: The ones accused by them have to prove their innocence and not the other way around as is the case in a land where there is rule of law in which burden of proof falls on the accuser.

3.2.- The Prison officers: ETA's victims

3.2.1.- Kidnapping of the prison officer José Antonio Ortega Lara: The prison officer José Ortega Lara was held by the terrorist group for 532 days.



3.2.2.- Pictures of the kidnappers and the place where he was held

3.2.3.- The facts

ETA kidnapped the prison officer Ortega Lara on January 17, 1996 and forced him to live in a hole (in Basque *zulo*) incommunicado for 532 days. Four individuals took turns to watch over the place periodically and to give him food through a very small window. It was his only contact with human beings even though there was very little that was human about those particular ones. The fan that was supposed to ventilate the tiny cell did not work. Ortega Lara was isolated from the work, that is to say, he was unable to see anything except the four walls of an unhealthy, windowless cell that measured five square metres, just enough for a mattress and a tiny camp table. He could touch both walls by stretching his arms. Ortega Lara could hear no noise coming from the outside. In addition to physical torture, the terrorists added psychological torture by holding him incommunicado and made him lose the notion of time with the added cruelty of the terrorists constantly making him wait for a death to which he knew he had been condemned since ETA was not asking for a cash ransom but, instead, was calling for the ETA prisoners to be transferred to prisons closer to the Basque Country, something to which the State could not give in. It is the height of cynicism that the terrorist group should denounce prison conditions for its own prisoners when it held a man captive in conditions worthy of a concentration camp which only demonstrated once again the totalitarian character of a political ideology that thinks nothing of somebody who thinks differently. Ortega Lara was finally freed by the Civil Guard on July 1, 1997. One proof of how little they cared whether Ortega Lara lived or died is the fact that the kidnapers, once they were detained, refused to divulge the location of the very complex system of gaining access to the hole where a life was being held. In the moment of his liberation, Ortega weighed 23 kilos less. It was the longest ETA kidnapping and it was surely the cruelest one. When he emerged from the cell, Ortega Lara was completely disoriented and dizzy. He declared that he had resigned to die in that squalid *zulo* (hole).

3.2.4.- Petition of Amnesty International for Ortega Lara's release:

SPAIN: AMNESTY INTERNATIONAL CALLS ON ETA TO RELEASE JOSE ANTONIO ORTEGA LARA

José Antonio Ortega Lara, a 37-year-old prison officer who was abducted in the northern Spanish city of Burgos on the evening of 17 January, should be released immediately, Amnesty International said today.

Concerns for Ortega Laras safety were raised when he failed to return home from his place of work, Logroño prison. His abandoned car was recovered the following morning in a local industrial estate.

Euskadi Ta Askatasuna (ETA), the armed Basque group, claimed responsibility for Ortega Laras kidnapping in a statement published in the Basque newspaper *Egin* on 1 February. ETAs statement called for the Spanish authorities to abandon their strategy of repression of Basque prisoners, saying that in return it would be prepared to make an equivalent gesture. It further stated that prison officers would cease to be the object of their actions.

The strategy referred to in ETAs statement is the policy of dispersal of Basque prisoners in penal institutions throughout Spain. ETA prisoners undertook a lengthy hunger-strike before Christmas against dispersal, calling for the state to cease treating them as hostages and for all their rights to be respected -human as well as political- putting an end to the punishment which dispersal caused to the family and friends of prisoners.

The issue of dispersal of prisoners is not within Amnesty Internationals mandate and consequently the organization takes no position on it. However, Amnesty International urges Ortega Lara immediate and unconditional release.

We unreservedly condemn abuses by armed political groups such as kidnapping, deliberate and arbitrary killings and hostage-taking which contravene international humanitarian standards, Amnesty International said.

Ortega Lara is the second person currently to be held as a hostage by ETA. José María Aldaya Etxeburua, a Basque businessman, has been held since 8 May 1995. In a statement issued on 25 May ETA claimed that the reason for its action in kidnapping him was his refusal to pay the economic assistance requested to carry forward their fight for the liberty of the Basque people (*Euskal Herria*)...we wish to send a new warning as well to those businessmen who are in this position.

In a statement issued on 26 May 1995 Amnesty International urged Aldaya Etxeburua's immediate and unconditional release, condemning the practice of hostage-taking.

3.3.- Murdered prison officers

ETA murdered the prison officier Máximo Casado Carrera in Vitoria, a card-carrying member of the Comisiones Obreras (Workers' Commissions) trade union. He had received threats during the kidnapping of José Antonio Ortega Lara who was also a prison officer. The terrorist put a limpet bomb underneath his car parked inside a garage which went off when he started the engine to go to work at the prison in Nanclares de Oca (Alava). Casado Carrera's body was blown to bits as a result of the detonation which also damaged three cars parked next to the car of the murdered officer. The bomb used was quite powerful and contained nearly two kilos of explosives.

Máximo Casado, forty-four, was married and had two children, a 10 year-old girl and a 18 year-old boy. The murdered officer was born in Santa Elena de Jamuz, in the province of León, and had been working fifteen years at the prison in Nanclares de Oca (Alava) where he began as a teacher.

The prison officer at the Nanclares prison, according to his neighbours, had been suffering from constant harassment by pro-terrorist groups over the last few months. His mailbox was burnt and painted over as were the columns of his house. He was insulted and called "a jailer", his car was scratched up by running keys across it and he received early morning telephone calls.

The sixth prison officer murdered since 1983.

Máximo Casado Carrera, the prison officer at Nanclares prison in Vitoria, was ETA's sixth murder victim linked to prison institutions and as this document is being written, the 16th victim that has lost his life in terrorist attacks since the end of ETA's ceasefire. Since 1983 and up to today's attack, five prison officers have been murdered in the 20 attacks that the terrorists have perpetrated against members of this group and they have provoked the death of a prison officer's mother who opened a package bomb meant for her son as well as two prisoners and a civilian.

ETA's latest attack against people working in prison institutions was committed on March 11, 1997 when the Martutene (San Sebastian) prison psychologist from San Sebastian, Francisco Javier Gómez Elósegui, was murdered. The terrorists used the method of shooting the victim through the back of the head against prison officers on four occasions (three of them in San Sebastian and another in Puerto de Santa María), while the rest of the victims were murdered by package bombs, the most deadly of which cut short the lives of four people on June 28, 1991 at the Sevilla-1 penitentiary .

Gatherings to express popular revulsion throughout Spain

Political institutions, trade unions and universities expressed their revulsion at this murder of ETA's with various kinds of demonstrations. The disdain for popular opinion shown by the terrorist group was readily apparent in these reactions after 100,000 citizens had called upon the terrorists twenty-four hours beforehand to give up violence once and for all in a Bilbao demonstration. In numerous cities, there were gatherings of citizens in front of representative institutions to express their condemnation of terrorism.

The top leaders of every political party, with the exception of EH, and several thousand Basques heeded the call for demonstrations held in the three Basque provinces to express their revulsion for Máximo Casado's murder. Over 85,000 people demonstrated a day afterwards by marching through downtown Vitoria to cry for freedom and to show their revulsion for ETA's murder of the prison official. The demonstration ended with a word of thanks given by Conchi Jaular, Máximo Casado's widow. The banner that opened the demonstration was carried by Máximo Casado's widow, children, and in-laws as well as by the top representatives of the Comisiones Obreras trade union, José María Fidalgo and the UGT (Unión General de Trabajadores or General Workers' Union) trade union; Cándido Méndez and his work colleagues. Marching behind them were trade union representatives from every prison in Spain and also from the Ertzaintza (Basque police) sector.

Digest of articles from various newspapers

3.4.- Other Situations:

3.4.1.- A Penitentiary Custody judge decides in favour of prison officers concealing

their identity from ETA prisoners

He deemed it possible that the terrorist group could use personal information to intimidate or stage attacks against them.

Madrid, January 15, 2004 (COLPISA, C. Calvar).

The chief judge of Penitentiary Custody, Javier Gómez Bermúdez, declared that it was legitimate for prison officers to protect their identity from ETA prisoners since the terrorist group could use their personal information to “*intimidate*” them or “*compromises their security*”. In the decision, the magistrate struck down a complaint from a former member of the “*comando Madrid*” cell group; José Ignacio de Juana Chaos, who intended to identify a prison officer where he was serving sentence. The judge recalled that ETA “*had already killed and abducted several officers from Penitentiary Institutions*”.

The incident came about because the ETA member had sent the magistrate's officer a written document in which he complained that he had not been given the identification number of “*a prison officer named Agustin*” with whom he had had an altercation even though the Penitentiary Custody court at El Puerto de Santa María and Court number 3 in Madrid had ordered such information to be divulged.

After hearing the penitentiary centre and the prosecutor -who supported the prisoner's complaint- the judge determined that it “*was not necessary*” for the employee to be identified by this badge number so that the internee “*can exercise his right to complaint, denunciation or any other act appertaining to him*”.

The judge explained that, on account of controls existent in the jails, the identity of the prison officer -for the purpose of providing the effective judicial protection or to gain an eventual sanction- “*can be obtained by the prisoner providing the day, time, and place (module, patio, dining room, etc.) where the incident that provoked the claim took place*”.

The magistrate insisted that the register stating when, where, and who undertook a given service as well as the authority and means of investigation at the court's disposal “*allowed for a clear identification of every officer related to a concrete fact or incident*” without necessarily putting them at risk.

Multiple murderer

Gómez Bermúdez recalls that the prisoner who made the claim is “*a multiple murderer integrated in a terrorist-type criminal organization*” that “*has killed and abducted several prison officers*” such as Máximo Casado Carrera who was murdered in Vitoria in October, 2000 with a limpet bomb attached to his vehicle or José Antonio Ortega Lara who was held 532 days inside a hole by ETA until he was freed by the Civil Guard.

This is why he considered that acceding to the ETA member's petition would provide him “*information about the identity of prison officers that could serve to intimidate them and compromise their security*”.

In relation to the decisions issued by the El Puerto de Santa María Penitentiary Custody Court or Court no. 3 in Madrid, which had backed up the prisoner's contention, he pointed out that “*they had used up their efficiency in this concrete case for which they were issued without their being able to prolong the effects in a period of time beyond the supposed concrete case for which they were issued*”. That is to say, as De Juana Chaos' case was thrown out, the decisions of the judges that had ordered the identity of the prison officer with whom he had had the altercation had become moot without it being necessary to annul them.

3.4.2.- The ETA prisoners: Temperature gauge of the Basque "conflict".

Aitor Loyola. *Arbil Magazine*, nº 43

Bringing ETA's prisoners closer to home and regrouping them in prisons in the Basque Country and Navarre are two of the historical demands of the so-called MLNV (Movimiento de Liberación Nacional Vasco or Basque National Liberation Movement) and is its main mobilizing lever. On the other hand, the policy of dispersal of ETA prisoners started by the socialist government and currently maintained by the Partido Popular (People's Party) continues as before. Below we shall see some aspects regarding the true situation of the ETA prisoners and their role in the so-called Basque “conflict”.

Introduction.

The recent escape attempt by the ETA member Igor Solana from the Nanclares de Oca prison in Alava has brought to the fore in today's current events some circumstances regarding the situation of the prisoners of this terrorist group in Spanish prisons.

On the other hand, the topic also came to light on the occasion when the former Supreme Court justice and member of the State council José Luis Manzanares made some remarks on the TV programme “El Primer Café” on the Spanish channel Antena 3 in which he stated: “*judicial repression against terrorism is not serious in Spain*”. He likewise questioned the true application of conditional release and the granting of third degree of penitentiary custody to ETA prisoners, a fact that affects both the Court of Penitentiary Custody and the Administration itself.

It is not an unknown topic nor is it hardly dealt with in the Spanish media. As far back as November 27, 200, the Madrid newspapers *La Razón* dedicated two exclusive pages to the subject resulting in the Madrid prosecutors denouncing the fact that ETA prisoners enjoyed, in their opinion, privileges and impunity in the jails. In reference to the situation in the Madrid prisons, the prosecutors deemed the proposal to create a Penitentiary Custody Court within the National Court to be suitable, one that would be specialized in affairs concerning prisoners belonging to armed gangs. It would mean the unification of judicial criteria that would be applicable to matters such as obtaining extraordinary repayments even though it may have incurred multiple disciplinary proceedings (which, as they have admittedly not been informed, implies a substantial shortening of the real length of their sentence), aspects related to communication (face to face meetings, telephone calls), etc. In said article, it is stated that, in the end, the body of prison officers finds itself demoralized.

Denunciation from a trade union representing prison officers

Delving deep into this subject matter, issue #86 dated January 2001, of the journal pertaining to the largest union representing prison officers, ACAIP (Agrupación Cuerpo de Ayudantes de Instituciones Penitenciarias or Association for the Corps of Penitentiary Institution Auxiliaries), has made its own version regarding this problematic area known

In an article published on pages 27-29 of its journal, the situation of an inability to apply rules in many penitentiary centres is denounced, a situation that has allowed ETA prisoners to enjoy privileges that in many aspects go beyond prison regulations.

The article gives several concrete examples of these presumed faults: one ETA prisoner per cell in contrast to most inmates who generally have to share their cell with another inmate, internees classified in article 10 or first degree of imprisonment (solitary confinement) serving their time in ordinary ways without hardly any limitations on schedules nor any kind of restrictions, a direct line to the wardens or assistant wardens to find a solution for “their things”, the lack of support from the General Prison Office that these prison officers suffer from regarding denunciations of tortures and, finally, the scant participation of prison staff specialized in writing up reports that illustrate - beforehand- many of the comprehensive rulings handed down by judges in face of the pretensions of ETA prisoners.

Thus, we may wonder whether it is a question of privileged treatment of this kind of prisoners or, to the contrary, whether this strange and odd situation -strange and odd to most citizen- is the net result of exceptional circumstances which have come together.

To begin with, we can reliably state that it is doubtlessly a complex situation that has got out of hand for various reasons: concrete judicial practices (there is no unanimity in many of the decisions adopted by various judicial bodies), the multifarious reality of prison life in which “each prison is a world”, and, finally, actions and pressure brought to bear by groups supporting ETA prisoners.

The policy of "dispersal" of ETA prisoners.

Inmates belonging to the ETA terrorist group (who number some 450 in Spanish prisons) are the object of extraordinary attention by a group of organizations of the so-called MLNV (Basque National Liberation Movement).

That is how it has always been but this especially scrutinized attention came into evidence after the policy of “dispersal” of these prisoners by the socialist government went into effect, the goal of which was to try to control the so-called “jail front” of ETA, to break up the unity of its integral members and to favour individual “reintegration” of some of its former members. An attack aimed directly at ETA's heart could not go unanswered. That is why the organizations making up the self-styled MLNV gradually and laboriously and with an admirable perseverance came up with a long-term strategy in response which could be summed up in several slogans: unconditional support for the prisoners, use of EVERY means at their disposal, non-stop mobilization, pressure.

Without wading deep into an analysis of this antiterrorist policy, we can conclude that it is, to a large extent, a spent policy nowadays: the unity of the members of the self-styled “group of Basque political prisoners” is evident and there have hardly been any people who have left the organization over the last few years. In order to make this appraisal, one needs to get to know about the real situation of ETA prisoners and the support work (which could also be understood as a question of obvious “pressure” with the ultimate objective of maintaining discipline among the “militants” that are imprisoned and to stave off desertions) which has been maintained over all these years.

The real situation of ETA prisoners

In the first place, ETA prisoners can count on considerable support from their lawyers which allows them to “squeeze” the prison regulations. Various law firms are wholly committed to the prisoners' cause with abundant resources at their disposal: Ione Gorizelaia in Bilbao, Iñigo Iruin in San Sebastian, Txemi Gorostiza in Pamplona, etc. Other lawyers, on a secondary level, belong to penitentiary staff that serve all prisoners as well as some prisoner-support associations (e.g. Salhaketa or “denunciation” in Basque) that also make the effects of their persistent judicial work felt within the walls of the prison and the offices of the Courts of Penitentiary Custody and Provincial Courts with notable efficiency. Thus, they undertake an exhaustive followup of origin, elaboration and content of each and every one of the judicial rulings of the different judicial authorities. These followups are personally delivered and subtle (and sometimes not so subtle) pressure is brought to bear on the judicial officials and judges. This constant work allows them to glean every single favourable aspect from prison regulations by taking advantage of the material contradictions and regulatory shortcomings, something that is not always possible for the rest of the inmates since they do not have access to such support that is as dedicated as it is specialized.

On the other hand, there are, in many prisons, “informal” channels of communication between representatives of the “body of Basque political prisoners” as they call themselves and the administration in some penitentiary centres. The warden, assistant warden, an educator with some credibility are the people that, on behalf of the administrative staff of the prison, talk to representatives of the “body of prisoners” about matters of common interest in order to reach a “statu quo” that makes for a liveable everyday routine. This is a reality that bears fruit: one ETA prisoner per cell, extraordinary telephone calls, additional extraordinary communication with the outside world, laundry with soap and softeners for members of the terrorist group in the centre's own laundry service, purchases of food on the outside, private residential spaces formulated as occupational workshops, etc. In making up this real-life prison regime, rulings issued by the judges from the Penitentiary Custody Courts and Provincial Court, in response to a complaint, have a profound influence by authorizing, for example, possession of a personal computer in their cell, face to face communications (in a room without bars or glass barriers) with their usual partner even if they have no children in common, transfers to other centres so that they can maintain relations with their partners who are also imprisoned, oral communications with messages for ETA, extraordinary permissions for various causes, etc.

Thus, when those “actors” intervene, reality overwhelms what is foreseen by regulations which on occasions leads to the restrictive nature of a prison regime, to which many of the prisoners should adhere, being somewhat watered down

Another aspect to take into consideration which offers another important glimpse into the real situation of these prisoners is that dealing with mobilizations that they themselves carry out within various penitentiary centres. The sophisticated reasoning varies. In each centre a different strategy is maintained according to the situation at hand, the degree of exhaustion of the ETA members, the space “won”, and the faithful carrying out of orders received: hunger strikes, fasts, putting up bills and banners, denunciations, passive resistance to determined orders, refusals to enter a cell or to leave a particular area, etc. In practising this game of “push and pull”, a particular model of lifestyle comes about in each penitentiary centre in which many factors play their part such as the leadership style of those in command, the willingness of the ETA prisoners, their outside support, lawyer action, judicial rulings, and transfers of the prisoners themselves to other penitentiary centres.

Support groups acting on behalf of ETA prisoners

We have mentioned support lent by lawyers linked to groups within the self-styled MLNV for these ETA prisoners. Let us now take a look into these aspects.

On every weekend, thousands of people leave the Basque Country to go to many Spanish prisons in buses and vans in order to visit members of their family or friends who are imprisoned. These trips are doubtlessly an occasion for indoctrination, cohesion, and mobilization for those thousands of family members affected by the physical separation from their children, parents, brothers and sisters, aunts and uncles, etc.

It is not in vain that the Gestoras Pro-Amnistía, followed by Senideak (literally “relatives” in Basque) have sought for many years to bring closer together relatives and friends of nearly half a thousand members of the terrorist group (that is, if we add those imprisoned in Spain to those held in French prisons). The way that they follow the orders given to them is something that speaks volumes for them. In view of that, the work done by these family members and friends of the ETA prisoners is a fundamental factor in maintaining their morale and firmness of convictions. The symbolic expression of their importance is manifest in the numerous demonstrations held in support for the prisoners: at the head of such demonstrations bearing the banner slogan, alongside distinguished members of Herri Batasuna, there are files of family members marching and holding up poster-sized pictures of the ETA prisoners.

Another very concrete aspect which illustrates their real situation is the economic support lent to them by ETA circles which comes in the form of grants for the numerous trips made by family members and the money which reaches the prisoners themselves through them (somewhere between 120 and 240 euros, according the state of ETA's finances) . This allows ETA prisoners to improve the material aspects of their lives, concretely by allowing them to purchase books, musical equipment, computers, special food (prawns for birthdays and other festive celebrations, macrobiotic food, food complements), clothes, incense, sports equipment, etc.

The women have also taken up the struggle with a feminist slant in the world of nationalism and have certainly adapted it to modern times. The “amatxo” (Mommy) has been the mainstay figure in transmitting nationalist thought in the Basque house-hold. Heiresses of an arguable Basque matriarchy that ran the farm household and domestic and family life, they have taken up where the young radicals have left off. Every weekend,

hundreds of women, wives, sisters or simply girlfriends march through the streets and highways to lend affective and political support to their prisoners. There have been quite a few relationships between couples that have started in the prisons: first through the bars in the visitors' area and then face-to-face encounters until finally their relationship is established. All of this is generally within the framework of a kind of union that has extended throughout society: de facto couples, with or without kids, emancipated from the oppressive Church values, liberated from the patriarchal and male chauvinist model. The role of the women in maintaining the prisoners' morale has been decisive.

At the local level, support platforms are periodically held in support of certain prisoners in particular, support emanating from the radical Basque nationalist organizations in the town or neighbourhood where the prisoner had been living until detained. They try to pull in other groups to go along: parishes, neighbourhood associations, dance and sports groups, Basque nationalist parties with a presence in this precinct or neighbourhood, Basque nationalist trade unions, environmentalist groups, etc. They then organize all kinds of mobilizations, collect funds, present motions in town council meetings, etc. They extend their influence as they organize all these mobilizations while overseeing the social life in the area where everything is taking place.

The enormous amount of mail sent by pro-ETA people and groups, the publications and all kinds of books that they continuously receive, visits from professors from the University of the Basque Country, the attendance of lawyers, even like-minded doctors and opticians all of this makes up an extraordinary social fabric of unconditional support for ETA prisoners who can truly feel like they are "*protagonists that have sacrificed themselves for the national liberation struggle*" and are "*the best that Euskadi (the Basque Country) has*".

The role that ETA prisoners play

The prisoners have traditionally played a fundamental role in the organization: both in decision-making and in determining particular tactics concerning themselves.

It is significant that their situation has always been given high prominence in determining the objectives and priorities of the terrorist organization which is reflected in their discussion documents and internal memos, public communiqués, etc.

Their role also has symbolic and organizational importance as evidenced by, for example, the inclusion of ETA prisoners on the Herri Batasuna party's election slate during various elections.

It is no coincidence that during the so-called "truce" that the spokespersons that ETA made public were very important members of the terrorist group who were in prison which provided some clues about the true will for dialogue shown by the terrorist organization at that point in time.

Nevertheless, analysts who are ETA experts have been noticing that as the current terrorist offensive has taken a nasty turn for the worse, the prisoners have lost some leeway in decision-making within the organization which is reflected in less attention being given to them by the terrorist group in their communiqués issued over the last few months.

It is surely a consequence of internal movement with ETA circles which seems to indicate a redistribution of forces arising from a new tactical phase that the so-called MLNV is going through and it seems to be centred around the gradual assumption of responsibilities by the “young cubs” in the movement: members of the Haika (“arise” in Basque) youth movement. It shows a clear radicalisation of the MLNV as evidenced by the overwhelming victory of the “bateginez” (uniting) tendency within the internal discussion process of “Batasuna” (Unity). In contrast, the minority tendency called “Aralar” only managed to get 10% support. In this sense, police action undertaken against ETA over the last year has undoubtedly allowed us to confirm that several members of Haika have joined the terrorist group, that they have become a part of the Leninist control apparatus of the movement which has evolved into the outlawed political party EKIN (action) and, finally, that these “young cubs” have displaced some of the historical militants (moderate or burnt out). This all confirms the radicalisation process that we were talking about.

Some reflections

This article aims, first of all, at highlighting the complex reality that judicial and prison officials have to live through as they are caught in a vice between the disconcerting decisions that they have the responsibility to make and pressure from ETA's terrorism.

In every social circle, some kind of coherence between written and unwritten norms is a prime necessity. In the world of penitentiaries, regulations are very details but unwritten norms are also fundamental. These material and factual contradictions are fertile ground for judicial demands brought by lawyers on behalf of ETA's prisoner, many of which are won due to a lack of support from the central prison administration for their management teams. Thus, what should be forthcoming is a dedication of the right staff and material resources in order to cover legal needs that come about in certain penitentiary centres.

For ETA, the current situation can be defined in an awful manner: it's war! Indeed, in a war, as they themselves assure us, the use of any means is justified. It is evidently not a question of responding of the same means from the point of view of a land where there is rule of law, but as for the “judicial confrontations” and other fronts opened up by terrorism, every possible and legitimate means must be used if a democratic state does have really the will to fight and achieve victory.

Another aspect that may be studied is that dealing with certain legal reforms with regard to access that prisoners have to the third degree of detention, conditional release, and commuting of sentences by doing labour, whichever the case may be. Moreover, this desirable legal reform could be extended to other areas in order to prevent many Spanish prisons from turning into a “loophole” for their organization which allows for ETA prisoners to have easy and quick communication with their organization which doubtlessly moves through numerous people who, with one motive or another, visit them.

We may conclude that the current judicial and penitentiary system suffers from considerable breakdowns that lessen the efficiency of objectives staked out by the antiterrorist policy of democratic government for reasons analysed in this article. Such deficiencies will have to be made right in the name of simple coherence if the will to win does indeed exist.

3.5.- The privileges of ETA prisoners in their academic studies: a digest of articles:

3.5.1.- *El País Universidad*, February 19, 2003:

Gotzone Mora, a professor at the University of the Basque Country and spokeswoman for platform *Profesores para la Libertad* (Professors for Freedom), which is made up by educators at the public Basque university, yesterday defended the legal changes passed by the Council of Ministers because what the new measures do “*is assure the right of ETA prisoners to an education while saying no to privileges*”. “*It will go a long way towards lowering the tension at the University of the Basque Country and will truly provide the right to an education but with the ETA prisoners having to study*”, she sustained.

In statements made to various news agencies, Mora termed statements made by Xabier Arzalluz, the president of the PNV on Sunday as “*undignified*” and “*an invitation to violence*” in which the PNV leader urged the University of the Basque Country to “*raise Cain*” against the reform. Moreover, Mora considered the words of Manuel Montero, the rector of the University of the Basque Country, as “*profoundly unfortunate*” because in her opinion “*evidence is being denied: namely that there are privileges for the prisoners*”.

3.5.2.- *El Correo Gallego*, 29 de diciembre de 2003:

Most of the ETA prisoners that were enrolled at the University of the Basque Country have preferred not to move to the Open University (UNED). Only 48 out of 260 that had been previously enrolled at the University of the Basque Country have done so, i.e. 18.46 per cent.

The prisoners from the ETA terrorist group who studied at the University of the Basque Country should have enrolled starting this course at the UNED Open University if they wanted to carry on pursuing their higher studies after the reform stemming from the General Penitentiary Act that the Executive Administrations made at the end of the last school term.

The decision for undertaking this legal modification was taken after denunciations were made by a group of professors from the University of the Basque Country were brought to the attention of the Spanish Prime Minister, José Maria Aznar, who was given an explanation of how the terrorist inmates were pursuing their studies at said University.

These advantages centred around the difficulty that educators had in making sure that the examinations were actually taken by the inmates and around the fact that most of the enrolments were in department where there were many professors in tune with their political ideology. The privileges, according to the professors' denunciation, resulted in an unusually high number of people passing with extraordinary grades or marks.

The Spanish Government analysed the denunciations and after checking after the facts, it modified the General Penitentiary Act so that all of the prisoners in Spanish jails who wanted to study at the University with the General Prison Administration authority had signed an agreement, i.e. the UNED Open University.

The reform went into effect this academic term and after allowing for a period of time and an extension thereof for the students' records to be transferred, only 48 ETA members serving prison sentences have taken up this option.

3.5.3.- *El Mundo*, May 11, 2003:

ETA's «bright» students

THEY ENROLL en masse at the open university set up in the Basque Country that is tailored to the needs of ETA members. They have managed to get brilliant academic records. For the first time CRONICA publishes the grades of those special students and traces back how the intrigue works for them.

ILDEFONSO OLMEDO

In chronicles written after his detention at a shopping centre where he had gone to buy a bicycle, the gunman Valentín Lasarte was portrayed as bloody, ruthless psychopath. One chronicle was entitled “*the master of shooting people through the back of the back*”. It was also never said that he was an excellent student. The proof was that he had enrolled in Psychology and had disastrous results. He failed to pass a single subject. It all changed not long after he got into prison, but not all at once. Even after five months behind bars, towards the middle of August 1996, the distinguished member of the Donosti terrorist cell and bartender at the “Bar Lasarte” in the Old Part of San Sebastian where he helped his father at the bar, he spent most up his time glued to the TV. Unlike other prisoners in the group, he showed no interest in his education.

Now, Lasarte is on his way towards becoming a future psychologist. Like Julia Moreno Macuso, *Bombi*, detained in France, and some other companions of his, Lasarte is studying Psychology through correspondence at the University of the Basque Country. And with results that are more than astounding in comparison with his past record. Out of the 14 subjects that he has already passed, he has an A (9 in Ethology) and B's in subjects such as Human Development Model (8), Socioaffective Development (7) or Psychology of the Personality (8). He is not a unique case. At the University of the Basque Country, smart ETA members abound. And they are finishing up a coat of arms, one with an axe and serpent (ETA's symbols) on it, one which even shines with “cum laude” academic records.

Música Garmendia, Francisco: A (9). González Peñalva, Belén: B (7.6). Arakama Mendía, Iñaki: A (9). Altuna Epelde, Asier: B (8). Galarraga Arrona, José Antonio: B (7,008). Etxebarria Iztueta, Mikel: B (8,513). Having finished up up his academic studies with a “cum laude” while serving a sentence for collaboration with an armed group and possession of explosives, Julen Zabalo Bilbao is now a professor of Sociology at the University of the Basque Country. His doctoral dissertation, directed

by the vice-counsellor of Education of the Basque Government, Ander Gurruchaga, was entitled “The Basque Nation and National Territory” and was defended at the Palma de Mallorca penal institution.

During his imprisonment which stretched to 11 years, one of the most noteworthy tutors that visited him was to become a future member of HB's “National Board” (Governing Body), Txoli Mateos, was also to become his wife. She now teaches as a sociologist at the School of Journalism in Leioa, one of the academic majors where most ETA members are enrolled (25) and has a department nicknamed Terrorism I.

As if they had nothing better to do than knuckle down and work hard, tens of ETA prisoners have achieved -without any tutors to come and visit them, oftentimes not having to sit examinations as they only have to hand in papers to understanding professors- brilliant school records and academic degrees. Enrolled *en masse* at an open university tailored-made to their needs in 1988 by the University of the Basque Country in collaboration with the associate centre of the UNED open university in Bergara where Herri Batasuna was founded by the then mayor José Luis Elgoro, and being beneficiaries of free tuition and grants from the Basque Government, ETA inmates abound in majors such as History, Sociology, Journalism, Education or Psychology. There are also others in more technical fields such as Architecture, Fine Arts, Computer Science, Physical Education and various branches of engineering (Mining, Electronics, and data transmission).

Very few enrolled at UNED.

Every university is, in theory, a bricks-and-mortar institution or an important part of it is, and this one is tailored to the needs of the prisoners. That explains why only 10 inmates from ETA or ETA circles, out of a total that today tops 300, choose it over what the vast majority of the rest of the Spanish prisoners choose along with those citizens who wish to undertake university studies but are unable to attend classes: the UNED open university on account of its hard-won fame for thoroughness and control over the entire evaluation process.

The story goes way back (it formally started in 1988) and is rife with suspicion. It has now reached its end. Faced with denunciations of presumed favourable treatment of ETA inmates (suspiciously high grades, nearly no one having to take tests, etc. , etc.) which were presented by professors from the University of the Basque Country itself (several hundred grouped in the civil platform called professors for freedom), the Spanish Government has just reformed Article 56 of the 1979 General Penitentiary Act which reads: “*Universities that have no agreement with the penitentiary administration shall not be permitted to engage in teaching in an official capacity*”. This came to mean, in fact, the end of the prisoner section at the University of the Basque Country since only the UNED open university or the Universitat Oberta de Catalunya have signed an agreement with Penitentiary institutions.

Last week, Xabier Arzalluz and on Thursday, a Basque nationalist group of professors and tenured professors who deny the obvious called for the Basque university community to use civil disobedience against the measure. “*Either they raise Cain from within the University of the Basque Country or they've had it with me*”, said the PNV leader at a rally. Meanwhile, Valentín Lasarte will try, from his cell in Ocaña (Toledo),

to get them to pass him in two subjects in the third year of his psychology major with high marks in which he has enrolled this year. Like the rest of the ETA prisoners, he has free tuition (independent of what grades he receives unlike what happens at UNED), an annual grant for books from the Basque Government (174.30 euros per person) plus photocopies and whatever learning material that the University of the Basque Country sends him through the Bergara centre.

43,000 EUROS.

These allocations are maintained even if the prisoner has escaped which was the case of Belén González Peñalva (with a lengthy record of attacks and kidnappings to her credit) who escaped in 1998. Then she only had a three-year teacher's degree and now has a Bachelor of Arts degree in Political Science from the University of the Basque Country. According to what the Basque counsellor for Education, Anjeles Iztueta (EA) admitted in reply to a question put by the PP parliamentarian Iñaki Ortega, the ETA member now being held in France received a total of 1,013 euros for the acquisition of learning material between the years 1996 and 2001 -including the time when she was evading justice-. Just in the 2001-2002 school year, the Ibarretxe government allocated over 43,000 euros so that Basque prisoners would not go without books or photocopies of class notes.

Sometimes not even financial aid is the most important question. In 1995, the University of the Basque Country approved a privileged regime for a historical member of ETA, Eugenio Etxebeste Arizcuren, alias *Antxon*, who then was confined to exile in the Dominican Republic. *Antxon* decided to enrol in Biological sciences and the Basque university provided a special telephone line so that he could contact his tutor. Apparently, the group's ideologist only managed to pass a single subject, Mathematics they say. His tutor, Arantza Urkaregi, today a councilwoman for Batasauna in Bilbao, tried to meet with him on at least two occasions on the Caribbean island and she was one of the 60 professors who, last Thursday, demanded that the rector of the University of the Basque Country should respond vigorously to Spanish government in defence of the Basque prisoners.

Valentín Lasarte, who, as we learnt in one of his trials, went out and bought himself a pistol because his own terrorist group had refused to provide him with one, has already topped Etxebeste himself who soon quit his fleeting flurry of studying at the University of the Basque Country. Ever since April, 2000 (the Penitentiary Institution Administration prohibited visits from professors from the University of the Basque Country after a long succession of anomalies), Lasarte has not had any direct contact with his tutors (professors that offer this service from each school or department although they are almost always the same ones). If he served his sentence in one of the French prisons together with other ETA members (and other groups), his visitor over the last few years must have been a Galician that had settled down in the Basque Country who went over to the Basque nationalist cause as evidenced by his changing the first letter in his surname from an original "J" to an "X" in order to make it more Basque. This man went from department to department asking professors to pass on tests to ETA prisoners in France which he would deliver himself personally.

Besides the resulting high marks, the whole evaluation process lacked, in the best of cases, an air of transparency. With the Bergara centre always acting as an intermediary,

for which the University of the Basque Country paid over 11 million pesetas (some 6,611 euros), the examinations went through a great many hands back and forth from the jail. The professor for a given subject at a given moment prepared it, placed it in a closed envelope (not sealed with wax as in the case of the UNED open university) and handed it to the person in his department or university schools that took care of prisoner affairs. Said person would then send it on to a secretary at the Bergara centre who in turn would send it by mail to the prison where the teacher at the centre would make sure it got to the prisoner. Nobody at the University of the Basque Country invigilated the examination taking place and once it was finished, it was placed inside an envelope and started to wind its way back. All in all, it took about a month from one postal service to another, from hand to hand.

“I never was sure who did give the grade”, said a member of the teaching staff who never gave way despite being visited by friends of the prisoners so that he would substitute examinations for papers, a more generalized practice. His point of view is shared by many other professors at the University of the Basque Country: it should be the UNED open university, given its experience, means and suitable structure, that should deal unbiasedly with prisoners, including ETA ones. That is because the University of the Basque Country, as this teaching source claims, fell into a trap in 1988 when, with the excuse of reintegrating the ETA prisoners in society with eminent demise of ETA, agreed to deal favourably with the group of prisoners. *“Those of us who are facing this rotten situations and denouncing what fear and complicity have silenced for many years, we are in fact touching ETA's raw nerve, its prisoners, called in this myth they have of Euskal Herria (the Basque Country), to be the future leaders of the country. The academic degrees have not been given out for nothing...”*

“Permanent rinsing”

Months ago, when Fernando Savater, a former professor at the University of the Basque Country was asked by Gaceta Universitaria about the excellent marked obtained by ETA prisoners at said university, he answered ironically: *“in view of the academic degrees they have been awarded, it makes one feel like advising the minister (of education) that one solution for student failure at school is to lock them up”*. He also averred that *“what is going on at this university is a case of permanent rinsing”*.

There is also the fact that around some fifty professors and students are protected by armed escorts to and from class. Even two bombs have been placed on the centre campus in Leioa. ETA prisoners without students sail through when they take university access tests for people over 25 (last year, 31 out of the 33 that took the exam passed, 19 of whom got top marks).

There is also the case when, tomorrow, the University of the Basque Country will have a new professor. He is in jail awaiting trial for being, according to Judge Garzón, the designer of the financial apparatus of ETA. His name is Joseba Garmendia, a councilman for Batasuna, who was released from jail in January to take up post of applied economics at the University of the Basque for which there was no competitive examination or process. in contrast to his competitors and will take possession of his credentials at the Madrid office of Judge Garzon. Afterwards, he will go back to jail in Aranjuez and will await trial there. He will lose his post only if he is convicted.

3.5.4.- *La Gaceta Universitaria*, February 19, 2004

The scandal uncovered by Gaceta Universitaria

The University of the Basque Country has more students in jail than the UNED open university

In contrast with UNED students, those enrolled in correspondence courses offered by the University of the Basque Country do not have to be transferred to a penitentiary centre to sit an examination.

The number of inmates in Spanish jails that study through the University of the Basque Country outnumber those doing so through the UNED (Universidad Nacional de Educación a Distancia) open university. According to the latest information put up on the web site of the Ministry of the Interior on training and education in penitentiary centres, 236 prisoners pursued their studies through the University of the Basque County while 232 do so through UNED.

The University of the Basque Country is one of the few universities that offer university courses through correspondence.

According to Juan José Álvarez, director of the associate centre of Bergara (Guipuzcoa), this is due to the fact that *“those students who enrol at the University of the Basque Country do not have to travel to take their examinations which in the UNED system they have to move to those penitentiary centres which have been prepared for examinations to take place. This moving around can bring about an alteration in the prisoner's life to which not every inmate is ready to submit”*.

Whatever the reasons might be, one thing that is certain is that the University of the Basque Country is one of the few Spanish universities that offer the possibility of an education where those who are enrolled do not have to show up for class.

“Practicums may be substituted by papers”

When a prisoner enrolls in some academic major with practicums at the University of the Basque Country, there is no way that the student can fulfil this requirement since the institution does not have the suitable means to make it possible. This can give way to conflicts with external students since occasionally inmates are exempted from practicums in exchange for doing some papers. However, professor Juan José Álvarez does not consider this to be a comparative since *“the same thing can be done with external students, according to their individual situation”*

The same goes for class attendance which is impossible in the case of prisoners and required of the students in some subjects at the University of the Basque Country. *“No regulation at any public university”*, Álvarez explains, *“includes this requirement although it is true that every professor may take it positively into account when evaluating a student. In any case, it should be pointed out that data transmission practicums are counting more and more, which goes for external students and prisoners”*.

Agreement with the UNED open university

In order to go ahead with it, they can count on support from the UNED centre directed by Álvarez, who is also a tenured professor at the Basque institution. The accord was made official in 1988 through an Agreement in which the Bergara centre committed itself to handling the administrative paper work of tuition, scholarships, and giving out examinations for the University of the Basque Country. The accord is not without its polemical side owing to suspicions of corruption arising from the evaluation system used for ETA prisoners enrolled at the public Basque institution which was uncovered by *Gaceta Universitaria* (see issue #395 dated March 4, 2002) and now investigated by the Spanish government.

UNED has no academic contract with prisoner students from the University of the Basque Country

For Álvarez this makes calling into question work that has been going on over the last 26 years and *“on no account does it include an academic contract with the prisoner. The UNED open university has its own tutor programme for its prisoners who are enrolled and we took it upon ourselves to handle theirs until the Penitentiary Institution Administration banned the University of the Basque Country tutor programmes in 2002. Up to then, we were the one charged with getting lists of professors to volunteer to go to penitentiary centres to give classes to the prisoners enrolled at their university and conveying the answer from the Penitentiary Institution Administration which always went through some sort of selection process”*.

The direction of the associate centre in Bergara assures that they also have nothing to do with the examinations. *“Our mission is to pick them up in envelopes that are prepared and sealed by professors, take them to the Penitentiary Institution Administration so that they can distribute them at the various penitentiary centres and send them back once they are done so that they can be corrected at the University of the Basque Country. Throughout this process, the security measures taken are the ones demanded by the Penitentiary Institution Administration and the ones charged with invigilating the examinations are the ones designated in each prison”*. In answer to accusations of lending support to a corrupt system, Alvarez points out that *“when everything is proven, we shall [be able to] defend ourselves”*.

3.5.5.- *El Mundo*, July 29, 2003:

TERRORISM AND THE UNIVERSITY

Many ETA prisoners are passed without having to sit examinations after allowing them to hand in papers instead. It all points to academic disciplines pertaining to departments controlled by professors sympathetic to the radical Basque nationalist cause. 44% of ETA prisoners study at the University of the Basque Country

JOSEAN IZARRA

VITORIA.- Nearly half of the ETA prisoners jailed in Spanish prisons are enrolled in university courses given by the University of the Basque Country. What is more, many of them pass the course without taking any examination.

Prominent ETA leaders, collaborators and even gunmen with blood on their hands pursue their studies from their prisons, directed by professors from school departments forming a part of the institution preside by Manuel Montero.

According to university sources, 195 ETA members have taken advantage of an agreement signed by the University of the Basque Country and the Bergara centre of the UNED open university which makes the University of the Basque Country the only academic institution in an autonomous region to offer a service specifically for inmates.

The 44.3% of the 440 ETA prisoners jailed were enrolled in the last academic term. This elevated percentage -in the University access bridge course or in different academic majors- contrasts sharply with the rest of the university inmates who, in the best cases, do not go much beyond 2 % with illiteracy rates hovering around 10%.

Nevertheless, the amazing academic qualification of the Basque prisoner group eludes the usual system used by inmates that turn to the UNED open university. Not a single one of the over 200 ETA members has enrolled through UNED. Instead, every single one of them is directed, tutored and supported by professors from the University of the Basque Country.

This privileged treatment is not only an affront to the rest of the inmates, it is also an affront to the students at the University of the Basque Country itself. The debate opened at the university institution is not about the right of prisoners to academic instruction but, instead, about the procedure through which these prisoners are pursuing their studies. The debate has been rehashed over and over and has forced the rector of the university, under pressure from pro-Batasuna trade union organizations, to come out in defence of the current situation of the ETA prisoners.

Some educators recall the 1995 decision made by the University of the Basque Country to set up a special phone line between the ETA leader Eugenio Etxebeste *Antxon* and his tutor at the School of Biological Sciences so that Etxebeste could continue with his studies from the Dominican Republic. The University of the Basque Country maintains an accord with the Bergara centre of the UNED open university, signed in December, 1988 and extended from year to year. In exchange for financial compensation, the latter commits itself to perform “*the functions of administrative paperwork and support for the instruction of the students at the University of the Basque Country held at centres run by the Penitentiary Institutions*”.

Lasat April 8, the Minister of the Interior informed the rector of the University of the Basque Country his intention of suspending the direct role of the tutors which was taking place in December and April during each school term and that he was suspending travel of professors from the University of the Basque Country to prison institutions. The decision of the Penitentiary Institutions Administrations included substituting these one-on-one tutor sessions with written consultations and even the authorization of face-to-face contacts when concrete justifications are provided.

According to what EL MUNDO has been able to learn, the ETA prisoner group has opted to enrol in half a dozen university schools made up by departments controlled by professors who are ideologically in tune with radical Basque nationalism. In addition to the approximately thirty ETA inmates who, over the last school term, took the

University access bridge course, the ETA prisoners have opted for university majors such as History, Philosophy, Journalism, Law, Labour Relations, Political Science and Sociology.

“The choice of their studies is no coincidence. They make up groups in each jail and they select the same majors in which they know that they professors will have no problem in passing them without requiring anything”, claimed a Basque professor who requested that his/her name not be given out for reasons of his/her personal safety.

According to various educators, there is a generalized practice that consists of passing ETA inmate students after having them hand in papers during the academic term. *“Whether you give an examination or not is an indication of where you stand politically and it can result in nasty things happening to you”*, points out another professor at the Ibaeta campus in Guipuzcoa who knows from first-hand experience about “visits” made to professors' offices in order to make the prisoners' academic careers easier while they are behind bars.

3.5.6- *El Correo Gallego*, December 6, 2003:

The PNV makes a deal with Batasuna so that ETA prisoners can back to their studies.

The PNV makes a deal with Batasuna so that ETA prisoners can go back to their studies at the University of the Basque Country and can have financial support for their studies. The Batasuna MP that made the deal with the PNV concerning the University Act has been prosecuted for making threats against a dean.

Madrid. EUROPA PRESS

The MP for the *Sozialista Abertzaleak* (Basque nationalist socialists), formerly Batasuna, who made the deal with the PNV concerning the Universities of the Basque Country Act, Aritz Zubimendi, has been prosecuted for making threats against a dean at the University of the Basque Country. Zubimendi is the Batasuna representative on the Education Commission in which the report on this Act of parliament was drawn up with over 50 amendments from the Basque nationalist coalition were included, according to statements made to Europa Press made by the spokesman for the Partido Popular parliamentary group on these matters, Iñaki Ortega, who specified that the SA amendments that were accepted numbered more than 50 and not 32 as Zubimendi claimed.

Among the amendments agreed to by the PNV and Batasuna is the one that opens up the possibility of ETA prisoners being able to study at the University of the Basque Country and that the Basque Government will facilitate scholarships and necessary financial aid so that they can pursue them. Another one of the amendments that were accepted contemplates paying Basque-speaking professors more than Spanish-speaking ones.

The prosecution of Aritz Zubimendi took place at the beginning of September when the Prosecutor's Office from the High Country of the Basque Country called for 15

months of imprisonment and ineligibility of the SA parliamentarian from holding a parliamentary seat for four years on account of causing public disorder and making threats.

According to the denunciation that the University of the Basque Country presented to the High Court of Justice of the Basque Country, competent in this matter, the incidents took place on May 9, 2002 at the Law School in San Sebastian where elections were being held at a faculty senate meeting. A group of radical youths stormed into the place where ballot boxes were placed and prevented the students from exercising their right to vote.

The dean of the Law School, Francisco Javier Ezquiaga, who presides over the electoral board, asked the youths to disperse and when he tried to prevent them from throwing a can of paint over the ballot boxes, several people stopped him from making his way over there, one of whom of Aritz Zubimendi.

The dean ordered security to dislodge the premises and as they were doing so, the SA parliamentarian went over to the dean, thrust her finger into his chest and told him that she has taking note of who gave the order to dislodge, adding that he had better take care because one day he could be hit with an umbrella and that one of these days when he leaves the School, something might happen to him.

After these incidents, the rector received a letter in which he was urged to leave the Law School accompanied by the phrase “Gora Euskadi ta Askatasuna” (Long live the ETA) was emblazoned on it. A few days later, the dean was surrounded at the bar on campus by a good number of people that hurled insults at him.

The object of prosecution for these incidents, the parliamentarian Aritz Zubimendi, is the representative for Sozialista Abertzaleak (SA) on the commission handling the Universities Act in which the SA had made a deal with the PNV that allows ETA prisoners to study at the Basque University in spite of the fact that General Penitentiary Act was recently modified in order to prevent inmates from the terrorist group from having privileges at this university. Moreover, said Act includes having the Basque government financing their studies.

Article 8 of this Act includes in point two the following: *“The Government, in order to prevent anyone from being excluded from gaining access to the Basque University System for financial reasons, deprivation of freedom, health problems, being handicapped, or any other type of circumstances, shall promote equal opportunity policies by offering scholarships, financial aids, and financial credits by developing a policy aimed at overcoming social, financial and geographical barriers”*.

Another amendment included in point three of the same article points out that these policies shall be pursued *“by using regulatory accords of a public or private nature of university level bids at which these financial aids are aimed”*.

According to information to which Europe Press has been able to gain access, the latest budget put together by the University of the Basque Country allocated an expenditure of 488,015 euros for inmate students, an amount reflected in the overall budget of the University and which does not even include expenses that other departments have regarding these students nor the cost of materials which are subsidized by the Basque

Government.

Coordination with universities in the French Basque Country and Navarre

According to Iñaki Ortega's explanations, the text in the Universities Act also paves the way for Basque-speaking professors to be paid more than Spanish-speaking ones. In article 33, it reads that teaching and research staff, public servants and contracted employees, will be given paid complements in accordance with criteria that might be considered appropriate, among which include language skills.

The spokesman for University matters for the Partido Popular also highlights the SA's amendment which is present in the text in which it is agreed to “*promote and develop accords with universities in Navarre and the North Basque Country insofar as they so desire and particularly regarding the right to free circulation of students*” and that “*standardized mechanisms for the admission thereof into the Basque university system*”.

The lehendakari's broken promise

Iñaki Ortega considers that the Universities Act deal done between the SA and the three-party coalition government has meant that the lehendakari (Basque president) has broken his word about making no deals with Batasuna as long as that coalition refuses to condemn violence.

The Basque Partido Popular leader also recalls Josu Jon Imaz's statements in which he assured that they would not make any deals on “*relevant questions*” with the SA. Ortega wonders “*whether higher education is relevant or not for the PNV*”.

In his opinion, “*Batasuna has become the Political Group in the Basque Parliament that decides which laws are passed and which ones are not*”. “*The price that the Basque Government has to pay is its having to include over 50 amendments that aim to radicalize the Act*”, he argues and he closes by saying that “*once again, Anjeles Izutueta has gone ahead of the Basque Government in making deals with Batasuna, thereby radicalizing the Government's policies*”.

3.5.7 El Mundo, September 21, 2003:

The Arrasate (Mondragón) City Council has passed a resolution to pay for scholarship grants for 10 ETA prisoners with blood on their hands. Ortega Lara's abductor included

EUROPA PRESS

Madrid- The Arrasate (Mondragón) City Council passed a resolution on September 15 to pay for invoices of books corresponding to the 2002-2003 academic term for 10 ETA prisoners with blood on their hands who hail from this locality. The said invoices are all of the same amount, 120 euros each, without specification for which books and without V.A.T.

The invoices were sent to the City Council by the co-ordinator for the Studies Programme For Inmates at the University of the Basque Country, accompanied by a letter in which she asks that once the request for the payment thereof is approved that they “*kindly*” send a cheque for the total amount “*as in previous academic terms*”.

However, in relation to what the City Council had been sending, only five of the ETA prisoners that figure as being enrolled in some academic major while the other five are not enrolled at the University of the Basque Country. In spite of this anomaly, it is the University of the Basque Country that sends the invoices the Arrasate City Council.

Inmate students with blood-stained records

Of these prisoners, some have rather bloody records such as Jesús Mari Zabarte Arregui, who had been a butcher in his town and when he was detained by the Civil Guard, he was the leader of the “Donosti” terrorist cell in which had taken part in over twenty attacks and was accused of nine murders.

In this statement to the Civil Guard, he explained that, after participating in a machine-gunning of several national policemen that were having lunch at a bar in Renteria in which four were killed and two were wounded, the ambulance that was carrying one of them to the hospital was stopped whereupon his group finished the victim off.

Invoices without V.A.T.

Zabarte Arregui is not on any list as being enrolled in any academic major but the University of the Basque Country does send an invoice, without VAT, from a bookshop in Arrasate for a total of 120 euros. Neither is Jon Agirre Agiriano, who has a record of murdering a 13 year-old boy who was killed when a bomb aimed at a Civil Guard and placed under his car went off, enrolled at the University but his invoice is exactly the same as before.

On this list of beneficiaries of the book scholarship grant approved by the Arrasate City Council, there is also the man who kidnapped Ortega Lara and Julio Iglesias Zamora. Here too there is no evidence of any concrete studies on his part.

Josu Arkauz Arana, alias *Josu de Mondragón*, who also fails to appear as a student enrolled at the University of the Basque Country, was sentenced for, among other crimes, having sent a letter bomb to the then Minister of Justice, Enrique Múgica and for having maimed a policeman's neighbour, the policeman having been a recipient of a letter bomb that Josu Arkauz Arana had sent him.

Gabriel Urizar Murgoitio, who was convicted of the murder of a mechanic at a bar, is the fifth one on this list who fails to show up on the enrolment lists of the University of the Basque Country.

The five ETA members that are enrolled

The other five who are enrolled are: Amaia Arrieta González, in Psychology, accused of recruiting various people for ETA; Jose Ignacio Gaztañaga Bidaurreta, in Geography y History, convicted of murdering a national policeman ; Aratz Gómez Larrañaga, on

Journalism, convicted of attempted theft of a license plate making machine; Fermín Sanpedro Larrañaga, in Computer Science, accused of gathering information on the ferries that sail out of Santander, and Enrique Letona Biteri, enrolled in philology.

The latter is in prison and sentence to over 200 years for the murder of six people, one of who was in a late stage of pregnancy.

3.6.-ETA'S LAWYERS

3.6.1.-Introduction:

There is a firm and generalised conviction that the lawyers that defend ETA prisoners act as couriers for this terrorist group and thus aid in its cohesion. It should not be forgotten that during the first few years that the prison dispersal policy was in force it was the lawyers who, on behalf of their clients, claimed the right of convicts to serve their full prison sentences meaning that they chose not to take advantage of the reinsertion policy. Under Rule of Law, however, convictions are of little worth if not substantiated by actions. At the beginning of 1993 the lawyers Txemi Gorostiza and Arantxa Zulueta were caught speaking with ETA member De Juana Chaos about perpetrating attacks against prison officials but since this information was obtained illegally, no action could be taken. This incident highlights two facts: 1) that ETA used lawyers, as was suspected, to deliver orders and 2) that Rule of Law prevailed by putting the confidentiality of the lawyer-client relationship over and above the fight against terrorism; and this despite the fact that prison official José Ramón Domínguez was killed in a terrorist attack a mere 10 days after the lawyer by the name of Matanzas spoke out in favour of perpetrating attacks against prison officials. In May of 2003, the French police arrested lawyer Unai Larrea for having allegedly delivered written instructions from ETA to an inmate and member of the terrorist group. He has currently been indicted for conspiracy to commit terrorism. One month later the lawyer Itziar Larrea was arrested for having allegedly delivered correspondence to ETA convicts.

During the course of ETA's history, lawyers who supposedly were simply defending their clients have been found to be involved in a number of different affairs. In November 1990 the lawyer José María Elosua was imprisoned for having allegedly acted as the intermediary in the kidnapping of Emiliano Revilla. The lawyer Álvaro Reizabal was sentenced in 1993 to three years imprisonment for having mediated in the collection of ETA extortion money. The lawyer Carlos Trenor was imprisoned in October 2000 for his alleged participation as the party responsible for the ETA-EKIN plot; a case with which the lawyer Txema Matanzas was also associated. Xavier Alegria, member of the illegal Batasuna party, accused the lawyer Jon Enparantza of forming part of ETA's political network in a statement made on 23 February 2003 to the Civil Guard. In March 2003 Txema Matanzas was called by Judge Garzón to testify because his name had appeared in the police reports on the inmate solidarity organisation known as Askatasuna, made illegal in February 2002. Prior to that, in 2001, Judge Garzón filed an accusation against three lawyers -Txema Matanzas, Ainhoa Baglietto and Julen Arzuaga- for membership in the armed terrorist organisation for

allegedly forming part of the illegal inmate support organisation known as Gestoras Pro-Amnistía. As part of another initiative carried out in November 2003 against Gestoras Pro-Amnistía, determined by judicial decision as being part of ETA, the lawyers Arantza Zulueta, Zigor Reizabal and Aitor Ibero were arrested. As part of this operation, the offices of 11 lawyers were searched: Aitor Ibero, Ainhoa Baglietto, Ainhoa Erkizia, Zigor Reizabal, Jon Enparantza, Unai Errea, Julen Arzuaga, Joseba Agudo, Iñigo Elkoro, Amaia Izko and Juan Carlos Loldi. Court case 18/98 against ETA-EKIN, initiated by Judge Baltasar Garzón in 1998 and which includes action taken against Gestoras Pro-Amnistía and Askatasuna, is still open and all indications point to a hearing to commence in November 2004.

3.6.2.- Selection of press articles:

3.6.2.1.-On parole under police surveillance

The first instance of an ETA lawyer being indicted for collaborating with terrorists

EFE

PARIS.- The lawyer Unai Errea, one of the habitual defenders of members of ETA arrested in France, was indicted for conspiracy to commit terrorism and was released under judicial control according to informed sources. Sources went on to say that Paris anti-terrorist Judge Laurence Le Vert also indicted Errea for having delivered documents to a prisoner acting under the protection of his status as a lawyer. This is the first time that a lawyer defending ETA suspects has been indicted for alleged collaboration with the terrorist group.

Errea, whose law office is located in San Sebastian, was arrested on Monday at the Paris courthouse suspected of having delivered “documents” written in the Basque language to an ETA member being held in the La Santé prison in Paris on the 13th of this month. The prisoner in question was the alleged ETA activist Josetxo Otegi Eraso, arrested in Pau (Atlantic Pyrenees) in December 2002 according to the Askatasuna organisation in a communiqué in which the lawyers who normally defend ETA inmates spoke out against Errea’s arrest.

The lawyer was arrested on Monday after having defended the alleged ETA member Gaxuxa Arrambide in her appearance before an anti-terrorist judge for indictment and subsequently before the Freedom and Arrest Judge who ordered the imprisonment of the young woman. The lawyer was arrested in the presence of representatives of the Public Prosecutor’s Office and the Paris Lawyers’ Association. Upon arrest, Errea was frisked and his mobile phone and documents unrelated to the defence of his clients were seized. He was then taken into custody by Officers of the National Anti-terrorist Division (DNAT) until his arraignment today.

Another lawyer and defender of ETA members and a colleague of Errea, Jon Enparantza, was arrested in the year 2000 at the Paris Courthouse but for an ordinary offence. He was accused of being responsible for damaging the door to one of the rooms of the Paris Correctional Court. Enparantza was sentenced in February 2002 to make

payment in the sum of 1,500 euro for having, according to the prosecutor, kicked in the door of the defendant's cubicle during a hearing of alleged ETA members on 9 October 2000 at the Correctional Court. The lawyer filed an appeal and the case will be heard by the Paris Appellate Court on 3 June.

El Mundo, 22 May 2003

3.6.2.2.-A lawyer and defender of ETA inmates arrested in Paris for alleged links to the terrorist group

EFE

The Basque-Spanish lawyer **Itziar Larraz**, habitual defender of alleged ETA members arrested in France, was arrested herself on Thursday according to court sources. Said sources were not able to provide further details on the circumstances of Larraz's arrest taking place less than one month after the arrest of another habitual lawyer of alleged ETA members, Unai Errea.

According to the Askatasuna organisation Larraz, who is a member of the San Sebastian Lawyers' Association, was arrested by the French judicial police around noontime as she was leaving the Fleury-Mérogis prison on the outskirts of Paris subsequent to her visit to alleged ETA members being held there. Errea, who was also visiting clients at that same prison, was witness to the arrest and he allegedly learned that she was accused of having delivered correspondence to terrorist group inmates according to an Askatasuna communiqué.

This organisation, fruit of the merging of Gestoras pro Amnistía and the coordinating body for ETA inmate support committees, "vigorously" denounced the arrest, requested information regarding Larraz's situation and called for her "immediate" release. Unai Errea, arrested on 19 May in Paris after having accompanied an alleged ETA member before an anti-terrorist judge, was charged two days later with conspiracy to commit terrorism and was subsequently released under judicial control. Errea was charged with allegedly having delivered documents to an ETA inmate member acting under the protection of his status as a lawyer. This was the first time that a lawyer of ETA members was indicted in France for alleged collaboration with the terrorist group.

El Mundo, 13 June 2003

3.6.2.3.-The lawyer Txema Matanzas refuses to testify before Garzón after having insisted that he is not a member of ETA.

Arriaga, spokesperson for Gestoras, insists that he has nothing to do with Askatasuna

EFE – Madrid

The lawyer José María Matanzas refused yesterday to testify before National Court Judge Baltasar Garzón after insisting that he is not a member of ETA. The same statement was made by the spokesperson for Gestoras pro Amnistía Jesús Felipe Arriaga who claimed to have nothing to do with Askatasuna. According to court sources the judge, who did not adopt any precautionary measures concerning Matanzas and

Arriaga, summoned them for a statement because their names appeared last month in police reports that led to the arrest of five of the alleged leaders of Askatasuna, successor of Gestoras Pro Amnistía, whose activities were suspended by the Judge in February of last year and in November 2001 respectively.

Both were summoned to testify on 17 February but failed to appear on that occasion due to a formal defect in the summons according to allegations made yesterday before the Judge. Antton Ollokiegi did, however, respond to that first summons. Mr. Ollokiegi seems to have been linked to an act, organised by the platform Bai Euskal Herriari on 4 January at the Joxean Gaska sports centre in San Sebastian, that put the finishing touches on a demonstration by Askatasuna. During this act ten individuals with ties to ETA but with no pending criminal charges filed against them were on stage proclaiming their will to participate in the “national construction process” and exhibiting the EHNA, the “Basque Identification Card” implemented through the Assembly of Basque Municipalities (Udalbiltza).

Diario de Noticias, 4 March 2003

3.6.2.4.-Garzón investigates three lawyers of Gestoras

Yesterday Judge Garzón ordered the seizure of the computers of three lawyers of Gestoras Pro Amnistía before taking a statement from 12 of the 13 people arrested last Wednesday with ties to this organisation the purpose of which is to provide economic support under a legal guise to ETA prison inmates.

Juan Mayoral/CANOA

At midday on Friday and subsequent to consultations with the Lawyers' Association, several police officers proceeded to the headquarters of Gestoras in Bilbao and Hernani (Guipúzcoa) and confiscated computers belonging to **Arantza Zulueta**, **Zigor Reizabal** and **Aitor Íbero**. The first habitually defends ETA members arrested in Vizcaya. She was investigated years ago following recordings made at the Soto del Real prison that showed that both she as well as another lawyer, **Txemi Gorostiza**, spoke with ETA member **Iñaki de Juana Chaos** about perpetrating terrorist attacks against prison officials. The National Court acquitted both of them, however, ruling that lawyer-client conversations are a private affair and therefore inviolable. The judgement was thus based on the right to defence and professional secrecy.

Zigor Reizabal, who has been defending ETA prisoners at the National Court for a little over a year, is the son of lawyer **Álvaro Reizabal** who stood trial in his day for an alleged link to the collection network of the so called revolutionary tax. For several years he has been the legal representative, along with other colleagues, of ETA members captured in Guipúzcoa.

For that reason the commencement of the interrogation of those in custody was delayed until 14:00 after one of them, **Gaizka Larrinaga**, was released given that he had no ties with Gestoras Pro Amnistía. Once the incommunication order was lifted the first three to proceed to the Judges chambers were **Julen Larrinaga**, brother of the detainee who was released, **Jon Imanol Beaskoa** and **Jagoba Terrones**. They were defended by four lawyers from gestoras: **Arantza Zulueta**, **Ainhoa Baglietto**, **Iker Urbina** and **Amaya**

Izko. Court sources informed **CANOA** that Garzón had “a wealth of evidence” including documents (those seized from the three lawyers and others), police reports and telephone conversation recordings indicating that the twelve detainees are members of ETA.

Canoa, 3 November 2003

3.6.2.5.- Eleven lawyers file for legal protection against the search of their offices

DIARIO DE NOTICIAS – Pamplona

On Thursday a total of eleven lawyers filed two identical petitions for legal protection to the Lawyers’ Associations of Gipuzkoa and Navarra following searches of their offices by National Police Force officers on Wednesday in an operation that resulted in the arrest of thirteen members of Gestoras Pro Amnistía. According to the denouncement made by this group in a communiqué, the offices of the eleven lawyers remain closed and the latter do not know the amount of material seized. Gestoras denounced the action as being “incomprehensible and illegal.”

In Gipuzkoa the offices of the following lawyers were searched: Aitor Ibero, Ainhoa Baglietto, Ainhoa Erkizia, Zigor Reizabal, Jon Enparantza, Unai Errea, Julen Arzuaga, Josega Agudo, Iñigo Elkoro and Juan Carlos Loldi. Amaia Izko was the only lawyer from Navarra who was unable to enter her office subsequent to the searches ordered by the National Court Judge Baltasar Garzón and yesterday she reiterated her complaint before the Lawyers’ Association. Gestoras explained that to date the Lawyers’ Association of Gipuzkoa had contacted Garzón requesting that he “remedy this situation and allow the lawyers to proceed with their professional activity.”

Diario de Noticias, 3 November 2003

3.6.2.6.-Garzón charges 14 member of Gestoras with being members of ETA

Three lawyers were among those charged

National Court Judge Baltasar Garzón has filed charges against 14 members of Gestoras Pro Amnistía, including the lawyers Txema Matanzas, Ainhoa Baglietto and Juan Arzuaga, for membership in the terrorist group ETA. In this suit (declared secret and which includes an investigation of Gestoras pro Amnistía’s relationship with ETA), three lawyers of Gestoras pro Amnistía figure among the accused: Txema Matanzas who has already been indicted in relation with the “Ekin case”, Ainhoa Baglietto, a habitual defender of ETA prisoners before the National Court and the lawyer Julen Arzuaga. Also among the accused is Mikel Korta, indicted for the “Xaki case” – ETA’s international operation and ex convicts such as Mikel Sarasketa. The rest of the new suspects in this case are: Jorge Luis Arredondo Basterretxea, Joseba Iñaki Reta Frutos, Joseba Gotzon Amaro López, José María Olabarrieta Olabarrieta, Aitor Angel Jugo Alvarez, Maitane Mendez Bastida, Jesús Felipe Arriaga Ibarra, Fernando María Lejarza Eguren and Jorge Chocarro Zoco.

The Judge took the decision to file these new accusations based on police reports and action taken in this operation and will set a date to take a statement from the accused

once he has examined the documentation seized from Gestoras headquarters. In the order of commitment to prison issued to the 11 members of Gestoras, Garzón affirmed that the lawyers of this organisation obtained “*important information for the internal security of ETA*” from the records of criminal proceedings in which its members are involved “*going far beyond the right to defence as will be shown in this case*”. He went on to state that the implementation by Gestoras of the terrorist group’s guidelines is possible “*because of the presence of ETA-EKIN members in its administrative structure*” who also participate in the “*recruitment of members for ETA’s operational structure*”. “*Following orders from the terrorist organisation*” Gestoras, through EKIN delegates who go by the name of “ADIDAS”, are mostly in charge of providing economic support for ETA convicts in order to guarantee internal cohesion and submission to the discipline of the terrorist group.

In this sense Garzón pointed out that Juan María Olano, for whom an international arrest warrant for extradition and imprisonment has been issued in connection with this case, is one of those mainly responsible on the national level “*of the integrated ETA-KAS-EKIN structure that goes by the name of Gestoras Pro Amnistía*” along with Julen Celarain, one of the 11 members of this organisation now in prison. He also announced that “*an investigation is under way on all sources of funding for Gestoras and its organisations as well as the movement of funds (...) towards other structures that participate with or have ties to the same criminal network (HB, AEK, and publishing companies)*”.

Terra/EFE, 22 November 2001

CONCLUSIONS

Currently, and for few years time now, ETA is the main source of violation of human rights in the Basque Country and the whole of Spain. They have committed 845 murders, 3000 terrorist attacks with thousands of variably injured, 48 kidnappings. We also have to take into account that more than 42.000 people only in the Basque country and Navarre, out of a population of 2.600.000, are considered a target for the terrorist band. Many of them have to adopt security measures that restrict their liberty or have to accept a permanent police escort. They are under a similar pressure to those who suffer psychological torture, which is in many cases reinforced with material attacks, burning their properties for example, or different physical aggressions. An uncountable amount of inhabitants have decided to abandon their homeland in the last 25 years to get away from this brutal persecution.

Torture was undoubtedly a common practice before 1979 (year the Spanish Constitution was approved) and was scarcely persecuted until round about 1985-86, but from this date onwards important efforts have been made to eradicate this, investigating the grounded accusations and punishing the people responsible. Furthermore, intolerance against torture and ill-treatment has been linked to an incredible improvement of law-enforcement efficiency, which can be proved by the huge amount of detainees that are found to be ETA collaborators or activists, recognised by the band who describes them as “prisoners and political victims of reprisal” .

ETA activists who secluded in Spanish and French prisons (round about 696 including pre-trial prisoners) have a similar penal regime to the rest of the prisoners. None of their legal rights has been violated, despite ETA’s systematic campaigns against their reclusion conditions and the “dispersal”. They have the same access to sentence redemption and social rehabilitation as common prisoners. Reported accusations of ill-treatment in prisons and inhuman reclusion regimes are absolutely incredible.

Nevertheless, ETA has exploited the benefits achieved with routine torture reports, however unfounded these reports may be. They have instructed their militants on how to make these systematic accusations, and they justify police achievements as a product of torture. ETA also mobilises a huge network of lawyers in means to achieve these goals, apart from the associated press and organisations which are supposedly dedicated to watch over human rights in the Basque country, and that ignore completely the numerous aggressions ETA is responsible for, which really attempt against Human Rights. Some Human Rights organisations are too credulous with these reports and tend to ignore the explanations and information coming from other circles, especially those coming from Basque civil groups or the organisations of victims of terrorism.

The result is that ETA continues to obtain important advantages in routine reports, however unfounded these might be, in certain circles people believe them. ETA manages to justify partially or totally its barbaric crimes as a way of “defensive violence” against a state that systematically violates Human Rights, and in this way they enjoy a certain status which is completely unacceptable, raises the morale of their own people, above all, because it reduces the credibility and legitimacy of those who ETA

defines as “enemies of the Basque people”, in other words, those people who are threatened because they peacefully and legally fight against ETA’s totalitarian aims

RECOMMENDATIONS

1.- The organisms for the defence of Human Rights should contrast the reports of ETA members with the information submitted by the administration accused, and in particular, the information drawn up by civil groups and victims of terrorism associations, such as Iniciativa Ciudadana Basta Ya, Fundación Miguel Angel Blanco, Covite, AVT, fundación Víctimas del Terrorismo, etc. Information supplied by the independent press, the magistrate professionals associations, the prison guards and the police unions that usually deal with ETA detainees and prisoners is also worthwhile considering.

2.- The reports evaluating compliance with Human Rights in Spain should take into account aggressions against Human Rights ETA and their satellite organisations systematically commit. Accepting the false victimisation of ETA jeopardises the unfair situation of the real victims of terrorism.

3.- Organisations that defend Human Rights should condemn these torture accusations and ill-treatment that prove to be false and clearly tendentious once they are investigated. Likewise, the general public and the organisms that watch over Human Rights should be informed of the manipulative, un-informative and injurious character of these accusations and the propagandistic campaigns divulging them in order to favour and justify terrorism and its objectives.