

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.

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