

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 see 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 know 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 doctor 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 they 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.