

Spain

IHF FOCUS: Torture and ill-treatment; judicial system; prisoners' rights; asylum seekers and refugees.

The central human rights problems in Spain remained the torture and ill-treatment of detainees, encouraged by long incommunicado detention. Other misconduct by law enforcement officials included unnecessary fatal shootings and the rape of women in custody. Immunity against prosecution – enjoyed both by the police and high-ranking political officials who had been involved in anti-terrorist activities in the 1980s – characterized the weak commitment of Spanish courts to punishing human rights abuses.

In September 1998, ETA (*Euskadi Ta Askatasuna*), a Basque armed group, declared an indefinite cessation of actions, beginning on 18 September. After over a year of peace, ETA unexpectedly cancelled the cease-fire as of 3 December and again threatened terror. The day before, thousands of people in the Basque country had demonstrated against the ETA threats.

Torture, Ill-Treatment and Misconduct by Law Enforcement Officials

Torture and Ill-Treatment

The 1996 Spanish penal code explicitly prohibited torture and ill-treatment and provided for extended penalties for those found guilty of such abuse. Spanish authorities on several occasions claimed that

torture was “practically eradicated” in Spain.¹ But in 1997, the UN Committee against Torture (CAT) noted that it had received “frequent complaints of acts of torture and ill-treatment,” some incidents of which appeared to “constitute manifestations of racial discrimination.” The CAT also expressed its concern that judges still accepted statements incriminating other co-defendants that had been obtained under duress or torture.² According to Amnesty International, members or suspected members of the Basque armed group ETA have alleged they were tortured or ill-treated by the civil guards (*Guardia Civil*) or the national police (*Policía Nacional*) during incommunicado detention that could last between three and five days,³ a period far too long by international standards.

The forms of torture included asphyxiation by placing plastic bags over the head; repeated kicks and blows to the head or testicles; forcing the victim to bend up and down repeatedly; applying electrodes to the victim's penis, stomach and chest; and sexual abuse and harassment.⁴

In a reply to Amnesty International's allegations, the director general of the cabinet of the interior minister replied in June that he had absolute confidence that each and every member of the security forces fulfilled their functions well and appropriately and that, as regards the treatment of any detainee in Spain, he had no doubt that the constitutional guarantees and rights of the detainee were incisively and scrupulously implemented.⁵

¹ See *Third periodic report of Spain to the UN Committee against Torture* (CAT/C/34/Add.7).

² *Concluding observations of the Committee against Torture: Spain. 27/11/97, A/53/44, paras.119–136, 10–21 November 1997.*

³ *Amnesty International Concerns in Europe, January–June 1999, August 1999; Amnesty International Concerns in Europe July–December 1999, March 1999.*

⁴ *Amnesty International, Spain: A Briefing on Human Rights Concerns in relation to the Basque Peace Process, 24 June 1999.*

⁵ *Amnesty International Concerns in Europe – January to June 1999, August 1999.*

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Misconduct by Police

According to article 5(2) of Law 2/1986 (*Ley Orgánica 2/1986 de los Cuerpos y Fuerzas de Seguridad del Estado*), law enforcement officials were allowed to use firearms only where there was a reasonably serious risk to the life or physical integrity of an officer, or to that of a third person. A circular of 13 May 1998 on the use of official cars, issued by the *Dirección General de la Guardia Civil*, stated that officers should not give chase where danger could be caused to themselves or to others.⁶

However, in several cases, police resorted to shootings, which appeared to involve excessive and unnecessary use of force.

■ In March, an 18-year-old youth, Moisés Esperanza, died after being shot in the back by an officer of the local police in Sabadell (Barcelona) at the end of a car chase.

■ In April, Miriam Gómez Cuadrado, died after being shot by a civil guard officer. She had been travelling as a passenger in a car driven by a friend Beltrán Sánchez Pérez, and was returning home to Bellavista (Seville) from a discotheque. Sánchez did not have a drivers license or insurance and was trying to escape a breathalyzer test. Two civil guards chased his car for four kilometers before one of them, a shooting instructor and head of the traffic division of Dos Hermanas (Seville), aimed his weapon at the car and fired the fatal bullet.⁷

Several cases of the rape of women of foreign origin while in police custody were reported.

■ In March, two officers of the civil guards were arrested and imprisoned pending trial for the alleged sexual assault of two Moroccan women in the Spanish enclave of Melilla in North Africa. The women alleged they had been assaulted by the officers on a Saturday morning in the area of Los Pinares de Rostogordo, close to the Moroccan border. The officers were detained on the orders of the investigating judge.⁸

■ In May, the Supreme Court upheld a June 1998 sentence by a Barcelona court sentencing a national police officer to nine years' imprisonment. The officer had raped a detainee in a police station cell in Nou Barris, Barcelona, several years before. The officer had approached the victim in a toilet and later, after she had been transferred to an isolation cell, offered her an alcoholic drink and tried to force her to perform fellatio. The woman refused and was then raped.⁹

Impunity

Law enforcement officials who allegedly tortured or ill-treated individuals continued to enjoy wide impunity in Spanish courts. The same applied to abuses committed by armed groups that cooperated with law enforcement officials, including some high-ranking Spanish officials (see GAL below).

In 1997, the UN Committee against Torture noted that "judicial proceedings instituted following complaints of acts of torture, at both the pre-trial and trial stages, are often of a duration which is completely incompatible with the promptness required by article 13 of the Convention." It expressed its concern that it had heard of

⁶ *Ibid.*

⁷ *Ibid.*

⁸ "Women in Europe," in *Amnesty International Concerns in Europe – January to June 1999*, August 1999.

⁹ *Ibid.*

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cases in which sentences were pronounced up to 15 years after the events in question and denounced “token penalties not even entailing a period of imprisonment, [which] seem to indicate a degree of indulgence which deprives the criminal penalty of the deterrent and exemplary effect that it should have and is also an obstacle to the genuine elimination of the practice of torture.”¹⁰

Despite the CAT’s criticism, a pattern of nominal sentences, the availability of pardons, lax enforcement of sentences, discrepancies in standards of forensic medical reporting, prolonged judicial proceedings (to the point that the statute of limitations on prosecution expires), continued, according to Amnesty International. In some cases, officers already convicted of torture but whose appeals were pending were selected for promotional courses. In many cases, appeal courts reduced lower court punishments.¹¹

Although most perpetrators went unpunished, some officers were sentenced for misconduct, but only received mild sentences:

■ In February, a Madrid court convicted seven police officers of the *Cuerpo Nacional de Policía* of the illegal detention and torture of six members of a Roma family at the Centro District police station on New Year’s Eve of 1989. The sentences ranged from two months’ and a six-month suspension from work to six months in detention and a seven-year ban from employment and public office. The father of the Roma family was beaten by two officers and a pistol was pointed at his

head. When he collapsed from fear and defecated, he was made to pick up the excrement with his hands. Subsequently, three of his children, aged between 11 and 15, were stripped naked and the eldest was repeatedly beaten. The injuries he received to his foot and ribs took 10 days to heal.¹²

■ In March, the Provincial Court of Bilbao sentenced a lieutenant and a captain of the civil guards to a non-custodial sentence totaling 18 months and three days, and to an employment ban for the same period for the torture in 1992 of three ETA members, Juan Ramón Roja, Francisco Palacios and Xabier Arriaga. Six other officers were acquitted. The court accepted the charge that the injuries to the three ETA members that were noted on their entry into prison were “the consequence of the ill-treatment that had been inflicted on them” while in the custody of the civil guards in Madrid.¹³

■ In July, three civil guards convicted of the illegal detention and torture of ETA member Kepa Urrea Guridi were partially pardoned by the Council of Ministers. Despite a September 1998 Supreme Court ruling that the officers had committed torture, the court reduced the three officers’ sentences from four years’ imprisonment to a non-custodial one years imprisonment, while maintaining the six-year disqualification from public service imposed at first instance by the Provincial Court of Vizcaya in 1997. Before delivery of the verdict, one of the convicted officers was promoted from sergeant to lieutenant. The partial pardon granted by the Council of Ministers reduced the six-year disqualifi-

¹⁰ *Concluding Observations of the Committee against Torture : Spain*. 27/11/97, A/53/44, paras.119–136, 10–21 November 1997.

¹¹ *Amnesty International, Spain: A Briefing on Human Rights Concerns in relation to the Basque Peace Process*, 24 June 1999.

¹² *Amnesty International Concerns in Europe – January to June 1999*, August 1999.

¹³ *Amnesty International Concerns in Europe – January to June 1999*, August 1999.

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cation to one month and a day, thus allowing the officers to remain in service.¹⁴

GAL

Alleged members of GAL (*Grupos Antiterroristas de Liberación*), which was active in the 1980's, committing at least 27 murders and several abductions of suspected ETA members, also enjoyed amazing impunity.

■ In 1998 – in the first trial of alleged GAL members – the Supreme Court sentenced former Interior Minister José Barrionuevo and former Secretary of State Security Rafael Vera to 10 years imprisonment for illegal detention and misappropriation of funds in connection with the kidnapping of French businessman Segundo Marey in 1983. Ten other defendants were given prison sentences between about 2 1/2 years and 10 years. In December 1998, however, the Council of Ministers granted 10 of the 12 convicted – including Barrionuevo and Vera – a partial pardon of two thirds of their sentences and the remaining parts were subsequently suspended by the Constitutional Court pending consideration of their appeals. All were released but remained barred from public office.¹⁵

■ In December 1999, another GAL trial opened which was related to the kidnapping, infliction of bodily harm and murder of two ETA members, José Antonio Lasa and José Ignacio Zabala. They had been abducted from France in 1983 and their bodies were discovered in March 1997 near Alicante, Spain, bearing signs of torture. Two former civil guards and a former

secretary of state faced charges varying from murder, abduction and membership in an armed band (GAL), and concealment. Before taking place, the trial faced numerous obstacles, including attempts to intimidate witnesses, one of whom, a former naval intelligence officer, was abducted and sodomized on a beach in Cádiz in 1996.¹⁶

In a positive move, in February 1999 the government proposed that general principles be set out for the future regulation of compensation to the “victims of acts of terrorism or acts perpetrated by the members of armed bands,” including GAL, ETA and the *Grupos de Resistencia Antifascista de Octubre* (GRAPO).¹⁷ Whether serious measures will be taken to achieve that end remains to be seen.

Detainees' Rights

Incommunicado

The issue of long incommunicado detention was one of the main human rights concerns in Spain, particularly as it clearly encouraged torture and ill-treatment.

The May 1988 Organic Law 4 introduced a provision to article 520 of the criminal procedure code that allowed law enforcement officials to hold a person in detention for up to five days before bringing him/her before a judge or releasing him/her. This could be applied to anyone suspected of having committed a crime while being involved in, or a member of, an armed band, or as an individual “terrorist” or “rebel.” The extended incommunicado period

¹⁴ *Amnesty International Concerns in Europe July–December 1999, March 2000.*

¹⁵ *Amnesty International, Spain: A Briefing on Human Rights Concerns in relation to the Basque Peace Process, 24 June 1999; Amnesty International Concerns in Europe July–December 1999, March 2000.*

¹⁶ *Amnesty International Concerns in Europe July–December 1999, March 2000.*

¹⁷ *Amnesty International, Spain: A Briefing on Human Rights Concerns in relation to the Basque Peace Process, 24 June 1999; Amnesty International Concerns in Europe July–December 1999, March 2000.*

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must, by law, be approved by a competent judge and be “substantiated.” However, Amnesty International noted that, in its experience, the extension was granted automatically on the simple basis of suspected links with ETA. According to the constitution, the maximum detention period was 72 hours.¹⁸

Moreover, article 527 stipulated that during the incommunicado detention detainees could only have access to an officially appointed lawyer, and not counsel of their own choice. But even these lawyers were subject to restrictions: for example, they were not allowed to be present before or after the taking of a statement. Further, the detainees were not allowed to inform their relatives or friends about the place of arrest.¹⁹ Such provisions were a clear violation of the internationally guaranteed due process standards.

Place of Imprisonment

A fact that caused severe criticism among the Basque minority was that, as a matter of principle, convicted ETA members or suspects continued to be imprisoned in facilities as far away as possible from their homes. Such a policy violated principle 20 of the UN Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment which states that prisoners or detainees “should be kept in a place of detention or imprisonment reasonably near to his usual place of residence,” if they so wish.

In October 1998, the Spanish government agreed to transfer some ETA-prisoners to the Spanish mainland or to prisons in the Basque country. In many cases, the reasons were health-related.²⁰

In September 1999, the Ministry of Interior announced that it had decided to transfer 105 ETA prisoners to prisons closer to their homes, including the Basque country.²¹

¹⁸ Amnesty International, *Spain: A Briefing on Human Rights Concerns in relation to the Basque Peace Process*, 24 June 1999.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Amnesty International, *Concerns in Europe July–December 1999*, March 2000.