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Final Comments to the 5th Periodic Report on Spain at the 42nd session of the Committee Against Torture - CAT October 2009

In the following pages, the Basque Observatory of Human Rights - Behatokia would like to refer specifically to several of the replies given by the representatives of the Kingdom of Spain to the questions posed by the Committee Against Torture, with particular reference to the exceptional detention measures stemming from the antiterrorist policy and their consequences for detainees' rights in the Basque context.

One of the main phenomena in terms of impact upon the enjoyment of civil rights, and particularly as regards the issue of ill treatment and torture, is the application of exceptional measures under Chapter V of the Spanish Constitution, which deals with "the suspension of rights and freedoms". The broad scope afforded to this suspension "for certain persons, in relation to investigation of armed groups or terrorist elements"¹ leaves the extent of hundreds of Basque citizens' human rights up to everyday practice.

Regarding the **follow up of the recommendations made by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism**, we can safely state that the extension of the concept of terrorism to include public and peaceful activities carried out by organizations that can by no means be linked to violent or criminal actions continues in full sway at the time of writing this report.

As to the term "slippery slope" with which the Special rapporteur, Mr Martin Scheinin² refers to "the gradual broadening of the notion of terrorism to acts that do not amount to, and do not have sufficient connection to, acts of serious violence against members of the general population", we find two conclusions can be drawn: the first has to do with the difficulties for those who carry out their professional activity in areas that deal with torture -lawyers designated by detainees, doctors... - whom the state has shamelessly linked in its reply to "the environment of the armed group itself". This unacceptable attempt at criminalization also serves to justify and root practices that detract from detainees' rights even further. However, the state goes further. Our second conclusion is that human rights defenders who denounce torture, who have carried out their legitimate activity in an absolutely public, peaceful and transparent way, have been treated as terrorists. Recently, the Spanish *Audiencia Nacional* (National Court) sentenced 21 publicly known members of the organizations Gestoras Pro-Amnistia and Askatasuna to 8 and 10 years in prison for a crime of membership of a terrorist organization with no evidence linking them to the armed organization ETA or to violent actions or other crimes existing in Spanish law such as glorification of a terrorist organization. These actions by the state simply curtail freedom of speech and the exercise of the most elementary political rights in the very delicate field of the defence of imprisoned people and of their rights.

1 Spanish Constitution of 1978. Article 55.2

2 Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, Martin Scheinin. Mission to Spain. A/HRC/10/3/Add.2. 16 December 2008

Furthermore, Mr. Scheinin made his recommendations about a situation which he believes is “particularly worrying in light of the measures triggered by the classification of crimes as terrorism: the application of incommunicado detention; the exclusive jurisdiction of the *Audiencia Nacional*; the applicability to terrorist suspects of up to four years of pretrial detention; aggravated penalties; and often also modifications in the rules related to the serving of sentences”. Indeed, the use of the classification of terrorism for increasingly broader activities and the expanding classification of people as “terrorist suspects” of increasingly larger sections of society in the Basque Country exacerbates the use of special laws, of unequal measures and therefore, of arbitrariness. Thus, instead of the minimized effect of these practices portrayed by the Spanish authorities in their document, we find that the state is consolidating the use of these exceptional tools, in an ever more usual and normalized manner.

Regarding the **use of incommunicado detention**, we have to say it occurs persistently. As the Committee knows, and the party state does not bother to refute this, the regime of incommunicado detention, regulated in Articles 520bis and 527 of the *Ley de Enjuiciamiento Criminal* (Criminal Procedure Law) is aimed at curtailing important rights of detainees, which in turn has a direct bearing on both their civil rights –such as the right not to be subjected to ill treatment and torture– and their procedural rights, specifically, the right to remain silent, which is closely linked to the right to effective judicial protection.

As to the first of the mentioned rights, according to data compiled by the Basque Observatory of Human Rights during the 2002-2008 period, there have been 656 instances of incommunicado detention. International bodies have stated that any incommunicado detention for a period longer than 48 hours can, in itself, be considered a form of cruel, degrading or inhuman treatment. Out of this total, 67 people (10.2%) have been held incommunicado for a period shorter than 2 days, whilst 589 (89.8%) were held longer. In addition, 24 people have had this period under the special regime extended after being taken before the judge, without seeing their lawyer, by being sent to prison, incommunicado. We have no indications that ill treatment or torture take place during this period in prison, but we are certain that it is a useful time/space for the marks or evidence of the ill treatment dispensed to detainees in police custody to disappear.

Out of the total incommunicado detainees, 445 (67.8%) have publicly stated they were subjected to torture or ill treatment during detention and 218 complaints have been submitted to the courts. These data contradict the figures admitted by the Spanish state.

Documented torture cases by year:

Year	Nº of incommunicado detainees	Nº of complaints to courts	Nº of people referring torture
2002	183	130	98
2003	148	93	61
2004	74	56	30
2005	62	52	40
2006	20	4	4
2007	74	45	30
2008	95	65	47
Total	656	445	310

At this point, we must add the data on the current year. Between January and September 2009, the number of incommunicado arrests was 37, with 20 people referring torture, of which 9 have taken court action.

These data allow us to conclude that the use of incommunicado detention is persistent, and that it is a period during which torture is applied, systematically, in 67.8% of the cases, or, if we take into account the idea that incommunicado detention for periods longer than two days is cruel and inhuman treatment, in 89.8% of the cases.

Regarding the guarantees that are suspended during the incommunicado period, we contend that the **prohibition of communication with a trusted lawyer** not only favours the commission of crimes of torture but it also causes serious defencelessness for detainees under incommunicado detention. Indeed, the first consequence of the impossibility to have confidential contact with their lawyers amounts to a cancellation of the lawyer's role as a guarantee of detainees' most basic rights, first and foremost the right to physical integrity. This means it is impossible for lawyers to gain knowledge of the events and immediately take court action, because detainees are unable to communicate how they were treated until the incommunicado period is over. We agree with the Spanish delegation when they admit that lawyers are not an "essential guarantee" against ill treatment, principally because, by banning their presence, the authorities make it impossible for them to be a guarantee.

Although the Government refers to "continuous and permanent control by the Judiciary Authority or the Prosecutor who must be aware of the arrest from the very beginning", this Observatory has not found a single case in which the either the said Judiciary Authority or the

Prosecutors have had any contact with an incommunicado detainee, have in any shape or form expressed interest in how detainees are being treated, in the conditions under which they are making their statement to the police or even any cases in which they have carried out any proceedings or actions to investigate claims made by detainees when they are taken before them (often still without the presence of their lawyer of choice).

The second consequence of the ban on communication with a trusted lawyer is defencelessness of detainees, who are at the mercy of incriminating statements obtained through illegitimate treatment. When the party state says that "Spanish law states the right of detainees not to make statements against themselves and not to admit guilt, according to Article 24.2 of the Spanish Constitution", the Government seems to forget that article 17.3 complements the said right with "they cannot be obliged to make a statement" which, according to Constitutional Court Verdict 202/2000 is interpreted as "the right to remain silent". This right is completely devastated by incommunicado detention, a regime designed to obtain information and statements from the people under it. Incommunicado detention is used as a substitute for a proper investigation based on scientific, meticulous and methodical police work.

Indeed, even the Spanish authorities, in their report, state that incommunicado detention is not aimed at securing detainees but rather, that it is viewed as "a key moment of initial investigations". This statement indicates that these arrests do not take place as a logical effect of a prior methodical and scientific investigation (and, therefore, once there is enough evidence to justify the arrest) but rather, that incommunicado detention is precisely the first part of investigation, the period during which evidence will be gathered. The Spanish delegation has been betrayed by their subconscious when they made this statement. In order to guarantee the efficiency of this system, assistance by a trusted lawyer is forbidden and substituted by a very specific type of "court appointed counsel" which becomes absolutely ineffective from a procedural point of view, in terms of defending detainees' interests. The court appointed lawyer is a passive and testimonial figure, with no part in assistance to incommunicado detainees and whose actions are limited to the validation of detainees' statements to the police, towards the end of the detention period.

The Spanish authorities' sustained and systematic refusal to abolish incommunicado detention or to allow supervision by truly independent agents can only be justified by the attempt to safeguard the above-described system and the efficiency obtained by use of ill treatment as an investigative tool.

The pinnacle of this system is the **validity in court procedures of statements made by detainees during incommunicado detention.**

Firstly, it is important to remember that Spanish Constitutional Court Verdict 114/1984 acknowledged that: "the prohibition on the use

during trials of evidence obtained via breaches of fundamental rights is not proclaimed in any Constitutional precept explicitly stating it”.

Furthermore, judiciary authorities that assess statements by detainees obtained during incommunicado detention systematically argue that, since breaches of fundamental rights have not been proved in any other court with jurisdiction over the matter, these statements are fully valid in law. This inevitably leads to the issue of court inactivity regarding investigation of torture, which we shall assess later in this report.

The practice of the *Audiencia Nacional*, which is the legal body with jurisdiction in these crimes, has been to grant validity as a source of evidence to statements made in police custody. However, statements made by detainees could not be seen as rational evidence enough upon which to base a conviction. It was necessary to have, at least, one “element of corroboration”, in other words, one more piece of evidence with enough weight to grant validity to the statement given to the police. This corroboration element should be objective and external to the statement.

This jurisprudence suffered a significant change in 2006, with verdict 1215/2006, of 4 December, by the Supreme Court. In this verdict, the high court allowed for statements made in police custody to be taken as full evidence as long as a number of circumstances could be established: that the detainee has had his or her constitutional rights read, that the statement be given in the presence of a court-appointed lawyer and that the statement be complemented during the trial hearings with a declaration by the officer that took the statement. All in all, statements given by detainees during incommunicado detention can be validated, without any further corroboration or evidence. Therefore, these statements are given the status of real evidence, even if detainees retract or argue that the statement was made under pressure or torture. The non-existence of any judiciary actions to prove the latter is the “perfect finish” that closes and gives coherence to the whole system, making torture an essential element in the investigation and trial of crimes of terrorism. Even the Basque regional Parliament passed a proposal requesting the “*Audiencia Nacional* to suspend and shelve all proceedings where torture and incommunicado detention have been used against detainees³”.

As regards the introduction of prevention mechanisms, such as **supervision of incommunicado detainees by their doctor of choice**, it has been possible to implement it in certain cases, via the random application of the so-called “Garzón protocol”. On December 13, 2006, the investigation judge in charge of Central Investigation Court N^o 5 of the *Audiencia Nacional*, Baltasar Garzón, issued an injunction with a series of measures for the prevention of torture and ill treatment of incommunicado detainees, including the possibility of their being visited in police stations by a doctor of their choice. These measures can only be applied following a request by the detainees’

3 Basque regional Parliament, motion of 1 December 2006

lawyers and only three out of the six investigation judges at the *Audiencia Nacional* have ever agreed to implement them (Baltasar Garzón, Fernando Andreu and Santiago Pedraz). In this period (2007-2009) assistance from a trusted doctor was requested in all 169 instances of incommunicado detention. It was accepted in 77 cases (45.6%) and refused in the remainder, a total of 92 (54.43%). However, we find that this prevention measure is not fully effective, because out of the total of 77 detainees who have been able to see their doctor of choice, 30 (38.96%) have referred torture and ill treatment.

These visits have always taken place in the presence of the court-appointed forensic doctor designated by the *Audiencia Nacional*, with the latter in charge of the examination, whereas the detainees' doctors have only been allowed to observe. In addition, there have been instances where these visits have been subjected to audio-visual surveillance⁴ and other times when confidentiality of the visit was compromised by pressure exerted by members of the security forces opening the door of the room and interrupting⁵.

As we can see, the so-called Garzón Protocol has very little preventive strength; it is very limited, mainly because of its circumstantial application, lacking any judicial or independent control mechanism to make it effective. The doctors who have been allowed to visit detainees have stated that the protocol is not useful in preventing and detecting ill treatment in its current form; their only function has been to "reduce incommunicado detainees' anxiety and give them some human support, in a situation of absolute isolation from the outside world"⁶. Nevertheless, the Spanish representatives at the CAT argue for the ban on a trusted doctor's presence as part of the "need to avoid the presence, during a key moment in the investigation, of people linked to the environment of the armed group who may coerce detainees or calibrate the damage they may cause for the organization". This line of argument is completely out of order.

This Observatory cannot fathom the circumstances under which the argument of "preserving the safety of detainees" from a professional chosen by them and who may assist them can be upheld. A simple refusal of their visit by detainees (who are under police custody, lest we forget) would be enough for the visit not to take place. Criminalization of the healthcare sector cannot be understood or tolerated in any circumstances. There is not a single case of the very few instances where visits have actually taken place in which such an accusation can be made, even less so as a justification of the ban on assistance by a chosen doctor, as the party State has argued. Such claims can only be interpreted as part of an extensive and exacerbated view of the limits of an organization such as ETA, expanding it to include an entire section of society that is under constant scrutiny and is liable to be branded as "terrorist". Doctors chosen by detainees,

4 This situation happened in the Guardia Civil station at Tres Cantos.

5 This situation happened in the Canillas General Information Station, *Cuerpo Nacional de Policía*.

6 Statement by Matilde Iturralde, a doctor who visited incommunicado detainees.

trusted lawyers, relatives, friends... This train of thought, which attempts to justify the ban on detainees choosing their own lawyer because “this kind of organization often has its own network for the legal support and assistance of its members, which also acts as a bearer of instructions and threats to detainees”, leads to the charge that trusted lawyers are members of a terrorist organization, which would demand the State act accordingly, with chirurgical precision, and not refusing legal assistance as a whole. If this is not done, it would seem that the Spanish delegation wishes to create a smokescreen to justify inactivity by the State in taking steps to eradicate this detention regime. This interpretation is a further element that demonstrates the extensive interpretation of the term “terrorism” used by the Spanish State, which we referred to at the beginning of this report.

Regarding the question about **installation of audio-visual recording equipment in all areas of police stations where detainees are held and especially where incommunicado detainees are held**, there are two main points to make. Firstly, following the order from various judges at the *Audiencia Nacional* for incommunicado detainees to be recorded, the Spanish *Cuerpo Nacional de Policía* sent reports to the *Audiencia Nacional* stating the impossibility of carrying out the order due to a lack of the technical means to do so⁷. Despite their knowledge of this situation, the judges at the *Audiencia Nacional* have not only not taken any action to change it, but they have continued to order detainees be recorded whilst knowing it was impossible.

Secondly, we would like to highlight the actions of the Basque regional Government Department of the Interior. In December 2005 this Department sanctioned a protocol to record all *Ertzaintza* (Basque regional Police) premises, thus preventing possible ill treatment of detainees. We must highlight two issues about this protocol: firstly, the fact that it has not been made public, so there is no information about the technical means used, about whether the entire detention period is recorded or only the times when detainees are in certain parts of the police station or if, on the contrary, recordings are partial in terms of space and time; secondly, the fact that these recordings, in the event that they actually exist, are not available for the defence when they have been requested⁸ following a claim of ill treatment or torture. It is also important to point out the statements by the Basque Interior Minister, Mr. Rodolfo Ares, where he has asserted that the recordings are useless and unnecessary, thus ignoring the various recommendations made by this Committee, as well as several agreements passed by the Basque regional Parliament in this vein.

7 As in the case of Iker Agirre Bernadal, arrested by the *Cuerpo Nacional de Policía* in Port Bou. 25 January 2007.

8 As in the case of Manex Castro Zabaleta, arrested by the *Ertzaintza* in Villabona. 1 March 2009

As to the **statement that security forces and judiciary authorities do not systematically investigate all torture and ill treatment claims**, we would like to make the following comments:

Investigations carried out by Spanish courts must be described as late. There are numerous cases in which, when detainees have made statements to the judge at the *Audiencia Nacional* detailing torture and ill treatment, the latter has not carried out any proceedings whatsoever to investigate the events, arguing lack of jurisdiction, whereby new claims must be made before other courts, which in turn are shelved due to their being lodged –according to these courts- too late⁹. We take a positive view of the fact that, in 2008, certain judges at the *Audiencia Nacional* have decided to take action on statements by detainees, thus beginning judiciary proceedings. Unfortunately, this has only happened in 7 cases.

In addition, even the minimum procedures directed at clarifying claims of crimes of torture are not carried out. Only 33.87% of claims made are still open, with no court-hearing having taken place in any case. Most cases are automatically shelved without even taking a statement from the claimant. Statements were taken from only 90 out of 310 claimants between 2002 and 2008 (29.03%). There have even been cases where the Court has issued a decision opening up proceedings, only to declare them closed in the following sentence in the document¹⁰. At least 54.19% of claims were shelved once, with certain cases being shelved up to 4 times, thus dragging proceedings out over long years.

Furthermore, the courts never begin the said proceedings; it is always counsel for the claimant who has to carry out all the actions for claims to be investigated properly. 10% of the claims made during the 2002-2008 period were shelved within a year. 28.38% were shelved between the second and the fifth year and 4.19% continue open 5 years after the claim was made. We must insist that during all these years no member of the security forces has been convicted for torture; indeed, no trials have taken place. On a positive note, we can say that in the cases of Maite Orue Bengoa¹¹, and of Igor Portu and Mattin Sarasola¹², arrested on January 6, 2008, there will probably be a trial, with the private prosecution having already made its submission in the first case, 4 years after Ms. Orue's arrest.

9 Jose Javier Oses was arrested on November 21, 2007. The complaint was submitted almost one year later, because the detainee believed that court action had automatically been started by the *Audiencia Nacional*, as he had told the forensic doctor and the judge at JCI N° 3 Fernando Grande Marlasca about his treatment.

10 David Brum Martinez. Arrested on 18 de November 2003. Court injunction opening proceedings and closing them on 27/04/2004, by Madrid Investigation Court (JI) N° 1, DP 3167/2004

Unai Redín Sánchez. Arrested on 19 February 2003. Court injunction opening proceedings and closing them on 14/04/2004, by Madrid Investigation Court (JI) JI N° 29, DP 1766/2004

11 Maite Orue Bengoa, arrested 27/07/2005. Madrid JI N° 30, DP 5773/2005

12 Igor Portu Juanena and Mattin Sarasola Yarzabal, arrested on 6 January 2008. Donostia JI N°1, DP 66/08

Practically no court attempts to identify the perpetrators of crimes of torture, and even fewer summon suspects to take their statements. Only in 31 cases (10%) has anyone been summoned to court as a defendant, with a maximum of 90 persons charged in the said period. This is a very small number if we take the number of claims and the number of members of the security forces taking part in each operation into account.

Regarding the **measures to protect people who refer ill treatment or intimidation as a consequence of their claims**, we must conclude that at least three instances of court action against torture claimants have taken place, on grounds of perjury, slander and libel against the State Security Corps and Forces, and in two cases on grounds of cooperation with an armed group. The latter was the charge brought against Mr. Martxelo Otamendi, the editor of the daily Berria and Mr. Unai Romano. The argument used was that their claims were part of a strategy of the armed organization ETA and, therefore, the fact they took court action for torture was a way to actively cooperate with the said organization; both suits were finally shelved. Julen Larrinaga and Aiert Larrarte, a lawyer for the Association Against Torture -TAT- were tried for slander and libel for denouncing torture suffered by Mr. Ibon Meñika-Orue in April 2006 at the hands of the *Guardia Civil*, at a press conference.

At the trial held in May 2009 they were both acquitted, but now perjury proceedings have been opened against Ibon Meñika-Orue.

These events reveal the fact that people who are victims of torture, in addition to the possible threats and pressure during their detention, must face the possibility of being charged purely for making their account public and referring torture.

We find that there are no changes in relation to the **policy of dispersal for prisoners convicted of or charged with crimes of terrorism**. The first issue worth of mention here is that, in their report, the Spanish authorities acknowledge this is an exceptional measure not included in sentences passed by the courts. Indeed, Article 25.2 of the Spanish Constitution states that convicts will enjoy all rights “except those expressly limited by the content of the verdict, the meaning of the sentence and penitentiary law”. The Spanish Authorities cannot argue that dispersal has been put in practice via any one of these three routes stated in the Constitution. It is purely and simply a discretionary measure, applied with a deeply arbitrary vision to a specific group of prisoners. As the Special Rapporteur for the Question of Torture, Mr. Theo Van Boven stated in his report¹³ “it apparently has no grounding in law and is applied arbitrarily”. Indeed, the Authorities justify its application whenever it is convenient for reasons of “penitentiary

13 Report of the Special Rapporteur on the question of Torture, Theo van Boven. E/CN.4/2004/56/Add.2. & February 2004

intervention, personal evolution or special humanitarian reasons". Let us go into these three possibilities:

Penitentiary intervention or security reasons. The need for security in penitentiary centres cannot be used to justify the policy of prisoner dispersal. Security is always in conflict with prisoners' rights, and thus some of the latter will have to be restricted in order to ensure the former. However, in practical terms, when Basque prisoners were held together in certain prisons, there were neither special security problems nor breaches by this collective of the penitentiary regulations of the centres where they were held. In fact, when this exceptional and arbitrary policy was put into effect, some twenty years ago now, no reference was made to security reasons which may justify the design of the penitentiary dispersal of Basque prisoners; at the time, the justification stemmed from political priority criteria, in terms of the antiterrorist policy. Nowadays, when those criteria have failed, dispersal only continues as an additional, cruel and illegitimate punishment.

Personal evolution of prisoners. When prisoners are serving their sentences, they are by definition separated from the crimes they may have committed and the organizations of which they may have been members when at large. Therefore, alleged reasons to do with pressure, proselytism or similar situations cannot be invoked in a generic manner. Rather, they should be taken into account if and when they occur, in a proven and specific way and if it is possible to consider that even inside prison, a prisoner may continue to be committing a crime by participating in armed or terrorist organizations. In this sense, the Spanish authorities introduce a clause whereby "it is up to the inmate himself to state his intent to abandon violence as a political means and the organization that maintains terrorist activity" for his right to be held in a prison close to home to be recognized. Thus, the generic figure of the "reformed or repentant terrorist" is introduced in order to determine who should be the subject of measures that do not correspond to the socializing aims that the Spanish Constitution sets out for any sentence depriving a person of their freedom. This precondition can only be interpreted as an ideological one that, additionally, is not directed at obtaining early release, parole or other benefits, but at the ending of an illegitimate measure that unquestionably worsens people's living conditions inside prison, as prisoner dispersal clearly does.

Humanitarian reasons. We can say that the reality is the opposite to what has been argued by the Spanish representatives: there are currently 7 Basque prisoners suffering serious, incurable diseases, who are kept at an average distance of 549 Km from the Basque Country and who are being systematically denied parole. In fact, these people should have been released under Article 92 of the Penal Code, but, quite to the contrary, they are kept in prison, dispersed, with all kinds of pretexts to refuse their release, when all the legal requisites concur in a medically certified way.

We cannot share the view expressed by the Spanish authorities that proximity to the family home “is not an essential part of the re-socialization process or return to society”. According to the UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle 19, “A detained or imprisoned person shall have the right to be visited by (...), in particular, members of his family”, and principle 20 states that “If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence”. Such requests have been made uncountable times and they are refused by the competent authorities.

Whilst we realize that other prisoners are held at a certain distance from their homes, in this case we are in the presence of a policy designed for and directed at a specific group of people with no legal or juridical justification for such an unequal treatment. All in all, the report by the Kingdom of Spain is an attempt to prioritise certain political aims over existing and objective rights such as those that determine living conditions for prisoners and their relatives. Therefore, we must ratify our contention that this is an arbitrary measure and express our concern, together with Special Rapporteurs Messrs. Van Boven and Scheinin due to “aggravated penalties and often also modifications in the rules related to the serving of sentences”. Exceptionality in prison sentences affects the living conditions of prisoners convicted of terrorism to really cruel and inhumane limits.

As to the information provided by the Spanish delegation on the so-called “**Parot Doctrine**” set out by Supreme Court verdict 197/2006 on the matter of parole in crimes of terrorism, first of all, please note the praise for the retributive nature of certain penalties expressed by the Spanish delegation. This retributive character is contrary to the Spanish Constitution, which states that penalties or sentences must be directed at re-socializing the convict. However, it must be said here that we are not discussing a new penalty or sentence included in the Penal Code, but a new restrictive interpretation of access to parole or release. Please also note the lack of detailed arguments for the Government representatives to state that the subject “exteriorises a patent tendency to crime”, thereby instituting a classification of prisoners as enemies, devoid of dignity as human beings.

We must remember that the Spanish State carried out the reform introduced by Organic Law 7/03 of 30 June about **full serving of sentences** increased the maximum stay in prison up to 40 years for those convicted of crimes to do with armed organizations, which in turn is a consequence of the scrapping from the Spanish Criminal Law of 1995 of remission. Without actually establishing a life sentence (a figure that is not present in Spanish law) prisoners will actually spend 40 years in prison as a result of this change.

The Supreme Court verdict of 28 February 2006 has become known as the Parot Doctrine. It **Cancels** all the **remission** that certain prisoners were entitled to under the Penal Code in force before the reform of

1995. All in a context of denial of rights of prisoners affecting their release, their living conditions and their dignity, as described earlier. Thus, the amendments of the Penal Code of 1995 (via Organic Law 7/2003) are being retroactively applied to prisoners convicted under the Penal Code of 1973, meaning that remission should be calculated on the total of the sentences received, which, in practice, amounts to cancelling remission altogether.

Therefore, we must conclude that this is but a new interpretation, introduced via the Supreme Court, of a practice that was in force since it was established by the Penal Code of 1973 until the new parameters of reform 7/03 of the 30th June 2003 came into being. The change introduced by this new interpretation is aimed at unifying and levelling the sentences of prisoners who have accumulated remission and certain benefits over the years, to the new limit for effective sentence-serving of 40 years, which is why it is being applied retroactively.

Finally, in order to justify most of their inaction, the Spanish authorities rely on the idea that implementation will occur via the development of the **Human Rights Plan -PNDDHH** launched in December last year by the Spanish Government. This plan does not use the word “torture”, even when referring to its alleged “zero tolerance” of irregularities by the State Security Forces; there is no mention of the way in which the MNPT (National Mechanism for the Prevention of Torture) will work or what mechanisms it will use. The Plan waters down international recommendations regarding judiciary and personal guarantees for people in custody. As an example, while the UN Human Rights Committee literally recommends “abolition” of incommunicado detention, the PNDDHH only argues for a *moderation* of the regime. However, the Government has had to state that “the necessary normative and technical measures to fulfil the recommendation by human rights bodies to record, on video or another platform, the entire time incommunicado detainees are held in police premises will be tackled”. There has been no progress towards putting these measures into practice and nothing in the text of the PNDDHH indicates when they will be implemented. There is also a promise to “guarantee incommunicado detainees may be examined, as well as by the forensic doctor, by another doctor who is a member of the public health system, freely appointed by the head of the future National Mechanism for the Prevention of Torture”. Please note that this is not even the trusted doctor appointed by the detainee that appears in the “Garzón Protocol”, in addition, there is no reference to supervision by the investigation judge, the right of relatives to know where detainees are or detainees’ right to communicate with their own lawyer.

We believe that the problem of torture under incommunicado detention is not a merely sporadic or accidental one, caused by uncontrolled members of the security forces and which therefore can be resolved with control mechanisms. Torture is in the foundations of the system of

antiterrorist investigation in the Spanish state; it infects arrests, court proceedings and trials and serving of sentences.

Spanish authorities must carry out deep reflection on their attitude towards torture, in order to achieve the political will to face up to a process whereby there will be a definitive guarantee of non repetition.