

## **Seventh periodic report concerning Spain to the Human Rights Committee**

### **Introduction**

In the context of the list of previous issues drawn up by the Human Rights Committee as part of the seventh periodic review of Spain, topics of interest included “efforts to promote investigations into human rights violations that took place in the past” (para. 13, paragraph b), “enforced disappearance” (para. 13, subparagraphs c and d) as well as the “rights to freedom of expression”, in particular the “humiliation of victims of terrorist offences” (para. 24).

This shadow report is presented by the International Institute for Social Responsibility and Human Rights ("IIRESODH"), by the UNESCO Chair in Human Rights and Public Authorities of the University of the Basque Country and by the Berridatzi Bizikidetza Josteko Elkartea Association, with the purpose of alerting the United Nations Human Rights Committee to serious and systematic violations of the State's obligations to respect and guarantee in flagrant violation of the International Covenant on Civil and Political Rights (“ICCPR”), for failing to comply with its obligations in the face of serious violations committed during the process of democratic transition and in particular in the context of the fight against Euskadi Ta Askatasuna (“ETA”).

Indeed, Spain has not adopted the necessary measures to bring its domestic legislation into line with the Covenant or to guarantee transitional justice, including the rights to truth, justice, reparation and guarantees of non-repetition. Thus, state authorities frequently adopted a position of denial of justice and revictimization when human rights violations had been committed by high-ranking Spanish officials.

### **I. Context**

In the context of the fight against ETA, the Group for Antiterrorist Liberation (“GAL”, for its initials in Spanish) operated. These paramilitary groups, active between 1983 and 1987, made up of mercenaries and former soldiers, were financed with reserved funds from the Ministry of the Interior, acting mainly in French and Spanish territory, against alleged members or collaborators of ETA. The actions of the GAL included kidnappings, torture, extrajudicial executions and enforced disappearances, with the knowledge and participation of senior state officials.

Although the Spanish state initially denied any connection with the GAL, the involvement of senior officials was proven and several were convicted<sup>1</sup>. Thus, in 1995, the Senate created the “GAL-Reserved Funds” commission<sup>2</sup>. Although it did not issue a final report, it acknowledged the participation of senior officials and the use of public money. However, the sentences of the Spanish courts have been disparate; some classify the GAL as a terrorist association, while others do not; generating a difference in treatment between the victims of those groups.

An example of these practices that illustrates this *modus operandi* is the emblematic **case of José Antonio Lasa and José Ignacio Zabala** (J.A.L. and J.I.Z.), showing in a paradigmatic way the illegal strategy of the State. Both young men, accused of allegedly belonging to ETA –without any sentence in this regard, but only police reports attesting to it– were kidnapped in Bayonne, France –where they were in the process of asylum– by members of the Spanish Civil Guard, clandestinely transferred to Spain, tortured under the orders of Commander Rodríguez Galindo and finally executed and buried with quicklime in Busot. The enforced disappearance was covered up for more than a decade and the remains were not identified until 1995. While the “direct” perpetrators and masterminds were convicted of the crimes of illegal detention and homicide, **they were not found responsible for enforced disappearance or torture or ill-treatment**, nor were the high-level perpetrators identified or prosecuted.

On the other hand, the families suffered constant **revictimization**: (i) it took a long time to hand over the bodies of J.A.L. and J.I.Z.; (ii) during the funeral, police officers intervened violently to prevent photographs from being placed on the coffins, alleging compliance with a court order; (iii) it was not granted the status of victims of torture in the context of the enforced disappearances of J.A.L. and J.I.Z.; (iv) they were not granted compensation for being victims of terrorism –a status that was not denied– on the grounds that the direct victims –J.A.L. and J.I.Z.– were members of ETA, generating discriminatory treatment among the victims of terrorism, and denying in a certain way the State terrorism committed by the GAL; (v) the relatives were asked to pay the costs of the contentious-administrative proceedings initiated to obtain compensation as a victim of terrorism (exactly €9,252.06).

This case aims to demonstrate the existence of a **pattern of impunity** in favor of the perpetrators of crimes committed by the GAL and the **denial** of State terrorism that occurred

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<sup>1</sup> [https://www.eldiario.es/euskadi/cia-consideraba-navarra-cuarta-provincia-vasca-diseccionaba-eta-gal\\_1\\_8509826.html](https://www.eldiario.es/euskadi/cia-consideraba-navarra-cuarta-provincia-vasca-diseccionaba-eta-gal_1_8509826.html) ; <https://www.panoramical.eu/union-europea/58538/> ; <https://www.lavanguardia.com/politica/20230921/9242492/puigdemont-vincula-gonzalez-guerra-gal-cargar-amnistia.html>

<sup>2</sup> [https://elpais.com/diario/1995/10/19/espana/814057220\\_850215.html](https://elpais.com/diario/1995/10/19/espana/814057220_850215.html)

during the democratic transition in Spain and at least the first decade of democracy, in clear violation of the international obligations of the Spanish State to respect and guarantee the human rights of the people under its jurisdiction, without discrimination, including through an effective domestic remedy (Article 2 of the ICCPR). All of that in violation of the pillars of transitional justice (truth, justice, reparation and guarantees of non-repetition).

The following are the internal rules and practices that allow undue impunity to be maintained and to hinder transitional justice:

## **II. Validity of Francoist laws**

Laws that were adopted during the dictatorship remain in force, even though they contravene the obligations to guarantee and respect human rights contained in the Covenant.

1. The [Official Secrets Act of 1968](#) **allows information about serious human rights violations to be concealed *sine die***. We highlight that parliamentary debates are currently being held to reform this Law and that the President of the Government, Pedro Sánchez, committed to reforming it<sup>3</sup>. **This review of Spain is a decisive opportunity for the Committee to recommend its repeal.**

This law clearly contravenes freedom of expression in its aspect of seeking, receiving and disseminating information (art. 19.2 of the ICCPR) as well as the principles of transitional justice, by preventing the truth about the facts that occurred, by obstructing the investigation, prosecution and conviction of the perpetrators of serious crimes and consequently by preventing the full reparation of the victims and the non-repetition of such acts (art. 2.2 of the ICCPR).

However, the Official Secrets Act was supplemented by [Law 19/2013 of 9 December 2013 on transparency, access to public information and good governance](#), which sets numerous limits on the right of access in Article 14. Therefore, the Committee should request the Spanish State to amend Law 19/2013 to allow an effective right of access to public information (art. 19.2 and 2.2 of the ICCPR).

2. The [Law on Police Decorations](#) (1964) and the [Law Establishing Rules for the Exercise of the Grace of Pardon](#) (1870): **do not provide for the withdrawal of decorations**

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<sup>3</sup> <https://www.youtube.com/watch?v=XcHmYK-oR78>

even when a person has been convicted by a final judgment for human rights violations after 1978 and allow for the granting of a pardon. This decoration allows the salary of the official to be increased by between 10 and 20%, even if he has committed human rights violations.

This practice was even criticized by [police unions](#) for compensating people who do not meet the requirements. In fact, certain people were decorated even when they had already been condemned.

In the case of J.AL. and J.I.Z., two months after their murders, the Government of Felipe González decorated Enrique Rodríguez Galindo and Felipe Bayo (recognized and convicted perpetrators of the crimes of murder and arbitrary detention of the two young men) with the **Cross with red badge of the Order of Merit of the Civil Guard. a distinction that implied a 15% increase in his salary.** Disturbingly, exactly two years after the kidnapping of the young people, the Official State Gazette awarded the Cross with white badge to Captain Ángel Vaquero, also implicated in the crime. Likewise, Lieutenant Colonel Pedro Gómez Nieto, who admitted to having been present in the torture of Mikel Zabalza<sup>4</sup>, was assigned for five years as an attaché at the Spanish embassy in Honduras (2005-2010). These decorations and recognitions have not been eliminated, although their beneficiaries were condemned.

3. The [Amnesty Law of 1977](#): extinguished the criminal liability of persons who had committed crimes “of political intent” before December 15, 1976.

This Law was denounced by the Committee on Enforced Disappearances in its [concluding observations of 4 November 2021](#) on Spain (paras. 13 to 21).

4. [Law 20/2022 on Democratic Memory](#): created a commission that contributes to the clarification of human rights violations during the War, the Dictatorship and until 1983 in favor of people who fought for democratic values, but not later. It would therefore be important to extend the scope of application of such law until at least the first decade of democracy and for any politically motivated human rights violations, regardless of the people affected.

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<sup>4</sup> The audio in which he acknowledges the facts was not admitted by the court because it lacked sufficient probative value: <https://www.publico.es/politica/mando-guardia-civil-reconocio-torturas-zabalza-estuvo-cinco-anos-agregado-embajada-honduras.html>

The Committee on Enforced Disappearances, in its [concluding observations of 4 November 2021](#) on Spain, stated that the Democratic Memory Law does not fully comply with the Convention by excluding compensation as a form of reparation and by not providing for measures to remove legal obstacles that prevent the criminal investigation of enforced disappearances initiated in the past, such as the Amnesty Law of 1977 (paras. 13 and 14).

All these laws make it possible to feed impunity for serious human rights violations, particularly those perpetrated by high-ranking public officials; in breach of the pillars of transitional justice (truth, justice, reparation and guarantees of non-repetition) and with the rights contained in the ICCPR (effective remedy, due process, freedom of information, equality and non-discrimination, obligations of respect and guarantee; all of them directly, in addition to all the other substantive rights contained in the ICCPR that are unprotected).

### **III. Absence of autonomous classification of the crime of enforced disappearance**

Although the Spanish State ratified the International Convention for the Protection of All Persons from Enforced Disappearance in 2009, it did not autonomously criminalize the crime of enforced disappearance. In fact, Article 607 bis, paragraph 1, 6 of the Criminal Code classifies enforced disappearance only as a crime against humanity, but this crime is not contemplated as a common law crime. Thus, it does not allow the prosecution of individual or isolated enforced disappearances, which clearly violates the rights to life, the prohibition of torture, liberty and an effective remedy (Articles 6, 7, 9 and 2.3 of the ICCPR).

The Committee on Enforced Disappearances recommended in its [concluding observations of 4 November 2021](#) that the Spanish State autonomously criminalize the crime of enforced disappearance (paras. 5 and 6), a recommendation that has not been complied with by the Spanish State. In addition, it highlighted the lack of progress in investigating enforced disappearances and the archiving of complaints in accordance with the jurisprudence of the Supreme Court (Judgment No. 101/2012) on the understanding, inter alia, that the 1977 Amnesty Law would be applicable to the facts denounced or would be unprosecutable (para. 17).

#### **IV. Refusal to investigate high-ranking officials for crimes against humanity**

Faced with the declassification of two CIA reports from 1984<sup>5</sup>, in June 2020, which clearly establish the responsibility of the former president of the government, Felipe González, read together with journalistic articles and political statements already known, civil society – including the relatives of J.I.Z. and J.A.L.– requested an investigation into the participation and criminal responsibility of Felipe González for having induced or facilitated the GAL to commit serious crimes against rights protected by the Covenant.

However, both the state authorities and the Prosecutor's Offices dismissed the lawsuits on the grounds that the statute of limitations for promoting public action had expired, even though **crimes against humanity are not subject to a statute of limitations**. This conduct of the Spanish authorities is a clear denial of justice, by refusing to investigate the crimes committed by a former Prime Minister, even when there are strong indications of the instigation of crimes against humanity.

Thus, the high-ranking masterminds –state agents and high-profile officials– who created the GAL and ordered the commission of crimes were not convicted; such criminal conduct remaining totally unpunished. In addition to constituting a violation of the obligations to respect and guarantee human rights and the principles of transitional justice, it specifically violates the right to an effective remedy and the principle of equality and non-discrimination (Articles 2.3 and 26 of the ICCPR).

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<sup>5</sup> In which we can read, among other elements: *"The government, however, appears determined to adopt an unorthodox strategy in dealing with ETA. [...] González has agreed to the formation of a group of mercenaries, controlled by the Army, to combat the terrorists outside the law. [...] the mercenaries would not necessarily be Spaniards and that their mission would be to assassinate ETA leaders in Spain and France. A so-called Group for Antiterrorist Liberation (GAL), similar in nature to the strong-arm squads contemplated by the government, has in fact surfaced in southern France. GAL has murdered two well known ETA-M activists in southern France and kidnapped a Spanish businessman in Hendaye who was suspected of collaborating with the terrorists. Madrid has somewhat halfheartedly denied any knowledge of or connections to GAL, but Basque politicians, clearly convinced of the central government's complicity, have protested vociferously. The Spanish press is rife with speculation that the authorities are behind GAL, and the Gonzalez government has indicated that it is prepared to go to great lengths to extirpate ETA." "The PNV helped organize the massive anti-ETA rally in Bilbao, and party president Arzallus highlighted the priority of the struggle against ETA at the PNV's annual "party day" celebration in October." "Vitoria, in our view, has finally realized that ETA violence-not Madrid's "repression"-constitutes the greater danger to Spanish democracy and therefore to Basque autonomy." (p.19).*

It is for this reason that, in the case of José Antonio Lasa and José Ignacio Zabala, the crimes of torture and forced disappearances were not recognized; being imprescriptible crimes that could have subsequently led to the conviction of the intellectual authors of high positions.

## **V. Failure to comply with the pillars of transitional justice**

All of the above does not comply with the pillars of transitional justice.

The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition stressed that impunity in law can be generated by amnesties and immunities, by the application of the statute of limitations and non-retroactivity of criminal law, by the insufficient classification of crimes, by pardons; a sign of the lack of political will<sup>6</sup>.

**Truth:** The Spanish State has not guaranteed the right to the truth regarding the serious crimes committed by the GAL and State terrorism. On the one hand, internal regulations such as the Official Secrets Act of 1968 and the restrictions of Law 19/2013 prevent effective access to key documentation, hindering the clarification of serious violations. In addition, the Law of Democratic Memory expressly excludes from its scope of application (with exceptions) the events that occurred during the democratic transition. In addition to that, the state authorities refuse to investigate the serious crimes committed by high-ranking officials, such as the criminal responsibility of former Prime Minister Felipe González in the creation and operation of the GAL. All this perpetuates the institutional silence on state crimes, in violation of articles 2.2 and 19.2 of the ICCPR, making it impossible for the victims to know the truth about the crimes perpetrated by the Spanish government.

The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition recalled that the right to the truth is individual and collective, makes it possible to combat impunity and ensure the non-repetition of crimes committed. Thus, States have “the duty to remember” that they must prevent revisionist and denialist theses from emerging<sup>7</sup>.

**Justice:** Spain maintains a structural pattern of impunity by refusing to adequately investigate, prosecute and punish the higher levels of responsibility of the intellectual authors of the crimes committed by the GAL. The prosecutors' offices dismissed well-founded complaints against high-ranking officials –such as former Primer Minister Felipe González– alleging that the statute of limitations had expired, despite the imprescriptible nature of crimes against

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<sup>6</sup> [A/HRC/48/60](#).

<sup>7</sup> [A/79/180](#), para. 43.

humanity; even when there were public and well-known indications of such responsibility. Moreover, enforced disappearance is not classified as an autonomous crime, which prevents its effective prosecution and the Amnesty Law of 1977 constitutes an additional obstacle. Selective justice, lack of political will and institutional protection of senior commanders constitute a pattern of impunity incompatible with the State party's obligations that violates Articles 2.3, 6, 7 and 9 of the ICCPR.

**Reparation:** The Spanish State has failed to grant comprehensive reparation to all victims of the GAL, in violation of the principles of equality and non-discrimination. In fact, some of them were arbitrarily and discretionarily excluded from the reparation systems, under the argument of an alleged link with ETA that was never judicially proven, depriving them of access to economic compensation and symbolic reparation measures. Instead of adopting a victim-centred approach, the Spanish authorities have maintained a stigmatising and revictimising institutional discourse, as evidenced by the imposition of legal costs through administrative proceedings, violent interventions during funerals, and the fact that convicted perpetrators have received decorations and salary increases. In this regard, the State fails to comply with the international standards established by the Committee on adequate, comprehensive, and proportionate reparation for the harm suffered.

**Guarantees of non-repetition:** The current regulatory framework –which includes unreformed Francoist laws that facilitate opacity as well as the Amnesty Law of 1977– prevents the adoption of effective guarantees of non-repetition and maintains impunity for serious human rights violations. In addition, the recognition and promotion of convicted officials reinforces a culture of institutional protection and lack of accountability. Without legal reforms and institutional recognition of the crimes committed, the Spanish State continues to fail to comply with its international obligations (art. 2 of the ICCPR).

## **VI. Conclusion and Recommendations**

The Committee is respectfully called upon to examine these violations in depth and to adopt the following recommendations to ensure truth, justice, reparation and guarantees of non-repetition for the crimes committed by State-linked bodies during the democratic transition as well as those committed subsequently:

1. Repeal the Francoist laws (Official Secrets Law, Law on Police Decorations and Law establishing rules for the exercise of the Grace of Pardon) and the Amnesty Law.

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*Changing the present, taking care of the future*

2. Revoke the decorations of persons convicted of serious crimes, understood as those sentenced to a prison sentence of more than 5 years.
3. Allow access to classified documents dealing with serious crimes committed during the democratic transition and beyond.
4. Classify the crime of forced disappearance autonomously.
5. Extend the temporal scope of application of the Commission that contributes to the clarification of human rights violations during the War and the Dictatorship to the crimes committed during the democratic transition and subsequently.
6. Recognize the imprescriptibility of crimes against humanity.
7. Investigate, prosecute and punish high-ranking masterminds for crimes committed by GAL.
8. Recognize state terrorism and prevent denialist discourses.
9. Ensure comprehensive reparation for the victims of the GAL, without discrimination, taking into consideration the specific wishes of the victims through constructive dialogue.
10. Recognize the right to the truth autonomously in its domestic legislation.