

The Human Rights Situation in the Basque Country. Chapter IX of the Report by Alvaro Gil-Robles, Commissioner For Human Rights of The Council of Europe, on his visit to Spain In March 2005

161. There are at least two reasons for including a separate chapter on the human rights situation in the Basque Country. The first and most important reason is the continuation, for more than 40 years, of a form of terrorism linked to extremist nationalism which has caused over 1,000 deaths, almost 7,000 injured, massive damage and destruction and great suffering among the Spanish people. Terrorism affects Spanish society as a whole and has a particular impact on political and social relations in the Basque country itself.

162. Secondly, I believe it is useful to continue updating the analysis I made of the situation in the Basque Country in my report of 9 March 2001 [CommDH (2001) 2], in which I addressed the problem of the continuing violations of human rights in this Autonomous Community as a result of terrorist action. Two years later, in March 2003, I published a report [BCommDH (2003) 15] in which I examined developments in the situation and the measures taken to apply the recommendations made in 2001.

163. I would like to emphasise a point which I already made in my 2001 report, namely that the action taken by ETA is a direct interference with the most fundamental of human rights (Section III, § 1, page 4). In other words, terrorism is, in itself, a direct violation of the most fundamental of human rights, the right to life, and also the right to physical and moral integrity. I also pointed out in the same report (Section III, § 4, page 6) that many human rights violations were not only the result of direct action by ETA, but that the so-called “*kale borroka*” (street violence), carried out by radical pro-independence groups affiliated to ETA, had

become a new form of human rights violation in the Basque Country. The report called on the Basque and Spanish Governments to take the necessary steps to counter terrorist action and street violence effectively and to safeguard the fundamental human rights of all Basque citizens.

164. In the aforementioned March 2003 follow-up report, I noted with satisfaction that there had been a significant reduction in the number of incidents of street violence and an equally significant increase in the number of arrests made in respect of these incidents, and pointed out that the measures taken by the relevant authorities –both at central level

^{Note 62} and at the level of the Basque autonomous authorities and more specifically the Department of the Interior of the Basque Government, which supplied me with detailed and precise statistics – had succeeded in putting an end to street violence and to the impunity which had accompanied such violence up to that point. Despite this good news, I noted with regret, in my report, the large number of offences committed by ETA during the period 2001-2003 and the threats that this terrorist organisation had made against numerous citizens in the Basque Country, who continued to need police protection.

165. Since 2003, the trend towards a reduction in the number of incidents of street violence has continued and become more marked. The Basque Department of Interior provided me with extremely detailed information which clearly pointed to this conclusion. In 2001, the year in which my first report on this subject was published, 536 attacks of this type were made on the Basque population whereas in 2004 the number had fallen to 140. This is, of course, a cause for satisfaction. Nevertheless, it is vital to remain extremely vigilant since, as already stated above, there has been a worrying reappearance of street violence in the smaller and larger towns of the Basque country since my visit – particularly during summer 2005.

166. Indeed, the recent attempts by pro-independence groups linked to ETA to revive the “*kale-borroka*” movements are a cause for concern. In August 2005 alone, the police counted some thirty attacks of this type in a period of five days, coinciding with two bomb attacks by ETA. The banned political party “*Batasuna*” is in fact continuing to operate under various covers, to organise demonstrations and exert pressure on various democratically elected municipal councillors in the Basque Country to abandon their posts and responsibilities (more than 100 councillors have already yielded to the clear threats made to them). All State and Basque authorities responsible for the security forces therefore need to take

^{Note 62} According to victims associations, the new legislation on civil liability for damages caused by actions of “*kale borroka*” contributed, together with other measures, to reduce the extension of this phenomenon

action to prevent and punish this type of criminal and anti-democratic behaviour. 167. On the other hand, it is also worth noting that the number of terrorist attacks by ETA has fallen steadily since I drew up the aforementioned reports. This trend is explained by more effective policing, international co-operation and the growing political and social isolation of the terrorist organisation and its affiliated groups. Although it has not been possible to completely eradicate Basque nationalist terrorism, as would have been desirable, there is no doubt that its ability to strike at Spanish society has been reduced to an all-time low. For example, compared to the 47 terrorist attacks by ETA

^{Note 63} and the 15 deaths caused in the whole of Spain in 2001, in 2003 there were only 2 attacks and 3 deaths. In 2004 the number of attacks rose to 7 in the Basque Autonomous Community and 26 in the rest of Spain, whereas, for the first time since the establishment of a democratic regime in Spain, ETA did not cause any deaths in 2004. Nor have any deaths been noted, to date, in 2005.

168. I have already referred, in the previous section, to the very wide range of measures taken by Spain to care for and assist the victims of terrorism. Brief reference should also be made to the measures taken by the Basque Government in this field, which are a useful addition to those taken by central government. For example, Decree 214/2002, dated 24 September, merged various existing victim-support programmes. This decree proposes a series of measures in various fields such as health – in particular psychological and educational-psychological care – education, employment, housing and material assistance. The Victim-Support Department, set up by Decree 369/2001, is answerable to the Basque Minister of the Interior and is mainly responsible for providing support to the victims of terrorism. In 2004 this Department dealt with 125 victim-aid cases ^{Note 64}.

169. As I already pointed out in my 2001 report, relations between associations for the protection of the victims of terrorism and the Basque Government have long been tense and difficult, the former accusing the latter of a tolerant attitude towards terrorists and of indifference, abandonment and purely rhetorical solidarity with

^{Note 63} According to the data provided by the Basque Department of the Interior, this figure can be broken down as follows: 24 attacks in the Basque Autonomous Community and 23 in the rest of Spain.

^{Note 64} According to the data provided by the Basque Government this figure can be broken down as follows: 68 cases concerning material damage – housing, vehicles, business premises and other items (personal effects, clothes...) – and 57 for physical damage.

those who have most directly suffered the consequences of terrorist attacks^{Note 65}.

170. In its search for a solution to this situation, the Basque Parliament agreed, in June 2002, to set up a committee to examine the situation and needs of the victims of terrorism, which came into being on 3 July 2002. All the political groups represented in parliament, with the exception of “*Euskal Herritarrok*”^{Note 66}, took part in this committee, and it also invited a wide range of representatives of institutions at all levels - the judiciary, universities, employers’ organisations and trade unions, the mass media, the Church and non-governmental organisation, in particular victim-support associations. After this committee had completed the first stage of its work, the Basque Parliament, at its plenary session on 25 June 2003, unanimously approved a motion concerning the measures that could be taken to alleviate the situation of the victims of terrorism, in which it is proposed that various authorities should adopt a wide range of extra measures to provide moral, financial, educational, administrative and judicial support to the victims of terrorism.

171. Although I am aware of the serious disagreements which continue to be an obstacle to a fluent dialogue between the victims associations and the Basque autonomous authorities, it is necessary to acknowledge the efforts made by the Basque Parliament to establish an open dialogue with the representatives of all political and social groups – especially the representatives of victims associations – to promote the adoption of more ambitious measures in support of the victims of terrorism. I have no indication, however, that the measures proposed by the Basque Parliament have been implemented, something I deem essential if one wants to the expression of solidarity with the victims be viewed as something more than simple rhetoric.

172. In my 2003 follow-up report, I referred to the enactment of Organic Act 6/2002 on political parties, providing for the possibility of banning parties and electoral coalitions which promote, encourage or justify violence. Pursuant to this law, the Supreme Court ordered the disbandment of the parties associated with ETA activities which had stood in the previous local and national elections under various names. In decision No. 48/2003, dated 12 March, the Constitutional Court rejected the appeal against this legislation, which had been lodged by the

^{Note 65} For example, AVT and COVITE were invited to appear before the Human Rights Committee of the Basque Parliament on 26 November 2002 to discuss the situation and needs of the victims of terrorism (Official Gazette of the Basque Parliament, 7th parliamentary year, No. 190, page 24877 et seq). On 29 October 2002, when the Minister of Justice, Employment and Social Security appeared before the same Committee, he himself recognised that he had to accept the criticism that the victims had not only suffered pain and trauma but that they had also felt forgotten, abandoned and neglected. (Ibid, page 24875).

^{Note 66} Pro-independence electoral coalition, closely linked to ETA.

Basque Government on grounds of unconstitutionality and found that its principles complied with the Constitution^{Note 67}.

173. The Constitutional Court also dismissed the appeals lodged by “*Batasuna*” (Unity) and “*Herri Batasuna*” (Unity of the People)

^{Note 68} and by “*Herritarren Zerrenda*” (Citizens’ list)

^{Note 69}, against the decisions rejecting their candidatures for the municipal elections and the European Parliamentary elections in 2004. Nevertheless, in decision 85/2003, dated 8 May, the Constitutional Court upheld parts of the appeal lodged by various voters’ associations from different parts of the Basque Country on the grounds that, in their case, the requirements set out in Article 23 of the Spanish Constitution, recognising the right to political participation, had not been met. However, the same decision rejected the appeals lodged by numerous other electoral platforms whose candidatures for the same local elections had not been accepted either. *Batasuna*, *Herri Batasuna*

^{Note 70} and various affiliated electoral platforms

^{Note 71}, have lodged applications in respect of this matter with the European Court of Human Rights. At the time of drafting, the decision on these appeals was still pending.

174. I consider it necessary, before concluding this Chapter on the Basque country, to make a reference to a problem explained to me during the visit, namely the situation of a group of non-permanent (“*interinos*”)

^{Note 72} teachers of the Basque public education system. These teachers had received notifications from the Department of Education to the effect that they were to be removed from their posts on the grounds that they had not succeeded in passing the exams demonstrating they had the “linguistic profile” required for the posts they were holding. In other words, because their knowledge of the Basque language was lower than the level required for their posts. This group complains of “linguistic discrimination” and has raised this complaint before

^{Note 67} The Basque Government’s subsequent application to the European Court of Human Rights was declared inadmissible, in a decision dated 3 February 2004, on the grounds that it was not entitled to bring an application.

^{Note 68} Judgments of the Constitutional Court 5/2004 and 6/2004.

^{Note 69} Judgment of the Constitutional Court 99/2004 of 27 May.

^{Note 70} Applications Nos. 25817/04 and 25803/04.

^{Note 71} Applications Nos. 35579/03, 35613/03, 35626/03, 35634/03 and 43518/04.

^{Note 72} In spite of their denomination as “non-permanent” (“*interinos*”), these 157 teachers enjoyed in practice a high degree of stability in the performance of their functions as they had been occupying their same posts for periods lasting between 15 and 25 years.

several national and international instances. After my visit, I met in Strasbourg with representatives of this group and they provided me with a large amount of documents concerning this problem.

175. These teachers allege, among other complaints,

Note 73 that the requirement to know the Basque language did not apply at the time they joined the public education system and was introduced only after the jurisdiction over educational matters was transferred to the Basque Autonomous Community, in disregard of the transfer conditions applicable to teaching staff.

Note 74 I agree, for my part, with the “*Ararteko*” and the National Ombudsman’s opinions that the measures imposed, for insufficient knowledge of the Basque language, on these senior teachers entail excessively detrimental consequences for them. Without prejudice to importance of the citizens’ right to use the official language of their choice, I consider, that initiatives aimed at facilitating the exercise of this right should not put the employment of so small a group of persons in peril, who represent less than 1% of all the teachers employed by the Basque autonomous administration. I consider it preferable to avoid impositions in this field where flexibility and prudence are much needed to avoid social tensions for linguistic reasons and to promote a consensual practice of bi-lingual education in the Basque Autonomous Community.

Note 73 They also complain that the Department of Education requires a knowledge of the Basque language to those who teach in Spanish, that they had not been given the opportunity to benefit from the Basque language learning programmes for teachers until 2000., that they are at pains to learn this language because of their age and because they live in areas where it is hardly spoken, that the Decree on “linguistic profiles”, was adopted against the wishes of the largest trade unions and with the only support of the nationalist ones...

Note 74 These conditions were enshrined in Act 2/1993 of the Basque Parliament on teaching staff outside university education, which granted stable employment to non-permanent staff in possession of the relevant academic diplomas and seniority