

Report by Alvaro Gil-Robles, Commissioner for Human Rights of the Council Of Europe, Issued After His Visit to Spain and The Basque Country February 2001

Introduction

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. (...)

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.

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.

General approach

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.

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.

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.

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.

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.

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 Edurne Iriarte 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. (...)

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. (...)

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, Ertzainta 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 Ertzainta 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 Ertzainta 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 Ertzainta 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 Ertzainta’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.