



PRESENTATION OF
THE POLITICAL REALITY
IN THE BASQUE COUNTRY:
FROM DEFAMATION TO TRAGEDY

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The logo features a stylized black silhouette of a hand with a small green sprout growing from the palm, set against an orange background.

PRESENTATION OF THE POLITICAL REALITY IN THE BASQUE COUNTRY: FROM DEFAMATION TO TRAGEDY

BY WAY OF PRESENTATION

The purpose of this brief publication is to offer concise, simple and high-quality information to people observing from abroad and who have a hard time understanding the paradoxical and complex reality of Basque politics.

That the maximum authority of a region in one of the oldest nations in Europe makes a case for the right to self-determination with a view to secession is very hard to understand. That, at the same time, both he and his collaborators cast doubts on the impartiality of the justice system, criticise, together with terrorist violence, the force that has to be legally wielded to combat it, and consider that any idea, as aberrant as it may be, has the right to be constituted in a legal party, must also lead to confusion, since it represents a part of the State which discredits itself. Consequently, it is understandable that the well-meaning foreigner is immediately tempted to think that, from the perspective of democracy, things have not changed enough in Spain since Franco's death, that Spanish democracy, relating it to all the black legends and romantic visions, does not exist, and to take as true that a small but indomitable people, defending their ancient liberties, are combating a cruel oppressor – straight out of a screenplay from the golden years of Hollywood.

Following the title of a book by our unforgettable companion Mario Onaindia, we have looked to create a “guide to the Basque labyrinth”, with the collaboration of top university specialists in different areas. Those same specialists which Basque nationalists systematically question or combat through their propaganda and through the significant, although sometimes subtle, social coercion of the so-called moderate nationalists. And through bombs and gunshots to the back of the head by terrorist nationalists. Those specialists wanted to contribute their arguments in the task of dismantling the defamation of the Basque reality, so

widespread in certain sectors abroad and also within Spain, since one of the main disseminators, the Basque government, should in principle be a credible source.

In addition to the nine articles by specialists in Basque issues, we have included an annex containing extensive references to reports on the situation in the Basque Country prepared by the Commissioner for Human Rights for the Council of Europe. And to provide a more vital and up-close vision, we have included the conference given at Stanford University in early April by Joseba Arregui, spokesman for the Basque government prior to the pact between institutional nationalism and violent nationalism in 1999, the so-called Pact of Estella.

Fundación para La Libertad can only express its gratitude to all who have participated in this document for their collaboration and for the immense efforts made to condense in six pages the sixty that normally would have been used to explain the situation. We hope that the desired objective has been achieved.

Bilbao, 1st May 2008

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THE AUTONOMY OF THE BASQUE COUNTRY

Singularities. The Autonomous Tax System. The Basque Tax Contribution The Agreement State Government - Basque Authorities

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Summary

The Spanish Constitution of 1978 opted for a political decentralisation to accommodate Spain's regional diversity and to guarantee a more effective separation of powers. The Spanish model of territorial organization may be regarded as a federal system: all of the regions have a considerable level of self-government protected by Statutes of Autonomy. The Autonomous Region of the Basque Country was granted special powers, including a regional police or a separate financing system. Thanks to this financing system, the Basque Country has been able to develop a level of self-government not found in any federal state. However Basque nationalists demand for changes regarding the position of the Basque Country within the State, based on the assertion of a hundred-year-old "Basque problem". The Basque Government of the Basque Nationalist Party claims for a recognition of the right to self-determination of the Basque territories incompatible with the federal logic and the Spanish Constitution. This involves in practice breaking the bonds between Spain and the Basque Country through a confederation formula. The strategy in place invokes alleged historical rights in order to obtain new advantages, which has terrible consequences in a region where a terrorist organization kills people in the name of similar purposes.

The Territorial Organisation in Spain: the Autonomous Communities

The intention of the fathers of the Spanish Constitution of 1978 when opting for political decentralisation was to establish a form of organization of the State able to accommodate Spain's regional diversity and to guarantee a more effective separation of powers. The decision was mainly based on political grounds. The need to solve historical conflicts and to bring the nationalist parties, particularly important in Catalonia and the Basque Country, into the constitutional consensus explains why the makers of the Spanish Constitution opted for a decentralising initiative and helps to understand the features of said decentralisation.

There was a general recognition of the need to provide a quick access to full autonomy for the Basque Country, Catalonia and Galicia. However the difficulties involved in the decentralisation of Spain as it was organized in 1978 made it advisable to initiate a process moving at different speeds, both in terms of timing and in terms of the powers initially transferred to the various regions under their corresponding Statutes of Autonomy.

This situation called for an open model which was to be further defined by subsequent agreements between political forces. According to the Spanish Constitution, there would initially be two different types of Autonomous Regions: those immediately eligible for full autonomy and entitled to assume in their Statutes of Autonomy all powers not exclusively reserved to the State by the Constitution, and those initially entitled to a reduced level of autonomy, which could be increased, up to the same limit applicable to the first type of regions, after at least five years of autonomous government. Immediate access to full autonomy was not limited to any given region, but the requirements needed to get there limited this possibility. However, the Spanish Constitution established a special procedure which would allow the regions of Catalonia, Galicia and the Basque Country to directly achieve a full level of autonomy and to bilaterally negotiate the content of their Statutes of Autonomy with the State government. The power of the national Parliament was restricted to a vote of ratification of the agreements previously reached, which was to be exercised only after the Statute had been approved by referendum by the voters of the relevant region.

The Basque Country and Catalonia were the first two Autonomous Regions to be created and to reach full autonomy. The fact that both of them were governed by nationalist parties put them in a privileged position to put pressure on the successive central governments, favoured the development of bilateral relations with such governments and allowed both regions to consolidate a differentiated position. But such differences are found in a State where the position of the various regions tends towards homogenization. Through the amendments undergone by many Statutes of Autonomy during the 1990s, the powers transferred to the

various regions were substantially equalled and the devolution of education and health policies seemed to culminate the creation of a territorial organization model which is already defined as a federal system by most constitutionalists.

The Federal Transformation of Spain

Even though the instruments of coordination and cooperation, both horizontally among the Autonomous Regions and vertically between the regions and the State, may be insufficient, the Spanish model of territorial organization may certainly be regarded as a federal system: all of the regions have a significant level of self-government, which is basically the same in all regions and which is protected by Statutes of Autonomy which may not be amended unilaterally by the State; there is a judicial procedure in place, entrusted to the Spanish Constitutional Court, to resolve any disputes which might arise between the State and the Autonomous Regions in connection with the powers corresponding to each of them, and the regions have sufficient financing, defined by a coordination body comprised of representatives of all regions and the State.

The federal transformation of Spain is made evident by analysing the evolution of the proportion of expenditure managed by the regional governments (and, more particularly, by the Autonomous Regions) and by the State. In 1982, the central government, excluding the Social Security, controlled 53% of the total consolidated expenditure of the Public Administration, but this figure fell to 37.2% by 1996 and was down to 24% in 2003. Regional governments, on the contrary, managed only 14.2% of the total expenditure in 1982, but controlled 45.3% of the expenditure in 2003 (32.4% was managed by the Autonomous Regions and 12.9% by local governments). In 2005 only 23.5% of the expenditure will be managed by the central government¹ The same growth trend is to be seen in the percentage of staff at the service of the Public Administration working with regional governments (in 2004, 49.2% of the total staff was employed by the Autonomous Regions , while only 23.1% worked for the central government and 24% for local governments)².

During the current government's term (2004-2008), Spain has begun to undergo a process of statutory reforms which has been of special significance in the cases of Catalonia and Andalusia. The process is not yet completed, and it is therefore not possible at this point to predict its final outcome, but, as for the subject matter

¹-Source: *Presupuestos Generales del Estado para 2005* (2005 General State Budget), Libro amarillo, cap. VII. Financiación de los entes territoriales.

²-Figures obtained from R. Blanco Valdés, *Nacionalidades históricas y regiones sin historia*. Alianza Editorial. Madrid, 2005. p.86.

being discussed herein, it is quite obvious that this new situation will not lead to a recentralisation of the state but rather to a reinforcement of self-government.

The Singularities of the Basque Autonomous Community

As already mentioned above, the Basque Country has a Statute of Autonomy, enacted in 1979, which provides for access, from the very beginning, to the full level of autonomy provided for in the Spanish Constitution, thus guaranteeing the region's self-government and promoting respect for and development of its cultural identity.

As is the case of the other Spanish regions with an own language, according to the Statute of Autonomy of the Basque Country, Basque, or *Euskera*, is granted co-official language status alongside Spanish, and the Basque Parliament passed a law which lay the foundations for the language policy. This has made it possible to require a sufficient level of knowledge of both co-official languages in order to access most offices within the regional and local governments (a requirement which has involved a costly process of learning by those civil servants who lacked knowledge of Basque, and which has not encountered significant opposition, in spite of the fact that two thirds of the Basque population do not speak Basque). The school system established in the Basque Country encourages teaching in Basque, which is largely used as instruction language, and Basque has recently been declared as “main language” in primary and secondary education. All university programmes offered by state universities in the Basque Country are available in both languages. The regional government has also created a public broadcasting service with radio and television stations broadcasting exclusively in Basque and provides funds for the publishing of newspapers, magazines and books in Basque language. There are, in short, significant resources earmarked for promoting the Basque culture in Basque language.

There are historical and political grounds, which cannot be addressed herein, which explain why the Spanish Constitution included a first additional provision that “protects and safeguards the historical rights of the so-called foral regions [the Basque Country and Navarre]”, and whose “general revision” may be carried out “in accordance with the Constitution and the Statutes of Autonomy”.

Pursuant to this provision, which defines the singularity of the Basque Country (and Navarre), it was possible to regulate issues in the Statute of Autonomy of the Basque Country which would otherwise have required the approval of an Organic Law (creation of a regional police, internal organization by provinces and, most importantly, the establishment of a special economic agreement between Spain and the Basque Country - the so called *Concierto Económico*).

Among the special powers granted to the Autonomous Region of the Basque Country, it is necessary to point out the existence of a regional police, built, from the very beginning, as an integral police force with authority to intervene in all areas, the function of the State Security Forces being restricted to police services related to non-European or supra-European issues. However, the main differentiating feature of the Basque self-government system is the recognition of a separate financing system, with which the region has achieved a particularly significant increase in its resources, which has in turn favoured a broadening of the scope of its self-government. Thanks to this financing system, the Basque Country has been able to develop a level of self-government not found in any federal state, whose main difference lies in the abovementioned Economic Agreement, governing the tax relations between the State and the Basque Country.

There are two main rules governing this system: the Law approving the Economic Agreement with the Autonomous Region of the Basque Country (*Ley por la que se aprueba el concierto económico con la Comunidad Autónoma del País Vasco*) (defining the basic rules of the system and the scope of autonomy of Basque institutions regarding approval of tax regulations), and the Law approving the method for determining the tax contribution of the Basque Country for each five-year period (*Ley por la que se aprueba la metodología de señalamiento del cupo del País Vasco para cada quinquenio*). Both laws were enacted by the Spanish Parliament, but in accordance with the procedure applicable to single section laws. According to this procedure, the only role of the Parliament is to ratify an agreement previously reached between the Basque institutions and the State Government. Thus, the members of Parliament have no right of amendment and the State is not entitled, in principle, to modify such rules unilaterally. This ensures an advantageous bilateralism between the region and the State and strengthens the position of the region, since the approval of measures is dependent upon the existence of special agreements.

The Economic Agreement has two main characteristics. The first of these characteristics is *Tax Autonomy*, which means that Basque institutions have the power to establish the tax regulations applicable to the Basque Country and to collect, manage, settle and inspect all taxes levied (which, in practice, means all taxes except for custom duties levied on goods imported from outside the EU). The regulatory power of the region is subject to general limitations (such as restrictions imposed by international treaties and conventions which have been ratified by Spain, prohibition to hinder competition between companies or the free movement of capital, and that the regulations passed have as a result a fiscal pressure equal to that of the rest of the country) and to the specific harmonization rules applicable to each type of tax, as set forth in the law approving the Economic Agreement. In practice, the Economic Agreement grants little regulatory power in connection with indirect taxes, but gives broad authority regarding the regulation of direct

taxes (Income Tax and Corporate Tax). Basque institutions have therefore been able to develop a separate tax policy and enjoy a competitive advantage over other regions, which is particularly important given the lack of precision of the general limitations applicable.

The other defining feature of the Economic Agreement is related to the obligation *to pay a certain amount to the central Treasury, which is referred to as the Basque tax contribution* (or cupo). The logic of the system is basically as follows: Basque institutions collect taxes within the region and pay to the State the part corresponding to the expenses made by the latter in connection with issues which have not been devolved to the Basque Country, keeping the remainder to finance its self-government. This means that the funds transferred by the Autonomous Region to the State does not depend on the amount of taxes collected, but rather on an assessment of the exclusive powers of the State (the importance of which is gradually decreasing).

The Basque tax contribution is calculated by multiplying the cost of the expenses incurred by the State in connection with non-devolved powers by a coefficient which tries to represent the relative proportion of income of the Basque Country compared to that of Spain as a whole (which currently remains at 6.24%, as initially established). Taxes collected by the State within the Autonomous Region, or from persons resident in the region, and the amount of State deficit attributable to the region are deducted from the amount of expenses assumed by the State. *Tax offsets* relating to special taxes are then deducted from the resulting product (in order to prevent the region from being disadvantaged due to changes in the treatment of revenue-producing monopolies), and certain *adjustments* are made (the tax contribution being reduced by the amount of the sums transferred to the State for payment of Social Security charges and in connection with programme contracts and other agreements between the Basque Country and the State, including payment of regional police and health expenditures)³.

Since 1987, when health services were devolved to the Basque Country, the result of the financial flows between the State and the Autonomous Region have been to the benefit of the Basque Country

³-The formula for calculation of the Basque tax contribution would be as follows:

$$C = 6.24\% (PND - TCS - D) - \text{Offsets} - A,$$

where

C: Tax Contribution

6.24%: imputation rate

PND: value of powers not devolved to the Autonomous Region of the Basque Country

TCS: taxes collected by the State, not contemplated in the Statute of Autonomy

D: Deficit

A: Adjustments

According to data provided by Ignacio Zubiri Oria, Professor in Public Finance at the University of the Basque Country, in 2003 there was a positive balance for the region amounting to 52.9 million euros, which is equal to almost 25€ per resident in the Basque Country or 0.1% of the GDP. This means that, taking into account only regular resources (that is, excluding resources obtained from the EU), the amount of per capita resources obtained by the Basque Country is 64% higher than the average resources obtained by the rest of the regions (30% higher in percentage of the GDP)⁴. According to the above, the Basque Country (and Navarre, where the figures are very similar) has 64% more per capita resources than the rest of the regions to pay for the same public services.

Such imbalances cannot but seem puzzling, particularly if taking into account that the Autonomous Region of the Basque Country, despite being notably richer than the average of the regions in Spain, brings in more resources from the State than it pays out to the central Treasury, when it should, in fact, be among those contributing the most resources to cover the needs of the poorer regions. The reason for this apparent anomaly is mainly to be found in the formula used for calculating the amount of the Basque tax contribution, which does not consider participation in public expenditure allocated to interregional solidarity, and in the fact that the abovementioned 6.24% has remained unchanged since the establishment of the system, mainly due to political reasons. However, the benefits provided by this system cannot easily be withdrawn, given the bilateralism of the reform procedure and the need to reach an agreement on any amendments to be made.

As a result of this financing surplus, the Basque Country is able to implement its own policies in many fields, in support of political interests and local economic interests. The support to Basque economy is encouraged through the implementation of a wide network abroad, connected to the 162 Basque Centres spread over several countries, mostly in South America, four of which have delegations of the Basque Regional Government, and which are promoted by SPRI, a public company with branches in thirty countries. Other new instruments for strengthening the competitive position of the Basque economy include the recently established Basque Council for Science, Technology and Innovation (*Consejo Vasco de Ciencia, Tecnología e Innovación*) and the creation of two institutions promoting innovation (Innobasque) and basic research (Fundación Ikerbasque), provided with significant resources to attract scientists from outside the Basque Country and to create centres of basic research excellence. Thanks to the availability of economic means, it is also possible to provide sufficient resources and qualified personnel for the Delegation of the Basque country in Brussels, which is an

⁴- If resources obtained from the European Union are considered, the abovementioned resources would be 58% higher in per capita resources and 25% in percentage of the GDP.

important instrument to enhance participation of the Basque Government in the European Commission committees with regional representation and to provide information and act as a lobby for Basque economic interests in Europe.

Nationalist demands for change regarding the position of the Basque Country within the State, based on the assertion of a hundred-year-old “Basque problem” which Spain has failed to address, have historically served as an argument to obtain advantages which have by no means put an end to such demands. The relative advantage of the Basque Country over the rest of Spanish regions and the singularity of the Basque self-government compared to existing federal systems have not been enough convincing arguments to limit such demands. For this reason, the alternative discourse for the current situation, most prominently expressed in the “Proposed Political Statute for the Basque Country” (*Propuesta de Estatuto Político de la Comunidad de Euskadi*), submitted by the president of the Basque Government and approved by the Regional Parliament, is based on assumptions which are incompatible with the federal logic. Said proposal demanded recognition of the right to self-determination of the Basque territories. In practice, it involved breaking the bonds between Spain and the Basque Country through a confederation formula which cannot be explained here.

The unfeasibility of the proposal (in a region where the population is equally divided between nationalists and not nationalists) was made evident in the debate held at the plenary meeting of the Spanish Parliament held on 1st February 2005, where further processing of the proposal was rejected by an overwhelming majority. This has not, however, put an end to the strategy of invoking alleged historical rights in order to obtain new advantages, nor has it silenced the discourse of frustration, which has terrible consequences in a region where a terrorist organization kills people in the name of similar purposes.

THE NATIONALIST CANON Argumentation of the Basque “conflict”

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Summary

The purpose of this paper is twofold: 1) to set forth what could be referred to as the “canonical version of the Basque conflict”, which has been the version offered by the Basque nationalists for many years now. Although the basic points are the same in all cases, details of this version may vary depending on whether it is heard from the peaceful and democratic side of Basque nationalism (that is, the Basque Government and the Basque Nationalist Party, PNV) or from the radical and violent side of Basque nationalism (represented by ETA and the socio-political organizations around it – mainly BATASUNA); and 2) to contrast this nationalist canon with the historical, social and political reality of the Basque Country, in order to make evident the false statements on which it is based and, most importantly, to reveal its total inability to explain the Basque reality.

Structure and content of the canon

The nationalists' explanation of the political situation in the Basque Country takes the form of a fiction story or a tale. Thus, according to this explanation, Basque politics are muddled by an essential, unresolved conflict ("the heart of the plot"). An imaginative story has been built around this main theme, which, as any proper tale, is comprised of a main character (the "Basque people"), a story (the original independence of the Basque Country and the crushing of such independence in modern times), a key point ("terrorism"), an unsatisfactory evolution (the current situation) and a "happy end" (the exercise by the Basque people of their "right to decide").

As all stories and tales, the nationalist canon is highly attractive for its simplicity. However, as will be evidenced throughout this paper, it is a biased representation of reality, arbitrarily made up from a selective and Manichean point of view, which, in short, fails to explain the socio-political reality of the Basque Country.

The main character (the Basque people) and their history

The existence of a "Basque people", culturally distinct from the rest of Spain, is the basic starting point of the nationalist canon. According to this theory, the Basque people have been culturally different since ancient times, having certain unique cultural features (language, customs, racial origin, secular nobility) which would make them a distinct "ethnic group", separate from the Spanish people (according to the most impassioned versions of this theory, the "Basque population" would have existed for about 7,000 years, that is, since the emergence of sedentary agriculture). This people, or ethnic group, would moreover have had a national self-consciousness dating back to ancient times, evidenced by their continuous desire for self-government.

In this respect, according to the nationalist canon, history proves that the people inhabiting the four Basque territories (Biscay, Alava, Guipuzcoa and Navarre) have had self-government institutions since the end of the Middle Ages (although most of the data is found after the 16th Century), which put them in a special, privileged situation within the Spanish monarchy. These institutions were the so-called "*fueros*", which established a system of virtual semi-independence: although the Basque people in theory accepted the king of Spain as their sovereign, they reserved the right to run their own government and to reject the royal orders which they considered opposed to the law of their own institutions (the *fueros*).

This system started to be challenged by the centralism of the Spanish government during the 19th century, as a result of the implementation of a radically centralized

State. These challenges (which are most clearly reflected in the laws passed between 1838 and 1876) negatively affected both the political rights of the Basque as a distinct people and their cultural peculiarities as an ethnic group. With regard to their political rights, the powers of the so-called *fueros* were gradually reduced, until they finally disappeared. As for their cultural peculiarities, the Basque language was excluded from the education system and disregarded by the public administration.

These attacks against the Basque people as such reached their peak during Francisco Franco's dictatorship, from 1937 to 1976, a period of time in which any expression of cultural diversity was violently repressed.

The heart of the conflict

According to this view, the Basque conflict would be but a typical situation of political domination of one people by another, combined with an additional situation of repression of any distinct cultural identity ("cultural genocide"). After 1964, still under Franco's dictatorship, this conflict caused a violent popular reaction (ETA) which unfortunately evolved into indiscriminate terrorism, which still exists today. Although there is no agreement among nationalists as to the use of violence (which is supported by some and condemned by others, although all of them "understand" its reasons), all nationalists basically consider that it is an expression or a consequence of the background political conflict. Therefore, it would be absurd to try to solve the problem of violence without previously or simultaneously solving the conflict itself.

The unsatisfactory evolution

According to the nationalist canon, the limited democracy existing in Spain since 1978 has somewhat improved the earlier climate of oppression, but has not been sufficient to efficiently contribute to the resolution of the conflict. Thus, although the Spanish Constitution of 1978 and the Statute of Autonomy of the Basque Country of 1979 have given the Basque people a certain degree of decentralising autonomy, the level of self-government existing in the historical past has never again been achieved. Basque nationalist parties have repeatedly demanded recognition of the Basque people's right to freely decide about their political status, within or outside Spain, whether as an associated, confederated or independent state. The refusal of the successive State governments to even consider this possibility (and, in this respect, both socialist and conservative governments have reacted the same) is keeping the conflict frozen, without any significant change in the initial positions of the parties involved.

On the other hand, even though certain administrative powers have been devolved to the regional Basque government by the central State government, the regional government lacks the financial, administrative and human resources needed to guarantee the effective self-government of the Basque Country and to protect their distinct cultural identity.

The happy end

Any serious attempt at solving the Basque conflict necessarily requires that the Basque population is effectively granted the right to independently decide on their own future (it is the equivalent to the right to self-determination enshrined in several international texts of the United Nations, although here it is referred to as a “right to decide”). Exercise of this right may lead to a free association with Spain or to total independence within the European Union.

For many years, Basque nationalist parties have pointed out that the only possible way to unblock the situation is to engage an honest and open dialogue on the issue, but their proposals have repeatedly been rejected by the central government in Madrid. A few years ago, in 2005, a proposal for a new Statute of Autonomy recognizing this right to self-determination was rejected, as well as the more recent proposal for a new bilateral agreement, which also guaranteed the “right to decide” (2008).

The above described nationalist canon is extremely inappropriate to understand the actual situation of the Basque Country, because it distorts the main data, ignores or conceals other important information and, in short, provides a biased, partial and incomplete view of the Basque reality within Spain. This is, in short, a version of “how things should be” according to a nationalist *weltanschauung* rather than an objective account of “how things really are”.

Below is an account of objective data evidencing the deficiencies of the nationalist canon.

The Basque society

Modern sociology prefers to use the notion of “civil society” when referring to a given group of people, and avoids using concepts such as “nation”, “ethnic group”, “*volk*” or “community” which are in themselves loaded with ideological connotations and emotional values. It can be categorically stated that the Basque society is, and has been throughout its history, an essentially plural society, both from a cultural and a political point of view. Therefore, any reference to “cultural

monism” in the description of this society is extremely inappropriate. For the majority of Basque society, there is not a single cultural and national sentiment, but, rather, a natural overlapping of the Spanish and Basque national identities.

Shown below are a number of recent sociometric data for the period 1981-2007, taken from the EUSKOBARÓMETRO (Basque barometer) survey prepared by the Department of Political Science and Sociology of the University of the Basque Country:

- Perceived national identity (sentiment of belonging): the percentage of those who consider themselves “only Basque” varies between 23% and 40%, depending on the year. The percentage of those who feel “Spanish and Basque” ranges from 52% to 63%.

- Political sympathies or affinities: those who consider themselves “nationalists” are in all cases below 50%; those who consider themselves “non-nationalists” are always above 50% (annual data for a 25-year period).

- Last general elections in March 2008: 57% of the electoral roll voted for “non-nationalist parties”, while only 34% voted for nationalist parties (an additional 8% could be added to this figure, representing a hidden vote for BATASUNA).

According to the above data, most people in the Basque Country have a sense of “double national identity” and are capable of expressing “shared loyalties” regarding politics. The monist conception of Basque society as “a single people” is a distorting and simplistic view of the Basque reality.

History

Regional systems of shared government between the local elites and the king of the country were quite common in the history of Spanish and other European monarchies after the 16th century, and existed not only in the Basque Country but also in many other Spanish regions. This government system had the particular characteristics of the Ancien Régime and was gradually abolished by all European countries during the constitutional period following the French Revolution of 1789.

The historical situation of the Basque Country is not an exception in European and Spanish history, if compared to that of other regions, kingdoms or cities. The only particular feature of the Basque Country’s historical evolution is the extended duration of the above described pre-modern system. However, trying to find situations of “sovereignty” or “independence” in a medieval or pre-modern context is nothing but a “presentist” distortion of old ideas. To still invoke these alleged “historical rights” of the Basque people in the 21st century only evidences

a historicist conception of politics, typically found in all conservatism. The only thing which can be positively proven by history is that the Basque Provinces have been conveniently and peacefully integrated in the Spanish monarchy (and later, in the modern Spanish State) without any specific cultural or political problems.

It is true that the development of the modern capitalist society, and consequently of the liberal-constitutional state, entailed a process of political and cultural homogenization of the population throughout Spain (as happened, in fact, in all European countries). This was an almost inevitable phenomenon, which was probably positive on the whole. Spain, however, is the European country where regional and local cultures have been best maintained, as is evidenced by the number of native speakers of languages other than Spanish, who currently amount to more than 20% of the total population.

The use of violence

Terrorism is not the expression of a cultural and political conflict inherent to the relation between Spaniards and Basques, but rather an isolated and context-determined manifestation of certain characteristic movements of the 1960's: anti-Francoism, revolutionary leftism, anti-colonialism, etc.

ETA has existed longer than has been normal in other European cases due to the fact that some nationalist political sectors have addressed the issue indulgently and permissively and, in some cases, have even taken a political advantage of ETA's existence, using it as an argument to negotiate with, and justify their demands to the Spanish government. Basque nationalists have in general had an accommodating attitude towards terrorism because it suited them.

Furthermore, we cannot overlook the fact that terrorism has been an effective means of "persuading" the Basque population to internalize or assimilate the nationalist doctrine, under the threat of suffering negative consequences. In spite of that, an overwhelming majority of society is opposed to terrorism and tired of its persistence.

Current socio-political situation

What the Spanish Constitution of 1978 refers to as a "State of Autonomous Regions" is, in fact, a "Federal State". This is made evident in the following quote, taken from RONALD L. WATTS, *Comparing Federal Systems*, Kingston, 1999, who is one of the most reputed specialists in this field: "Spain is federal in all but name... Spain is currently one of the most decentralized countries in Europe..."

Spain is an interesting example of an effort to accommodate regional pressures for autonomy of varying intensity.” (page 130).

In the particular case of the Basque Country, the regional government is vested with financial and administrative powers which extend beyond those normally granted to a federated state, and establish a real federal asymmetry to the region’s benefit. The Basque government collects all taxes within the region, manages these taxes as it sees fit and pays to the central government a small contribution for military defence and diplomatic services. There is no other example in Europe of such a level of regional self-financing.

The Basque regional government regulates the study of the local language and culture with full autonomy. This has favoured an amazing process of recovery of the local language. According to the most recent laws passed by the regional government, the only language of instruction in pre-primary and primary education is Basque, a decision which has raised a great number of complaints by parents who wish that teaching also be done in their own mother-tongue, that is, Spanish.

The Spanish and Basque federal system is subject to a permanent process of adaptation and consolidation within a general plan of inter-regional cooperation. But, the nationalists’ demands for self-determination or secession destabilize the system.

There is no happy end, but a need to adapt to pluralism

In a situation of such extraordinary national and cultural pluralism as is to be found in the Basque Country, there cannot be a “happy end”, because of the nature of the situation itself. For the different national sentiments to harmoniously coexist, the solution must necessarily be based on any of the federal solutions widely undertaken throughout the world.

Effective self-determination of the Basque Country is seen as a traumatic and negative experience by most of the population, because it could involve a rupture or a split between communities. An overwhelming majority of the population would rather consolidate the current federal system, making all such changes as may be required in day-to-day practice.

What happens, in short, is that modern Basque society does not feel that there is a basic and essential conflict with their current political constitution, but is, on the contrary, rather happy with the current federal situation (70% according to the EUSKOBARÓMETRO survey). The only change almost unanimously demanded is ETA’s dismantling (98%).

Under these circumstances, the nationalist canon, or tale, on the existence of an alleged “essential conflict” is utterly inappropriate. In fact, the conflict actually lies in the nationalists’ insistence in keeping such a biased and limited view of a reality which is much richer, much more nuanced and much more plural. There is not a “canon of the conflict”, but rather a “conflict caused by the canon”.

THE BASQUE COUNTRY: A PLURAL SOCIETY

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Summary

Basque citizens have been called to polls in thirty occasions during the last three decades. Elections were all held in an exceptional context, due to the pressure caused by the violent anti-system groups and the political tension or polarization that the institutional hegemony of nationalism has managed to impose. This circumstance, which is not a circumstance but rather a pathology, should not be forgotten, because otherwise it may seem that competition is normal in the Basque Country and that Basque citizens are used to intimidation, to hatred (whereby opponents become enemies), to crossed insults, to daily having to decide what we are and what we should do with our identity, to troubled waters and to the “everything is justified” thinking. In addition to the inequalities or disadvantages that can be found in any developed society, in the Basque Country there is a large number of people who are denied their right to freedom of expression, to option and to competition and, thus, their right to representation. Part of the region has come to be exclusively controlled by violent totalitarianism. However, Basque society, although tormented by terrorist violence and the identity tension created by ethnic nationalism, is mostly an autonomist and moderate society,

The Basque country during Spanish transition to democracy

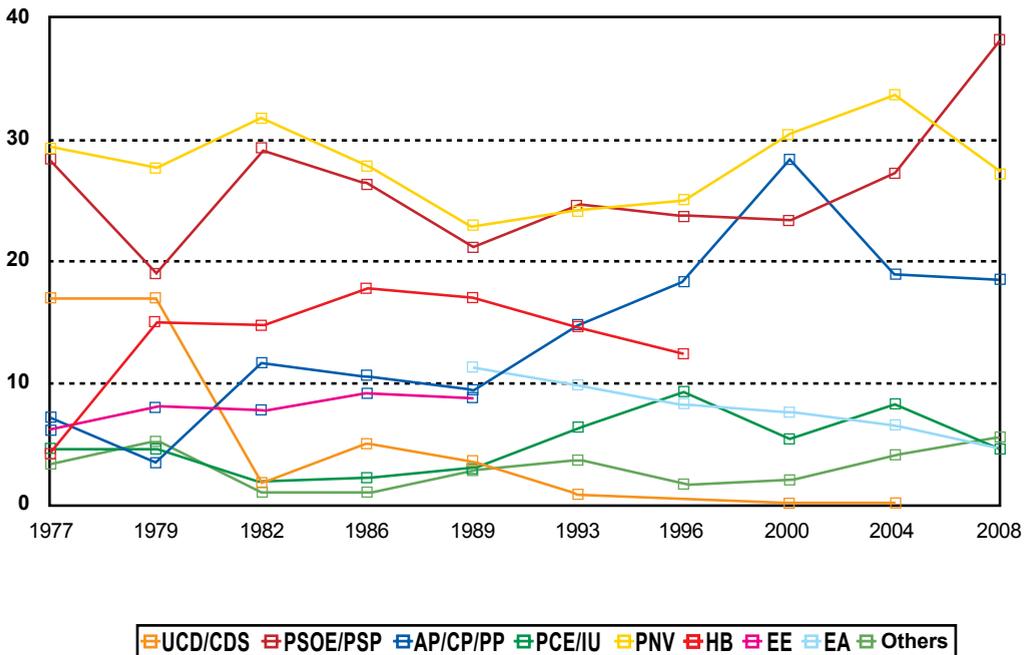
As the territorial question developed into a relevant issue during the Spanish transition to democracy, the Basque Country became an important focus of attention, not only because of the special position of Basque nationalism in its different versions, but also because of the destabilisation pursued by ETA's terrorism. This process of transition had certain specific features in the Basque Country. Firstly, due to the strong impact caused by the violent nationalism exercised during the last years of Franco's dictatorship, and, particularly, due to an increasing pressure caused by ETA's terrorism from 1977 on. Secondly, due to the semi-loyal position adopted during the reform process by the conservative faction of nationalism, represented by PNV (*Partido Nacionalista Vasco* or Basque Nationalist Party), which position was made evident when they abstained from voting in the Constitutional Referendum of 1978. Thirdly, due to the fact that some important political actors, both in the reformist centre and in radical nationalism, delayed in taking a specific political position (LLERA, 1985). Unlike in Catalonia, the Basque Government in exile was not restored, but instead a completely new statutory process was created, especially due to the internal instability and political disorientation of Basque nationalism. The transition to democracy in the Basque Country ended with the approval, by a majority of the Basque citizens, of the 1979 Guernica Statute, which had previously been agreed between all democratic parties. In spite of the difficulties encountered, the Basque Country managed to achieve an unexpectedly broad system of self-government, the recognition of the region's own historical legal diversity and of the *historical rights* referred to in the first additional provision of the Spanish Constitution and, most importantly, the constitutionalization of the Basque Country's special tax and financial system, further defined in the Economic Agreement (*Concierto Económico*). The Basque Statute of Autonomy was the first one to be approved by the Spanish Parliament and it was considered to set the guidelines and the limits for the rest of the regions in terms of self-government. Furthermore, it is also considered as the first step in the territorial and political decentralization model provided for in the Spanish Constitution of 1978.

Basque citizens called to polls in thirty occasions in thirty years

Basque citizens have been called to polls in thirty occasions during the last three decades, thus consolidating their political pluralism: four referendums, on the Political Reform (1976), the Spanish Constitution (1978), the Statute of Autonomy (1979) and finally, to decide on the permanence in the NATO; 10 legislative elections for the Spanish National Parliament (1977, 1979, 1982, 1986, 1989, 1993, 1996, 2000, 2004 y 2008) ---- see CHART 1----; 8 regional or autonomous elections (1980, 1984, 1986, 1990, 1994, 1998, 2001 y 2005) and 8 local and provincial elections (1979, 1983, 1987, 1991, 1995, 1999, 2003 y 2007). However, and despite an apparently "normal situation", the abovementioned elections were all held in an exceptional context, due

to the pressure caused by the violent anti-system groups, the excessive prominence given to such groups, and the political tension or polarization that the institutional hegemony of nationalism has managed to impose. This circumstance, which is not a circumstance but rather a pathology, should not be forgotten, because otherwise it may seem that competition is normal in the Basque Country and that Basque citizens are used to intimidation, to hatred (whereby opponents become enemies), to crossed insults, to daily having to decide what we are and what we should do with our identity, to troubled waters and to the “everything is justified” thinking. In addition to the inequalities or disadvantages that can be found in any developed society, in the Basque Country there is a large number of people who are denied their right to freedom of expression, to option and to competition and, thus, their right to representation. Before making any arithmetic-political analysis, it must be taken into account that in the Basque Country, 30 years after the advent of democracy, political competition still takes place in an unequally constituted society, and this circumstance has very negatively affected the quality of political representation in the region.

CHART 1
EVOLUTION OF VOTING OUTCOMES IN LEGISLATIVE ELECTIONS IN THE BASQUE COUNTRY (1977 – 2008)



Source: produced by the author based on data of the Spanish Ministry of Home Affairs.
 Note: HB did not exist in 1977. The votes shown are those of ANV (0.6%) and ESB (3.5%), which parties would later merge with HB. In 1982, UCD stood for the elections in alliance with AP.

Political and social tension, intimidation and fear, usual components in Basque elections

Political and social tension is a usual component in Basque elections. This is due to the intimidation and the different reactions to fear which are generated by the violence exercised by terrorists and their accomplices. After 40 years of terror, a range of political and social behaviours have developed in the Basque Country: affinity, instrumentalisation, cowardice, adaptation, inhibition, abandonment, escape, fear, frustration, hatred and, lately, reaction and courage. However, violence has always been present on the other side of the equation, without any possible equality or equidistance, except in the mind of certain selfish and morally corrupt political groups; most of them comfortably entrenched in the institutional system they claim to detest. They have even “swept away” the representation and democratic pluralism from part of the region, which has come to be exclusively controlled by violent totalitarianism. This violence has been present in many other ways, either through deadly terrorism or through an additional or alternative form of terrorism, the so-called *kale borroka* (whose members have continuously assaulted local representatives of institutional nationalism who support the existing system of autonomous self-government, and committed acts of thuggery during their political campaigns or prevented free exercise of the right to vote, as we have daily seen in the news), and has made itself evident in the difficulties encountered by regionalist parties to propose candidates in areas dominated by violence and by the dramatic reality of a population who feel like victims, are afraid to express themselves politically, and most of whom are trapped in a “spiral of silence”.

The diversity of the region

Basque politics is marked by the demographic diversity of the region ---see CHART 2 and 3---, the complexity of Basque institutions, as a result of the existing local law (based on a *foral* system), the pluralism and fragmentation of its party system (of *extreme or polarized pluralism*), the political polarization given by the nationalist factor and the existence of an anti-system political movement (represented by political parties such as HB/EH/B/EHAK/ ANV), also known as the *abertzale* left (extremist left-wing nationalism), which uses leftism and nationalist extremism to legitimize and protect the violence exercised by the terrorists (LLERA, 1994). All of the above evidences a highly complex structure in terms of governance, of inter-party relations and, thus, of electoral behaviour. In this respect, it is possible to identify three differentiated periods: the first period, from 1980 to 1986, was characterized by PNV’s minority government; the second period, from 1987 to 1998, was defined by a succession of coalition governments, which used different formulas but were always centre-left coalitions formed by a nationalist party and

a non-nationalist party; and the third period, from 1999 to this day, characterized by an excluding agreement between the nationalist parties and EB with ETA, the radicalization of pro-independence nationalism and the emergence of a politics of confrontation. They both have in common the effective and continuous political hegemony of the nationalist majority in the Basque Parliament and the minority predominance of PNV, which has, in fact, led all ten regional governments formed since 1980. The pressure of the terrorists' violence and the blackmail strategy used by the different political formulas of the so-called *abertzale* left have had serious political effects on the governance of a small region inhabited by only two million people. On the one hand, the nationalist bias has been strengthened and favoured and, on the other hand, government stability has been encouraged, limiting the opposition and weakening strategies against the executive.

CHART 2
ELECTORAL RESULTS BY BASQUE PROVINCES IN THE 2008 GENERAL ELECTIONS
(AS % OF VALID VOTES)

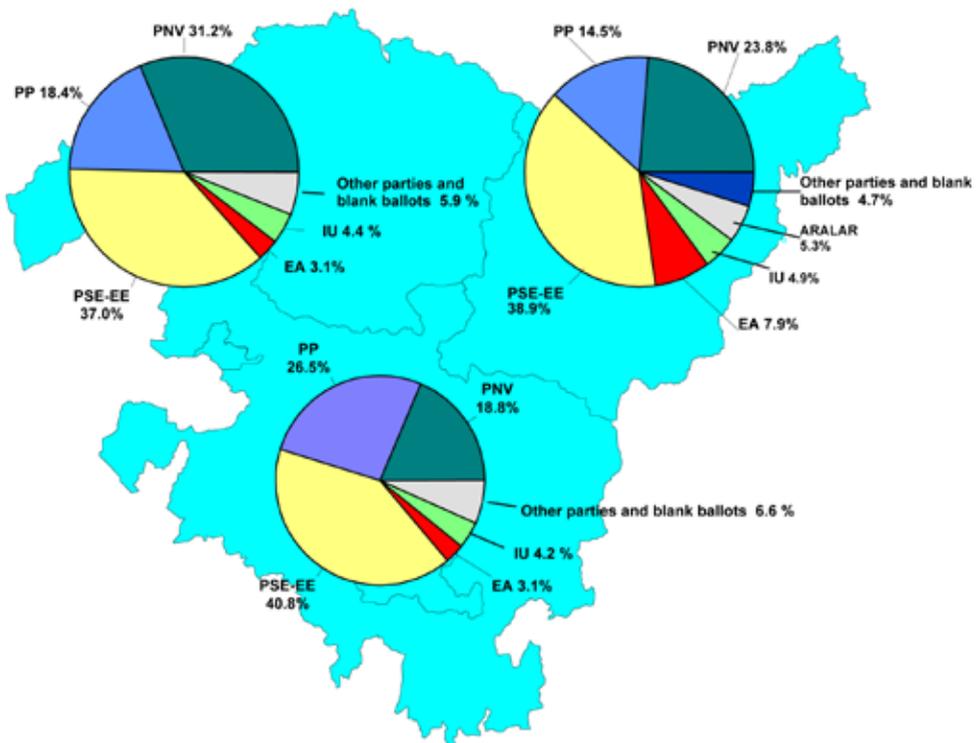
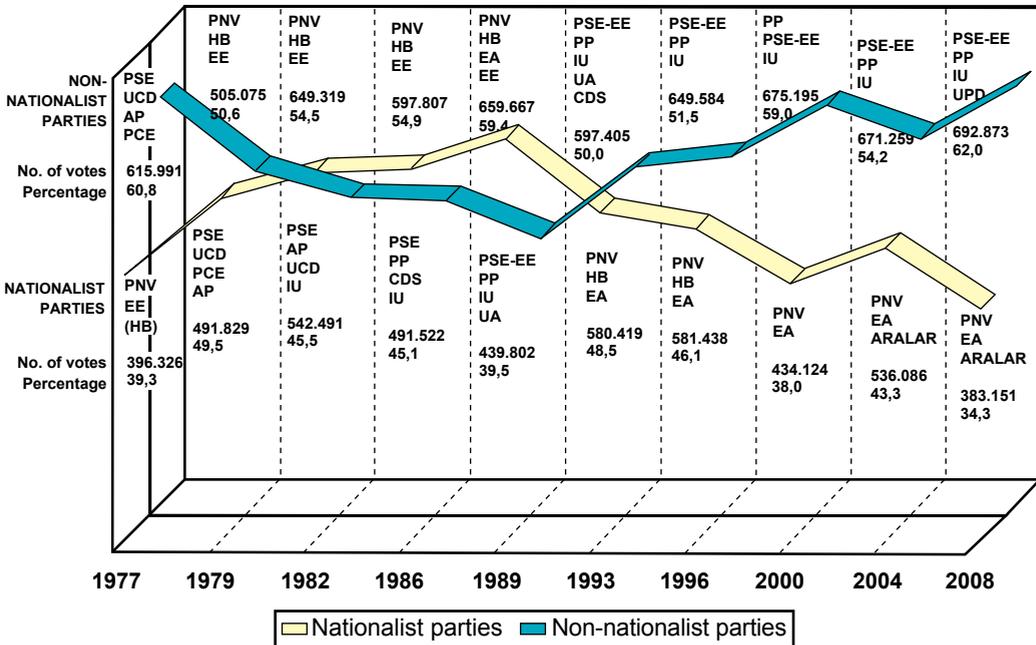


CHART 3

EVOLUTION OF THE NATIONLIST VOTE/ NON-NATIONLIST VOTE IN THE BASQUE LEGISLATIVE ELECTIONS, 1977 - 2008



The political party system in the Basque Country: “a polarized pluralism”

All annalists have always defined the political party system in the Basque Country as a system of *polarized pluralism* ----see CHART 3 ----, which is still a valid definition, since the main parameters have basically remained unchanged: the highest level of multi-partyism in Spain and its Autonomous Regions, a high and stable fragmentation (around 80 %) -which is very unusual in stable democracies-, a high level of competition between political parties, a high degree of multiple polarization and, above all, the blackmailing capacity of a strong and continued anti-system option, which supports the most durable terrorism in Europe.

CHART 4
CONFIGURATION OF THE BASQUE PARTY SYSTEM 1980-2005

	1980	1984	1986	1990	1994	1998	2001	2005
Parliamentary fragmentation	.81	.72	.81	.81	.82	.79	.77	.79
Adjusted party dispersion in Basque Parliament	.87	.90	.94	.94	.96	.92	.92	.92
Volatility	---	17	23(*)	12	15	8	8	10
Number of parties represented in the Basque Parliament	7	5	7	7	7	7	6	7
% of seats of the most voted party	41,7	42,7	25,3	29,3	29,3	28,0	34,7	29,3
% of seats of the second most voted party	18,3	25,3	22,7	21,3	16,0	21,3	25,3	24,0
Difference between the first and second most voted parties	23,3	17,4	2,7	8,0	13,3	6,7	9,4	5,3
Most voted party	PNV	PNV	PSE	PNV	PNV	PNV	PNV	PNV
Second most voted party	HB	PSE	PNV	PSE	PSE	PP	PP	PSE
% of seats held by the first and second most voted parties	60	68	48	51	45	49	59	53
Minimum parliamentary majority	2	2	3	2	3	3	2	2
No. of governing parties	1	1	2	3(**)	3	2(***)	3(****)	3(*****)
Government composition	PNV	PNV	PNV/PSE	PNV/EA/EE	PNV/EA/PSE	PNV/EA	PNV/EA/EB	PNV/EA/EB

(*) In 1986, EA is founded and CP has to compete against CDS.

(**) The first coalition government, formed by PNV, EE and EA breaks up in September 1991. EA is replaced by PSE and a new government coalition is formed by PNV, EE and PSE.

(***) The government is formed with the support of EH and a parliamentary alliance known as "Parliamentary Cooperation Agreement"

(****) Minority government without parliamentary alliances, but with the occasional support or abstention of EH (or SA)

(*****) Minority government without parliamentary alliances.

The truth is that PNV has moved from a clear predominance over the regional party system and the self-government institutions until the party's crisis in the mid 80's, to adopting, until the recent 2008 general elections, a solid and comfortable position in the central institutions (sometimes thanks to electoral coalitions with EA, a political party formed after a split with PNV), which has been favoured by the weakness of parliamentary majorities in Madrid since 1993 and particularly encouraged by the high level of competition existing among regionalist parties (PSE-EE and PP), which attract most of the votes in the two areas which define PNV's political identity: nationalism and right-wing ideology.

Pluralism and fragmentation indicators as well as the analysis of the correlation between political parties give an approximate idea of the strong competition

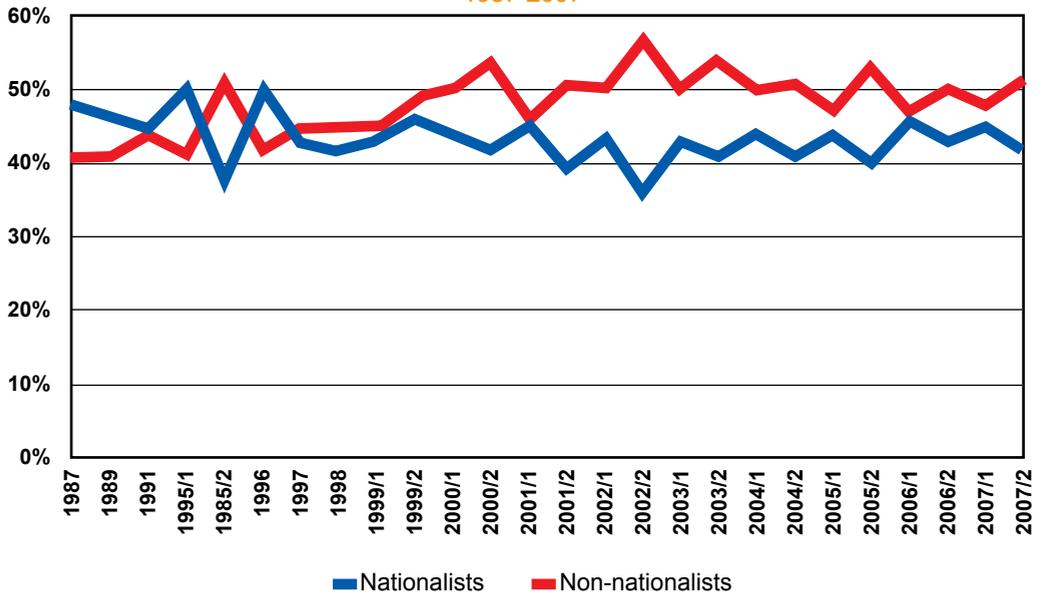
existing between political actors in terms of the functioning of such system, but what really matters is the ideological distance and the tensions between them, to the extent that these determine the intensity of political confrontation. As I have already described in earlier studies, polarization has two different dimensions, or two main scales on which the ideological distance between Basque parties may be represented: on the one hand, class polarization and ideological position with regard to the existing economic system, which synthesises social interests and the world conception in Western political culture, usually measured in terms of right-left; on the other hand, the intensity of nationalist sentiment expressed in a bipolar continuum between two national identities (Basque and Spanish) experienced as more or less compatible or exclusive. Although both political dimensions are theoretically different, the first one being more rational and ideology-based, the second being more symbolic and emotional, both of them are measured on a 1 to 10 scale, bearing in mind, however, that the results are always approximate and taking into account the relative value of such measurements, whose validity is nevertheless supported by a large number of researches. Basque voters have been more influenced by the second of the above dimensions.

An autonomist and moderate society

However, Basque society, although tormented by terrorist violence and the identity tension created by ethnic nationalism, is mostly an autonomist and moderate society, as shown on the following results taken from the EUSKOBARÓMETRO (Basque Barometer survey) (www.ehu.es/cpvweb/euskobarometro).

In the first place, it is important to point out that there has traditionally been a clear division between nationalists (42 %) and non-nationalists (51 %). At the end of last year, non-nationalists were once again in the majority ---see CHART 4---. Non-nationalists, who generally hold a slim majority, have a clear majority in Álava (57 %) and Biscay (51 %) ----compared to the 39 % and 44 % of nationalists, respectively. In Guipuzcoa, however, there is a well-balanced situation between those referring to themselves as nationalists (42 %) and those identifying themselves as non-nationalists (46 %).

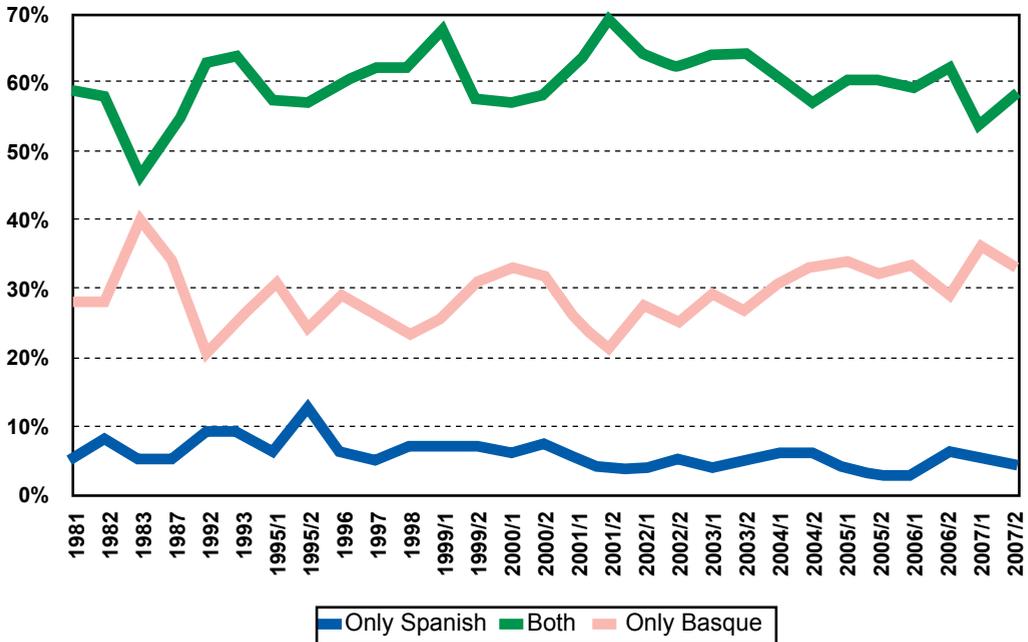
CHART 5
EVOLUTION OF NATIONALIST SENTIMENT AMONG THE BASQUE POPULATION,
1987-2007



Euskobarómetro (Basque barometer), November 07

Secondly, with an important overall advance in the last semester (+ 5 points), most of the Basque population (58 %) maintains a double Basque and Spanish national identity, even though the percentage of those feeling only Basque (22 %) is superior to the percentage of those who consider themselves only Spanish (5 %). On the other hand, extreme Spanish sentiment remains at a low 4 % while exclusive Basque sentiment has decreased to 33 %----see CHART 5----.

CHART 6
XIII- EVOLUTION OF PERCEIVED NATIONAL IDENTITY AMONG THE BASQUE
POPULATION, 1981-2007



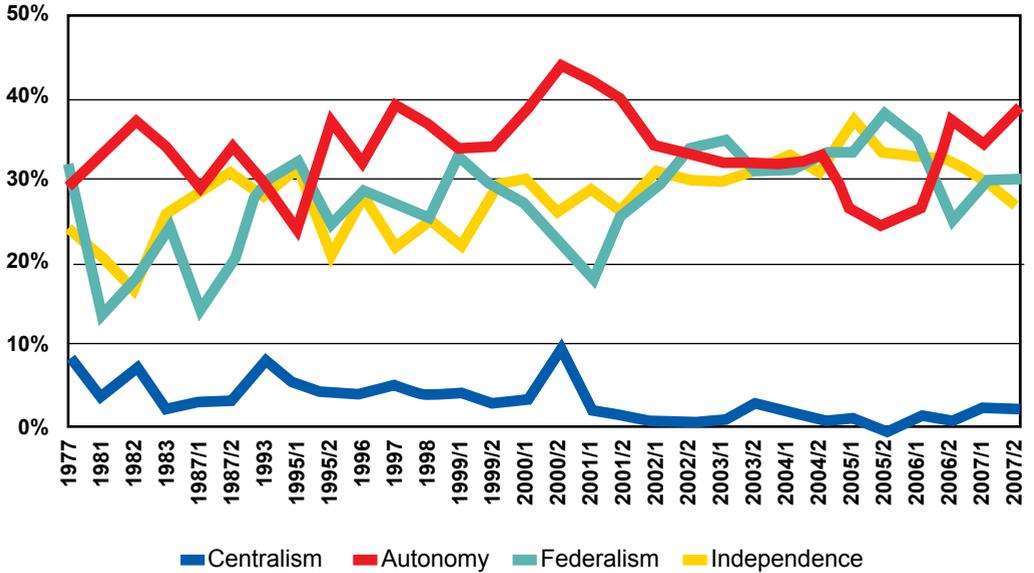
Euskobarómetro (Basque barometer), November 07

Finally, in a context of high inter-annual stability of the options available regarding the territorial organisation of the State, the Basque population is still divided between autonomy, federalism and independence. Since autonomy has recovered 15 points in the past two years, it remains the preferred choice for two out of five Basque citizens (39 %). It is still the majority option among the voters of the Spanish conservative party PP (93 %) and the voters of the Basque Socialist Party PSE-EE (63 %) and, generally, for all non-nationalist voters (59 %). The idea of self-government through a federal system has become more stable, and is supported by slightly less than a third of the Basque population (30 %). It is the majority option among the voters of EB (62 %) and Aralar (50 %), and has an important support among the voters of PNV-EA (39 %) and those of the Socialist Party (27 %). Both integrationist systems have a clear majority support, since they are supported by more than two out of three Basque citizens. On the contrary, as opposed to these decentralizing and integrationist formulas, the independent government system implied by alternatives such as self-determination or confederation has experienced a slight decline in support, currently being the preferred option of more than a fourth of the Basque population (27 %). It has a clear support among the voters of EHAK (84 %), but it has decreased among

the supporters of Aralar (44 %) and PNV-EA (30 %). Centralism remains stable, being supported by a meagre 2 % of the Basque population, a figure which can be regarded as testimonial or as an expression of rejection -----see CHART 6-----.

GRAFICO 7

XI- EVOLUCIÓN DE LAS ALTERNATIVAS SOBRE LA FORMA DE ESTADO EN LA C.A.V. 1977-2007



Euskobarómetro (Basque barometer), November 07



THE ECONOMIC SITUATION IN THE BASQUE COUNTRY

A powerful financial tool: The economic agreement State Government-Basque authorities

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Summary

The Basque Country has its own and privileged tax system, not to be found in any region of any other federal or centralized state. The design, management and control of the main taxes belong to the regional tax authorities of the Basque Country. “Global effective tax pressure” is slightly below to that of the rest of Spanish regions. Moreover there is a contribution to be paid to the Central State Institutions for additional services provided by the State. This contribution is determined solely by the Basque executive, without the intervention of the Central State Government. It has been considered that this contribution is under evaluated amounting in around 2,000 million euros. This entails a number of economic privileges which contravene the principle of equality established in the Spanish Constitution. Regional resources per capita in the Basque Country are 60% higher than the average of the rest of the regions in Spain.

The Basque Country and its economy

The Basque Country (or Euskadi, in Basque) is a small region in northern Spain, almost insignificant in the European Union (it has an area of only 7,234 square kilometres). The region is currently lacking in natural resources and is therefore very dependent upon resources from outside the region, particularly regarding energy, food, etc. In 2006, the population of the Basque Country totalled 2,133,684 people, with a population density of 295 persons per sq km, and its GDP at current prices amounted to 61,764 million euros, distributed as follows: Agriculture and Fisheries, 1%; Industry, 29.3%; Construction, 8.9% and Services, 60.8%. GDP per capita is 136.2% of the European Union average, higher than that of France (111.1%), Italy (103.3%), Germany (114.4%) and Spain (105.2%).

Since the end of the 19th century, the Basque Country has been one of the main centres of industrialisation in Spain, thanks to the efforts of a group of people who knew how to take advantage of the demands of a developing market (with strong protectionist measures which they knew how to profit from), to attract private capital, create a modern education system and rely on individual values such as effort and personal talent. This position was maintained until the 20th century. Thus, from 1950 to 1975, despite Spain's lack of liberal institutions and markets at that time, the region's GDP at current prices grew at an annual cumulative rate of 6.63%, whereas the Spanish average stood at 6.1% (the Basque Country thus being the third Spanish region with the highest GDP, only behind Madrid and the Balearic Islands).

When the nationalists took power in the Basque Government in the first years of the Spanish democracy, there was a situation of high political instability, replacement of individual values by group values, industry conversion, continued terrorist activity, etc. For this reason, the GDP of the Basque Country grew at a rate of 1.64% from 1975 to 1995, considerably below the national average of Spain (2.54%), also faced with the same kind of problems. After that date, there was a combination of ebullient nationalism in politics (attempts at destroying the existing political pluralism, setting of filters to limit access to public employment, etc.) and economic pragmatism, which brought more interesting results: from 1995 to 2002, Basque GDP grew at an annual cumulative rate of 3.8%, almost equal to Spain's average (4%). The annual average rate of GDP growth in real terms between 2000 and 2006 was 3.08%, still below the Spanish national average (3.34%).

As a final conclusion, it could be said that the weight of the Basque Country's economy in the economy of Spain as a whole has experienced a decrease, as shown in Table 1. This loss of relative position experienced during the last 25 years, as pointed out by all statistical sources available, indicates that the Basque public sector has been less efficient than the Spanish public sector, in each case with reference to their overall economy. It is necessary to point out, however, that the Basque Country has witnessed certain specific phenomena not experienced

by the rest of Spain: massive industrial restructuring and subsequent relocation of decision-making centres, higher labour costs than in the rest of the country, and a terrorist activity which, according to the perpetrators themselves, has negatively affected between 10% and 20% of the region's wealth-generating capacity, which explains why the growth of private capital has been considerably lower than in the rest of Spain: around 20% respectively 70% for the period.

Table 1. GDP at current prices for Spain and the Basque Country

	1960		1975		1980		2005	
SPAIN	19,253	100.00	47,428	100.00	50,229	100.00	905,455	100.00
BASQUE COUNTRY	1,287	6.68	3,400	7.17	3,209	6.39	55,620	6.14

In billions of pesetas. 2005 in millions of euros.

A Rich Population: per capita GDP

Per capita GDP is the most widely used measure both in welfare surveys and in economic convergence surveys. This indicator of the standard of living has to be completed with other indicators related to issues such as education and health, as is the case of, for example, the UN's Human Development Index or HDI. The arithmetic average of the income index (per capita GDP), the health index (life expectancy at birth) and the education index (adult literacy and schooling rate) places the Basque Country among the most developed regions in Europe.

Per capita GDP in the Basque Country (see Table 2) has always been above the Spanish national average, although its relative position has worsened. This is due to the process of real convergence between regions recently undergone in Spain. In 1955, per capita GDP in the Basque Country stood at 190% of the Spanish average, while it is currently below 130%.

Table 2. GDP per capita (in current Euros)

	1980		1995		2005		Crecimiento Interanual 1980-2005
SPAIN	2,429.20	100.00	11,114.70	100.00	20,863.90	100.00	9.00%
BASQUE COUNTRY	3,178.30	130.84	13,292.50	119.59	26,399.60	126.53	8.80%

Demographic Problems

Demographic variation is the clue to understand why the relative weight of the Basque economy in the Spanish economy is decreasing (smaller percentage of GDP and of capital accumulation), while it still keeps a high level of GDP per capita. The Basque population has not experienced significant growth since 1981, while the Spanish population has increased from 37 million in 1981 to 45 million (see Table 3).

Table 3. Demographic evolution of the Basque Country, and percentage of Basque population to total population in Spain

Population	1981	1991	1996	2001	2006
Basque Country	2,134,763	2,109,009	2,098,055	2,101,478	2,133,684
% of Spanish population	5.66%	5.35%	5.29%	5.11%	4.77%

In the last 25 years, the relative weight of the Basque population in the total population of Spain has decreased due to three main reasons:

a) Drastic decline in fertility rate. Decrease in the birth rate is explained by the change in living habits (lower number of children per woman), women's increased participation in the labour market (increase in average age of mothers at first birth) and decreasing confidence in the future.

b) Ageing in the population, which results in higher death rates

c) Change in migration flows. Traditionally a region of immigration receiving immigrants in search of work, the Basque Country's labour market has in the last 25 years become less attractive for people born in other regions of Spain. The prevailing excess of localism and ebullient nationalism impose identity criteria which are contrary to free individual choice. At the same time, language policies have been used as a filter which denies equal opportunities in the access to public employment. At the same time, the relocation of the decision-making centres of large companies has resulted in an emigration of qualified workers caused a decrease in quality jobs. A significant part of the Basque Country's human capital has had to emigrate due to a lack of job opportunities in accordance with their level of university education. This decrease is now being compensated by the arrival of foreign immigrants who perform unqualified jobs, although the percentage is still low compared to the local population (and 4% below the Spanish average). Special mention should be made to the loss of population resulting from terrorist activities. People who have been threatened or extorted by ETA and have emigrated as a result are spread across all economic sectors, including liberal

professionals, company executives, university teachers, etc. According to some sources, they amount to around 200,000 people.

A Powerful Financial Tool: the Economic Agreement between the State Government and the Basque Authorities. The Autonomous Tax System

The Basque Country has its own separate tax system. This means that Spain waives levying most of the taxes of a part of its territory because the regulatory capacity regarding the design, management and control of the main taxes has been devolved to the regional tax authorities of the Basque Country.

Taxes transferred or devolved to the Basque Country include the main taxes levied in any tax system. Thus, Basque tax authorities are fully empowered to levy the following taxes and to pass all relevant tax regulations in connection therewith: direct income tax, company tax (for companies resident in the Basque Country for tax purposes, with an annual turnover of less than 6 million euros; for all other companies, the regional tax authorities participate in the collection of taxes to the extent of the amount of revenue income generated in the region), including the tax consolidation system for Basque company groups; wealth taxes, inheritance tax and gift tax. Powers have also been transferred to the regional authorities in connection with indirect taxes, including VAT (on goods and services provided within the Basque Country), property transfer taxes and special taxes (on alcohol, tobacco, vehicle registration, etc.). Local taxes (levied by city councils) are also regulated by the Basque regional tax authorities.

Since the Basque Country has its own regulatory power over tax issues, it is necessary for the State Government to reach an agreement with the Basque tax authorities before establishing new taxes in order for such taxes to be incorporated into the tax system. This happened, for instance, in 1986, when Spain joined the European Union and the determination of VAT was established in the accession agreement. The limits of the Basque Country's regulatory powers are not clearly defined. On the one hand, Basque tax authorities have the obligation to respect the system, terminology and definitions set forth in the Spanish General Tax Law. On the other hand, they are subject to certain harmonization rules: they are not entitled to establish tax privileges, nor to impede Spain's single market or hinder free competition and the free movement of persons and capital. Finally, "global effective tax pressure" shall be at least equal to that of the rest of Spain.

However, exercise by the regional tax authorities of such advantageous fiscal powers does not seem to have been based on loyalty to the abovementioned obligation of tax harmonization. Taxes collected under regional tax policies regarding corporate profits have amounted to approximately 2% of Basque GDP,

slightly below the amount of taxes collected in the rest of Spain. This is not only due to a difference in the tax rate (28% vs. 30%), but is also related to the fact that the rate of tax effectively applied is significantly lower, as a result of higher deductions, increased tax reliefs and more tax-exempt corporate activities. This advantageous situation has also been evidenced in relation to inheritance taxes, gift taxes, property transfer taxes, etc. As for other taxes, such as VAT, which is subject to harmonization under international treaties, there has been almost no real regulatory autonomy at all.

This privileged tax system, not to be found in any region of any other federal or centralized state, has been managed in a context of continuous confrontation, sometimes with the neighbouring Spanish regions, sometimes with the Spanish State Government and sometimes with the European Union authorities, all of which have initiated judicial actions against certain tax regulations approved by the regional government, arguing that said regulations favoured relocation of companies from other regions, provided for disguised subsidies contravening the single market and hindered competition.

According to the applicable law, there is a limit to the Basque Country's tax autonomy: the so-called "global effective tax pressure" has to be similar to that of the rest of Spain. But this tax harmonization has not been achieved. According to Basque sources, tax pressure in 2005 equalled 32.6% of the GDP, notably below the Spanish average (which equalled 35.6% of the GDP) and significantly below the 27-nation European Union's average (amounting to 39.6%). All of this explains why the management of the Basque tax system, and not its actual existence, is the current subject of discussion.

The Dubious Method of Calculating the Basque Tax Contribution to the State

The Spanish State, which scarcely collects any taxes at all in the Basque Country (other than custom duties and other similar taxes) nevertheless provides the citizens of the Basque Country with all the services expected from a modern state. Some of these services are provided through the peripheral or regional administration of the Basque Country, such as health services, education, etc. (cf. II of Table 4). Such public services are determined solely by the Basque executive, without the intervention of the central State Government. Financial resources for such services are obtained from the tax revenue raised by the Basque tax system, as described above.

However, the Spanish State Government provides some other services through the central administration, which are related to powers not transferred to the Basque Country, the costs of which are not borne by the regional government (cf. III of Table

4). These services include international relations, defence and security, the armed forces, customs and tariffs arrangements, transport services of general interest, common institutions (the Parliament, the Royal Household, the Constitutional Court, the General Council for the Judiciary, etc.) and other similar services. The amount to be paid in connection with said central services, not provided by the regional government, is determined through a complex method of calculation. According to the procedure set forth in Spanish Law 29/2007 (which is shown in Table 4), services directly provided by the Basque government (II) are to be deducted from the total State expenditure. The resulting figure corresponds to the central State expenditure on indivisible services, or services not provided by the regional administration (III). This amount is multiplied by a coefficient which supposedly represents the relative weight of the Basque economy and the Basque population in Spain as a whole (IV), and which coefficient has remained unchanged since 1981 due to the nationalists' unwillingness to accept any changes thereto).

Table 4. Calculation of the amount payable to the Spanish State Government

	Million €
(I) State Budget. Expenditure	188,417
(II) Expenses borne by the regional government of the B.C.	102,665
(III = I – II) Expenses not borne by the regional government	85,752
(IV) Imputation rate (6,24%)	6.24%
(V = III x IV) Tax contribution	5,351
(VI) Adjustments and offsets	
Others (taxes levied directly by the State, non-tax revenue, etc.)	-1,153
Budget deficit	-2,550
(VII = (V – VI) Net Tax Contribution	1,648
(VIII) Other adjustments	-83
(IX = VII – VIII) DUE NET	1,565

As can be seen from the table above, the amount payable by the Basque Country to the whole of Spain for services provided by the central State Government should be 5,351 million euros (approximately 8.5% of the GDP), in accordance

with the relative weight of the Basque economy and population. However, the application of certain adjustments, some of which are of a clear technical nature and some of which are the result of political agreements, reduce the payable amount to only 1,565 million euros.

The most politically negotiated adjustment is related to the budget deficit. The revenue in the Spanish State Budget amounts to 198,454 million euros. This means that Spanish public finances have a budget surplus of approximately 10,000 million euros. However, certain revenues transferred from the central government to the regional governments of other Spanish regions are deducted when calculating the Basque tax contribution. This agreement between the central government and the rest of Spanish regions turns the actual surplus into a deficit for the purposes of calculation of the Basque tax contribution. Said deficit, estimated at 40,872 million euros, gives the amount of 2,550 million euros shown in VI above when multiplied by the abovementioned rate of 6.24%. In other words, the Basque regional authorities “purchase” the services not directly provided at regional level for an amount close to 2.5% of the region’s GDP.

This complex method for calculation of the final amount to be contributed to the State by the Basque Country is what is raising doubts about the Basque tax autonomy, since the discount applied to the final amount may disguise state subsidies. These financial flows (in the form of lower payments) obtained from another tax system, increase the resources of the region and, therefore, the region’s spending capacity is above the national average. All of this gives rise to a number of economic privileges (the regional resources per capita in the Basque Country are 60% higher than the average of the rest of the regions) which contravene the principle of equality established in the Spanish Constitution.

Outside the Basque Country, the most widely extended conclusion is that the method of calculation of the Basque tax contribution should be revised, since the costs related to powers not transferred to the region are erroneously valued. The lawyers of the European Union, in the various judicial proceedings being conducted, always refer to the undervaluation of the services provided to the Basque Country by the State Government. According to these lawyers, the contribution is “much lower than it would be if the Basque tax contribution was correctly calculated”. According to most of the sources available, this undervaluation amounts to an estimated 2,000 million euros.

THE FUNDAMENTAL POINTS OF THE PLAN IBARRETXE: The Right to Self-determination and the example of Quebec

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Summary

In September 2002, the President of the Basque Government put forward the proposal “A new political pact for coexistence”, the “plan Ibarretxe”. In September 2007, he presented his “road map”: in October 2008 the Basque Country would be consulted, regardless of whether an agreement would have been reached with the State. The process would conclude with a decisive referendum, in 2010, setting forth the right to self-determination of the Basque People. The “plan Ibarretxe” resuscitates the old “principle of nationalities”, removed from the new international and European order, as opposed to the “principle of integrity” of the member States of an international society, and the “principle of stability” provided by the international institutions. The “plan Ibarretxe” wants to make the exception the rule, generalising the ‘Yugoslav model’. Additionally the plan Ibarretxe derived directly from the process undertaken in Canada with Quebec claiming sovereignty, but based on a tergiversated exposition of the evidence. The plan Ibarretxe sustains that the process undertaken in Quebec protects what it expressly rejects. The Supreme Court of Canada expressly rejects for Quebec the right to self-determination in the light of international law.

Introduction

The political proposal commonly known as the *plan Ibarretxe* had its first parliamentary manifestation during the general political debate held in the Parliament of the Basque Country Autonomous Community of the (BCAC) in September 2002, when the President of the Basque Government - the *lehendakari* – presented the proposal titled “A new political pact for coexistence”. After that moment, the *plan* was developed in successive instalments until approval of the Proposal by the Basque Parliament on 30 December 2004 with 39 votes in favour and 35 against. This majority was possible because three of the six representatives for Batasuna – the party politically linked to ETA- voted in favour of the proposal, while the other three voted against, in a completely deliberate political operation. When the Proposal was taken to the General Courts (State Parliament), its consideration was rejected on 1 February 1 2005 with 29 votes in favour, 313 against and 2 in blank, after a debate in which the President of the BCAC intervened as representative of the Basque Parliament.

The corollary to this process was undertaken by the *Lehendakari* in a full session of the Basque Parliament in September 2007, in which he presented what he called ‘road map, setting out that in October 2008 the voting public of the Basque Country would be *consulted*, regardless of whether an agreement had been reached or not with the State in respect of a reform of the Statute of Autonomy, for the purpose of ratifying the agreement reached, in the former case, or, if no such agreement had been reached, to *implement* a process for solution’; that process would conclude with a *decisive referendum*, to be held in the second half of 2010, which would set forth ‘the right to freely decide on their future’ for the Basque people.

In the debate on the Proposal for the new Political Statute, the basis on which its legitimacy would be grounded has played a key role. To that end, its proponents and defenders have resorted to various arguments, which are not always mutually compatible. In this process, they have tried to show that the Proposal was in no way extraordinary in a European, and even world wide, context. Accordingly, depending on the drift of international events reflected in the press, the Proposal would reflect what was happening in the Åland Islands, the Faeroe Islands –they forgot about Greenland-, in Puerto Rico, in Quebec, in Scotland, in Montenegro and, finally, in Kosovo; the situation in the Basque Country would even be comparable to that currently existing in Tibet, as the spokeswoman of the Basque government recently affirmed. Anything goes; anything can be sued to demonstrate the unarguable legitimacy of the objectives contained in the *plan Ibarretxe*. Only the absence of a profound democracy in Spain would impede the materialisation in our midst of what is commonplace the whole world over.

During this long trek through the world's geography, the fundamental points of the Proposal have remained unalterable. In this document we will look to analyse the problems posed by those fundamental points from the perspective of their legitimacy.

The right to self-determination and the new paths of the 'principle of nationalities: an interpretation without basis

The *plan Ibarretxe* - and the Proposal for a new Political Statute for the Basque Country in which it was eventually materialised – are grounded in a notion of the national condition of the Basque people which tries to resuscitate the old “principle of nationalities”, trying to take it down new paths.

The Basque people are configured as a nation and, as such, hold title to a native political legitimacy to decide, for themselves, unilaterally, the form of political institutionalisation they consider to be appropriate. The institutionalisation of the Basque Country, the legitimacy of its powers and its limits would not be conditioned, consequently, by the Spanish Constitution. As a result, the exercise of their right to sovereignty would not be limited by the Constitution as regards the content of that document or in respect of procedure. The Proposal for a new Political Statute would not be bound by those issues.

During the presentation of the first instalment of the Plan, in September 2002, the President of the Basque Government indicated that the “national identity” of the Basque People is grounded in the “native sovereignty” of the Basque People “recognised on the basis of the current and updated status of our pre-existing historical rights, explicitly set out in the Constitution”¹ and “in accordance with the Additional Provision to the Statute of Gernika² and the Basque Parliament

¹ The First Additional provision to the Constitution establishes that: “1. The Constitution protects and respects the historical rights of *foral* territories. 2. The general updating of the foral regime will be carried out, where appropriate, within the framework of the Constitution and of the Statute of Autonomys”.

² Additional provision to the Statute of Autonomy of the Basque Country establishes that: “Acceptance of the regime of autonomy established in the statute does not imply a relinquishment by the Basque People of the rights that would have corresponded thereto by virtue of their history, which could be subject to updating in accordance with the provisions of legal regulations”.

Agreement of 15 February 1990³, which claimed the right of the Basque People to self-determination”. The references to constitutional provisions and to the parliamentary agreement are merely rhetorical, as they represent interpretations convenient to the objectives of the proponents, without consideration for their systematic interpretation and their original meaning; without consideration for the interpretation established by the bodies with legitimate powers for such interpretation.

The Proposal for a new Political Statute is based, in accordance with statements made in the Basque Parliament, on three basic pillars: “a) The Basque People are a People with a separate identity, b) they have the right to decide on their own future, c) respect for the decisions taken by the citizens in the different legal and political ambits in which the society is currently articulated”. The separate identity of the Basque People consists, in accordance with the Proposal, of a “feeling of national identity”, a “sense of belonging” which “goes beyond legal norms or political borders”. And that “national identity” give the Basque People, in accordance with the Proposal, the “right to be consulted so as to decide on their own future”. These three pillars are those which are reproduced in the Statement of Reasons to the Proposal finally approved by the Basque Parliament.

These principles will be the basis for the element around which, basically, moves the unquestionable – in the opinion of the proponents - legitimacy of the Proposal: the right to SELF-DETERMINATION. As has been reiterated at each and every one of the parliamentary interventions by the President of the Basque Government in defence of his Proposal, and as set out in the Statement of Reasons, the Basque People would hold the right to self-determination as recognised in the International Covenants for Civil and Political Rights and for Economic and Social Rights, of 1966.

³- The Basque Parliament at a full session on 15 February 1990 approved a “motion regarding the right to self-determination of the Basque People” (*Official Gazette of the Basque Parliament*, III Legislature, n.º B-IV-134-135, de 26.2.1990), which affirmed that the Basque People “have the right to self-determination”, a right which “resides in the power of its citizens to freely and democratically decide on their political, economic, social and cultural status, either by creating a separate political framework or by sharing, in part or in full, their sovereignty with other peoples”. Subsequently, it was added that the Statute of Autonomy “resulting from a pact freely ratified by the Basque citizens, constitutes a meeting point for the will of the majority and the legal framework which Basque has created for itself at a certain historical moment in order to attain self-government and to regulate peaceful coexistence, representing, consequently, the legitimate expression of the will of the Basque People. In this regard, the statutory strategy and the more in-depth take on self-government through the full and faithful development of each and every aspect of the content of the Statute represent for Basques citizens the valid framework for progressive resolution of the problems of Basque society, and for advancement in the national construction of Euskadi”. This was, accordingly, an agreement which affirmed the right to self-determination by the Basque People, but referring to the Statute of Autonomy as a manifestation of that right and as the framework for the setting forth of any political objectives.

But, once again, the 'right to free determination' of peoples is interpreted by attributing a significance, a content, which is lacking in grounds, and which is absolutely not based on the interpretation that has been given it by the international institutions which are responsible for such interpretation. The need for a systematic interpretation of the right to free determination of peoples and the principle of integrity of the member States of an international society, together with the principle of stability in the international order of States to which it is linked – which makes up the axis around which the international order is established in accordance with the San Francisco Charter (1945) creating the UN -, has given as a result, in coherence with the provisions of article 73 of said charter –in reference to States which administer 'non-autonomous territories'–, an interpretation of the right to self-determination –firmly consolidated within the scope of international Law- linked Trade Marks he process of decolonisation. This is what is stipulated in the well-known Resolution 1.514 of the UN General Assembly, which interprets the right to self-determination as a right to independence. When a more broad interpretation has been sought for the term 'right to free determination', as was the case in the Resolution 1.541 of the UN General Assembly, which interprets the right to self-determination in the internal scope, that interpretation has been limited to a demand for the 'political recognition' of the affected people, which translates to the recognition of democratic forms of political representation, as well as an undetermined autonomy within the State of which they form a part. That is, precisely, the significance which should be given to the agreement undertaken by the Basque Parliament on 15 February 1990, regarding the right to self-determination –mentioned previously -; and that is the content of the recognition of the political autonomy of the Basque Country, and of its cultural and linguistic differences. Proposal for a new Political Statute runs counter to that interpretation.

On these pillars, the Proposal resuscitates the old 'principle of nationalities', trying to take it down new paths. Each nation would have the right to decide for itself the means of articulations it wants for itself. That would comprise the possibility of deciding its position within the State of which it forms a part, as well as, especially in the case of a State which does not accept a form of institutionalisation that satisfies the objectives of the nation, the permanent disposition of the right to become, as a last resort, a sovereign State.

But the 'principle of nationalities' does not constitute an element of the new European order developed, especially, after the fall of the Berlin Wall in 1989. It constituted one of the elements on the basis of which the establishment of a new order was attempted after the Great War in 1918, and contributed to its dramatic failure with the outbreak of World War II. In other terms, the applicability of this principle was reduced, especially, to the reordering of the ruins of the Austro-Hungarian Empire, within the geopolitical limits of Central and Eastern

Europe - establishing what is known as a 'double paradigm' in the protection of national minorities from Western Europe - and certain isolated cases of minor modifications to the borders between neighbouring countries.

For these reasons, the 'principle of nationalities' has been removed from the fundamental elements of the new European order, in accordance with the activities of the OSCE, continued by the Council of Europe (COE) and, finally, by the EU. Only in situations in which application of the 'OSCE model' has failed clamorously - like in the disarticulation of the former Yugoslavia - has that principle been revived to a certain degree. The *plan Ibarretxe* wants to make the exception the rule, generalising the 'Yugoslav model'.

The idea, in the fundamental points of the *plan Ibarretxe*, to ground in that principle, in the core of Western Europe, the possibility of a reopening of the *status quo* of the system of States, sustaining the legitimacy of the disarticulation of the *nations* existing within that system. And with significant territorial irredentism, to the degree that the Basque nation, at the decision of the representatives of the BCAC, is configured to include territories which do not form part thereof and which, in certain cases, do not even form part of Spain.

The 'Democratic principle' and the right to sovereignty: the tergiversation of the doctrine of the Supreme Court of de Canada regarding the secession of Quebec

The Proposal for a new Political Statute derived directly from the process undertaken in Quebec claiming sovereignty, appearing in various parliamentary interventions by the *Lehendakari* Ibarretxe as a fundamental legitimising element. His very Proposal for a "status of free association" for the Basque Country, made in his parliamentary intervention in the debate of September 2003, is deeply in debt to the Quebec Proposal for sovereignty in the form of association or political and economic *partenariat* with Canada. But the Proposal set forth by Ibarretxe is based on a tergiversated exposition of the process in Canada and, very especially, of the doctrine established by the Supreme Court of Canada in its Ruling on the secession of Quebec, dated 20 August 1998, and on the political process carried out in Canada subsequent to said Ruling. Specifically, those who defend the Proposal have tried to sell as a *Canadian parameter* what is actually only one part of the process: the strategy of sovereignty applied by the *Parti Quebecois*.

In order to sustain their objectives, the defence of the Proposal for a new Political Statute has had to tergiversate the Canadian doctrine, even sustaining that it protects that which it expressly rejects. This is the case with the right to self-determination, which the Supreme Court of Canada expressly rejects for Quebec

in the light of international law, but which, as indicated previously, constitutes a substantial fundamental element of the Proposal for a new Political Statute. The tergiversation of the doctrine of the Supreme Court of Canada by the *Lehendakari* Ibarretxe in order to defend the Proposal goes even further. It moves around the significance of the consequences which derive from the 'democratic principle' in relation to what has been called the exercise of sovereignty. The Supreme Court of Canada established, first of all, that the object under study referred to the objective of secession. Any other objective relating to the status of a territory within a federal State should materialise by applying the principles of the federal system, and not through a move for secession. This is important because in both Quebec and the Basque Country the resolve to secede is played with not with a directly secessionist purpose, but rather with the aim of forcing a 'settlement in their favour.

Consequently, the Supreme Court indicates that, when the resolve to secede is in play, said resolve should be clearly stated, without double entendres of dual Proposals ('secession if our Proposal is not accepted'), sustained by a 'broad majority' in a qualitative sense ('free of any ambiguity as regards both the matter set forth and the support received'). In this sense, the regulation contained in article 13 of the Proposal for a new Political Statute for the Basque Country is of extraordinary significance relating to the so-called "democratic exercise of the right to decide", and establishing that the "clear and unequivocal will" of Basques citizens "will be sustained in the absolute majority of the votes declared valid"; that is, in practice, it could simply mean more votes in favour than against. This could not be further from the idea of *majorité élargie*, in the qualitative sense established by the Supreme Court of Canada.

Finally, the Supreme Court of Canada establishes that, when the above circumstances occur at once, the democratic principle requires that the parties negotiate. Negotiations which are faithful to that principle, which demand that any of the possibilities in the secessionist hypothesis be accepted. But the negotiations must respect the principles on which they are based and neither of the parties can count on a guaranteed outcome. The *lehendakari* Ibarretxe, however, sustains that, in the event that the results of the negotiations were not considered to be acceptable, the right to self-determination of the Basque People would grant legitimacy to the option of unilateral secession.

The *Lehendakari* Ibarretxe, consequently, avers that the Supreme Court of Canada says what it denies with regard to the right to self-determination for the Basque People; and tergiversates, to the point of denaturalisation, the conditions that the Supreme Court establishes. He continues to play with the 'dual Proposal' ('if the State does not accept the Proposal as a form of remaining in Spain, the Basque Country will opt for secession'), consequently denaturalising said proposal within

the democratic parameters established in the aforementioned legal doctrine. It denaturalises the requirement of a broad majority of a qualitative nature. It excludes the conditions which the democratic principle imposes for the negotiation process that would be opened. Elude that it would not be a process for negotiation of the status within the autonomic system, but rather of the conditions for secession. And it does not contain the necessary application of the consequences of the democratic principle within the Basque Country; because the same demands that require that the State negotiate the hypothesis of secession also oblige the internal operations of the subject wishing to separate. Because when certain conditions - territorial continuity and others - coincide, internal minorities have a similar right to not follow the rest of their community in the recessionary adventure. In the Basque Country, as in Quebec, and while the proponents of sovereignty do not want to accept it, the biggest obstacle to their objectives is the internal plurality of their society, their internal diversity, which makes coincidence of the conditions that, in accordance with doctrine of the Supreme Court of Canada, are required by the democratic principle extremely difficult. Political representation in the Basque Country over the decades expressly manifests this matter.

ETA, A TERRORIST ORGANISATION WITHIN A DEMOCRATIC SOCIETY

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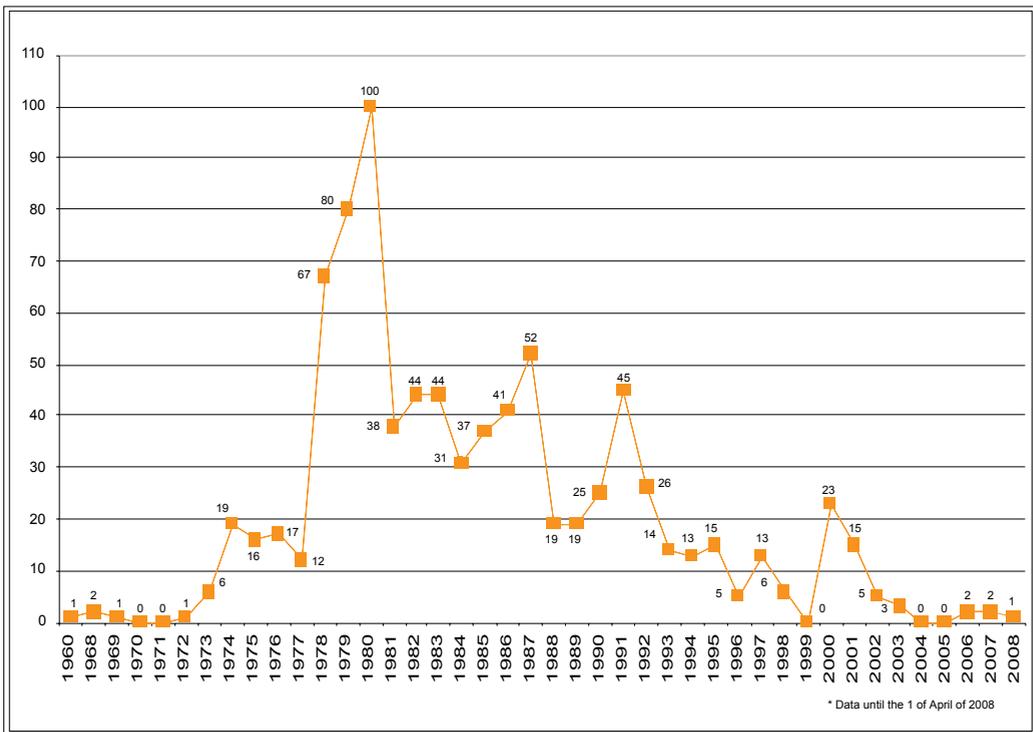
Summary

ETA was created in 1958 with the final aim of obtaining independence for the Basque Country and Navarre. The use of violence soon became their main instrument for public actions. The paradox of this organisation is that its violent activities multiplied exponentially after General Franco's death and the establishment of democracy. Between 1958 and 1977 – when the first free elections were held in Spain, ETA killed 75 people. Between 1978 to today ETA has assassinated 785 people. Since the beginning of democracy in Spain, ETA has had a political branch, first called Herri Batasuna and later Batasuna. For nearly twenty-five years this party operated in legality, in equal conditions with the rest of democratic parties. Batasuna was illegalised in 2003. Despite its propaganda insisting on the search for negotiations, ETA has refused to search for dialogued solutions. All the Spanish governments from 1977 to 2007, regardless of their political inclinations, have tried to attain the end of violence through conversations with ETA, but all attempts have failed. In the mid-1990s ETA designed a terrorist strategy to attack political and social representatives of groups contrary to independence for the Basque country, with the final aim of leaving these groups voiceless. ETA still represents a serious threat for people in the Basque Country and in the rest of Spain. ETA is the main source of violations of fundamental rights, from the right to live to the right to freedom of expression, political association or participation in public life.

ETA's victims in dictatorship and democracy

ETA (Euskadi ta Askatasuna, Basque Homeland and Freedom) was created at the end of 1958, at the height of the Franco dictatorship, with the final aim of obtaining independence for the Basque Country and Navarre, and the separation of those territories from Spain. The use of violence soon became their main instrument for public actions. Various branches, looking to act through political channels, emerged from ETA's main base, reducing ETA to an organisation which called itself "military" and was characterised by the exclusive use of terrorist violence.

MORTAL VICTIMS OF ETA 1960-2008



The paradox of this organisation is that its violent activities multiplied exponentially after Franco's death and the establishment of democracy in Spain, with the protection of citizens' rights and liberties in conditions similar to those of any other European country with a long history of democracy.

In the twenty-nine years between the creation of ETA and 1977 – when the first free elections were held in Spain, the organisation killed a total of 75 people. In

the three decades from 1978 to the present, that figure has grown ten-fold to 785 people assassinated.

In the crucial years of the transition - from 1978 to 1980, when the construction of a democratic system in Spain was at stake - ETA intensified its terrorist activities and became a threat for all citizens, endangering the very viability of a regime of liberties. In those three years alone, attacks by ETA took the lives of 247 people and injured 359 more, causing considerable political tension.

ETA rejected the citizen-approved democratic framework, the Constitution of 1978 and the Statutes of Autonomy of the Basque Country of 1979, which, in addition to establishing a system of liberties, also gave rise to an autonomic system for the Basque Country endowing regional authorities with faculties exceeding those, for example, of the German "Länder". These two legal texts were approved by public referendum, but both have been rejected by ETA with violence since then.

The history of ETA under democracy is a combination of attacks against members of the security and military forces, and other terrorist actions against the general population, both Basques and from other parts of Spain. On occasion those attacks have been completely indiscriminate, like the car bomb placed at a Barcelona shopping mall in June 1987, causing the death of 21 employees and customers.

Batasuna: ETA's political branch

Virtually since the beginning of democracy in Spain, ETA has had a political branch, a party initially called Herri Batasuna (Popular Unity) and later just Batasuna (Unity). For nearly twenty-five years - from 1978 to the end of 2002 – this party has operated in legality, in equal conditions with democratic parties. It has been allowed to present candidates for election and to have representation in all areas of power: in municipal governments and local institutions, in the autonomic parliament and in national parliamentary assemblies.

For many years, democrats trusted that the presence of the political branch of ETA in public institutions would draw the armed group towards disarmament and an acceptance of peaceful channels. While legal, the political branch of ETA had the same opportunities as other parties and led various municipal governments, in accordance with the votes obtained.

However, rather than acting as a factor to bring the armed group towards peace, the political branch has always been a puppet for ETA, which has set the guidelines and taken the most important decisions for Batasuna. The Basque Country has experienced the parapolitical phenomenon seen in Colombia, in which a terrorist

organisation uses force to sponsor friendly political representatives, while assassinating members of rival parties and intimidating the population with its attacks and threats.

In 2002 HB-Batasuna's organic dependence upon ETA, together with certain other indications of a criminal nature, led the Spanish Justice system to declare precautionary suspension of activities for the party, which was finally illegalised in 2003.

ETA's rejection to dialogued solutions

One of the peculiarities of ETA during its thirty years acting against the democratic system has been its refusal to search for dialogued solutions, despite its propaganda insisting on the search for negotiations. All the Spanish governments from 1977 to 2007, regardless of their political inclinations, have tried to attain the end of violence through conversations with ETA, but all attempts have failed. The most recent was that by the current president of the Government, José Luis Rodríguez Zapatero, who between 2005 and 2007 was in talks with ETA, accompanied by the governments of other countries and by international mediators.

The cause of all these failures has always been the same: ETA's refusal to renounce its maximum demands, consisting of the integration of Navarre in the Basque Country – despite the fact that the former's population has overwhelmingly opted for non-nationalist parties, election after election – and a subsequent referendum for self-determination in order to obtain independence for these Spanish territories. In a second stage, ETA's strategy is to separate three Basque-French territories from the French Republic and join them with the Basque Country and Navarre to form what they call "Euskal Herria". ETA's intention is to forcibly change the borders of two long-standing European states, France and Spain, and to bring about a new country which has never existed as an independent nation.

To achieve this objective, ETA has to overcome not only resistance from Spain and France, but also active rejection from great part of the population of the Basque Country and Navarre.

Terrorist strategy against political opposition

To silence that population hostile to independence, in the mid-1990s ETA designed a terrorist strategy attacking the political and social leaders of that group, leaving them voiceless.

For more than a decade, ETA has been using a double network of violence to attach non-nationalist politicians, university professors, journalists or intellectuals who are public references for that part of the population which opposes breaking ties with Spain. On the one hand, ETA uses urban guerrilla or street violence groups to carry out actions including arson, the use of homemade artefacts, the destruction of property, threats and physical aggressions against members of the Socialist party (PSOE) and the Partido Popular (PP), and against the properties and businesses of their family members. These groups use non-lethal violence with a high degree of intimidation against political adversaries.

The second network of violence used is that involving ETA's armed cells, which since 1995 have assassinated or injured numerous public representatives of the aforementioned parties, as well as party members without public positions, journalists or leaders of opinion among the non-nationalist part of Basque society. The sectarian violence of ETA has caused the death of dozens of people in the last thirteen years – the most recent on 7 March 2008, in Mondragón, where the former socialist representative Isaías Carrasco was killed – and has led many more to flee the Basque Country to avoid being a target for attack. Thousands of Basque citizens have preferred to live elsewhere in Spain to avoid the threat of terrorism. The paradoxical situation has arisen where hundreds of members of the Basque Autonomous Police Force - the Ertzaintza, created under the Statutes of Autonomy of 1979 – are living outside the Basque Country to guarantee their safety and that of their families. Those agents live in neighbouring communities like Navarre, La Rioja, Burgos, Cantabria and even in French territory, travelling daily from their place of residence to work at Ertzaintza headquarters.

This generalised threat has led hundreds of non-nationalist politicians and party members to live under the protection of police agents, not leaving their houses without a bodyguard. The Basque Country has become a space without precedent in the world: it is the only territory in which all members of the opposition have to live under police protection to avoid being killed by an insurgent group, while members of the party which has been in power for thirty years - the PNV (Basque Nationalist Party) have no problems with security because they shares ETA's aspirations for secession.

ETA is still a serious threat

ETA's leadership, arsenals and hideouts are in French territory. For a long time the French Government held a non-belligerent stance, tolerating ETA's presence in exchange for not attacking France and not promoting nationalism in the French Basque Country. This gave ETA a safe retreat just twenty kilometres from San Sebastian, where it was not sought out by the police and could organise itself

without interference. In France, ETA trained its activists, extorted Spanish business people, harboured its members hiding from the Spanish justice system, and planned attacks and all other activities.

This has given ETA better conditions to survive and to carry out its terrorist activities than any other similar group in Europe. Fortunately, the passivity of the French authorities has changed over time and Paris now collaborates satisfactorily with Madrid in the fight against terrorism.

This collaboration has permitted a reduction in ETA's activities, with a drop in the number of attacks and assassinations, and has further impeded and restricted its operations.

Nevertheless, ETA still represents a serious threat for people in the Basque Country and in the rest of Spain. ETA is the main source of violations of fundamental rights, from the right to live to the right to freedom of expression, political association, participation in public life, etc. ETA's activities in the last thirteen years, in addition to assassinations, include the systematic persecution of political adversaries, making it very difficult for parties like the PP or the PSOE to do politics in the Basque Country. Fourteen members of the PP and twelve of the Socialist Party have been killed by ETA.

Additionally, ETA wields a permanent threat over the media critical with nationalism, which also represents a major restriction to the right to free expression and information. Numerous journalists and heads of news agencies have to live under police protection. Two Basque journalists have been killed by ETA, as has a media executive, and various others have been the target of attacks in which they have been injured or escaped unscathed.

THE CLOSING OF THE NEWSPAPER EGIN

The newspaper EGIN, the “fourth front” of the terrorist organisation ETA

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Summary:

The closure of the newspaper EGIN was the outcome of the judicial investigation 18/98 conducted against the financial structure of ETA. It was initiated ten years ago by judge Baltasar Garzón and revealed the complexity of the internal structure of ETA, not limited to a clandestine military force ordering and executing terrorist attacks and murders, but which also comprised other areas specialised in political and financial activities, international relations, youth activities, prisoner support, amnesty campaigns, sport activities, civil disobedience, and business and journalistic activities. The Spanish High Court judgement of 19th December 2007 proves that the newspaper EGIN was an instrument of ETA's media front and that the newspaper's publishing company was part of the terrorist organisation's financial structure.

Judicial Investigation 18/98 and the Judgement issued by the Spanish High Court (*Audiencia Nacional*) on 19th December 2007.

The decision issued by the Third Section of the Criminal Division of the Spanish High Court (*Audiencia Nacional*) on 19th December 2007, whereby 47 offenders were sentenced to 521 years of prison for affiliation or collaboration with an armed group, and whereby the organisations KAS, EKIN and XAKI were declared illegal due to their relationship with ETA, originated in judicial investigation 18/98, conducted by judge Baltasar Garzón.

The 1,184-page decision of the Spanish High Court is based on a 600-volume judicial investigation initiated in 1998 and a 14-month-long oral procedure. The closing of the newspaper EGIN and the criminal sentence imposed on its former executives have been presented as an attack against the freedom of expression, as an attempt to criminalize ideas. As on previous occasions, Basque nationalists have tried to undermine the action of the justice, arguing that the decision was based on political interests. According to the spokespersons of the so-called *abertzale* (radical nationalists) organisations, the High Court judgement brought to light the “true state of emergency” imposed on the Basque Country by Spanish Prime Minister Rodríguez Zapatero. The head of the Basque Department for Justice, Joseba Azkarraga, speaking on behalf of the Basque Government, denounced that the High Court decision creates “a crime of opinion”, “imprisons ideas” and “harms democracy”. The total rejection of the decision is directly linked to the importance of the subject matter decided upon, which is just as critical for the criminal prosecution of the members of the terrorist network of ETA, who apparently operate within the law and do neither bear nor use weapons, as was the revolutionary change of strategy in the investigation of the Mafia adopted by judge Falcone in Italy. A careful reading of this complex but thoroughly grounded judgement will soon prove that it has no relation with the freedom of expression and that, far from criminalizing ideas, this decision convicts certain persons for specific offences, such as cooperating with or belonging to a terrorist organisation.

Judicial investigation 18/98, initiated ten years ago by judge Baltasar Garzón, revealed the complexity of the internal structure of ETA, which was not limited to a clandestine military force ordering and executing terrorist attacks and murders, but which also comprised other areas specialised in political and financial activities, international relations, youth activities, prisoner support, amnesty campaigns, sport activities, civil disobedience, and business and journalistic activities.

The closure of the newspaper EGIN, whose publishing company was controlled by ETA, was the outcome of an important judicial operation conducted against the financial structure of ETA. In the framework of this investigation, the newspaper

“Egin” and the radio station “Egin” were searched and shut-down, accused of belonging to the financial network of ETA and of being merely an “instrument” to help the terrorist organisation carry out its activities.

Although the judicial investigation was related to two newspapers, Egin and Egunkaria¹, this judgement only contains a decision with regard to the first one. Through his investigation, judge Garzón lifted the veil on the organisation of ETA's several fronts or structures. The Spanish High Court, having admitted the many pieces of evidence submitted in the proceedings, finally concluded that KAS (and later its successor EKIN) was connected with ETA. The judgement has therefore taken a giant step towards illegalizing, through a criminal proceeding, all of ETA's structures, which have been operating for years, under a cloak of legality, as allegedly independent associations.

The theory and strategy of “splitting”: ETA's various fronts

The Spanish High Court has revealed the strategy of ETA, that is, the so-called “theory of splitting”, according to which certain political and cultural structures were developed as separate organisations, fictitiously independent from the so called “armed front”. The name ETA was used exclusively for the latter, while the rest of organisations seemed to stay within the law. This was how several political, social and cultural organisations (as the former political party HASI) were created around ETA. After 1975, all these organisations were gathered into a provisional coordination platform named KAS, an organisation formally independent but closely controlled by ETA. KAS thus grouped both ETA and the rest of organisations, although all of them remained under ETA's control. As thoroughly described in the High Court judgement, ETA exercised its control over KAS through the double affiliation of its members, among other means. This meant that members of ETA directly participated in KAS as delegates in all those

¹ The newspaper Egunkaria was shut down on 20th February 2003 by order of Investigating Court no. 6 of the Spanish High Court. 10 people, with current and past responsibilities within its managing team, were arrested on charges of “affiliation and cooperation with an armed group”. These arrests marked the end of the investigations conducted by the Information Service of the Guardia Civil regarding the instrumentalisation of the newspaper Euskaldunon Egunkaria by the terrorist organisation ETA through the company Egunkaria S.A. On 10th March 2003, Central Investigating Court no. 6 issued two extensive court orders, 41 and 45 pages-long respectively, deciding on the precautionary closure of the companies involved in the publishing of the newspaper. These decisions ordered that the companies Egunkaria Sortzen S.L. and Egunkaria S.A. be precautionary closed and their business immediately ceased, also prohibiting further publishing of the newspaper Euskaldunon Egunkaria. The order also adopted other measures related to or deriving from the above: the assets and properties of said companies were deposited with the Court and their accounts were blocked. The judicial investigation is not yet concluded and it is therefore necessary to wait until a judgement is issued before making a legal assessment of the case.

areas which ETA wished to control. As to the subject-matter of this article, this was the strategy used in connection with certain media, such as the newspaper EGIN. In 1995, KAS went underground and the political and military strategy of the couple ETA-KAS was established in three different lines of action or fronts: a) in the political area, KAS was ordered to promote social and institutional destabilization through mass organisations and the appointment of specially trusted persons for the main offices within Herri Batasuna, as well as to control the communication media referred to herein; b) in the economic area, KAS was entrusted with the design of a financing project intended to support the members of the terrorist organisation ETA. Said financial plan was based on the use of “legal” companies, such as the publishing company of the newspaper EGIN; c) in the so-called “military” area, KAS was ordered to carry out “low intensity” terrorist attacks, which were to complement ETA’s activities in order to create a coercive atmosphere, and to supply information on potential targets for ETA. In this third area, the newspaper EGIN also played an important role.

The significance of the High Court decision of 19th December 2007 lies in the fact that it brings this intricate structure to light. A substantial amount of evidence, including the key economic instruments used by ETA, proves that the newspaper EGIN and its publishing company undoubtedly belonged to ETA’s financial organisation (cf. pages 108 et seq.).

With regard to EGIN, one of the most significant proven facts is related to the media front of ETA-KAS, which was comprised of the companies Orain S.A., Ardatza S.A., Hernani Imprimategia S.A., Publicidad Lema 2000, S.L. and Erigane S.L. (cf. pages 145 et seq.). After examining the many documents seized from ETA, the Court concluded that “the Orain group, which at the time was comprised of Orain S.A. and Ardatza, was one of the instruments controlled by the terrorist organisation ETA in their financial structure, as reflected in the 1992 Udaletxe project. The group also served as a complementary means to ETA’s armed struggle, through the use, by the terrorist organisation, of its communication media (Egin and Egin Irratia)” (cf. page 149). The High Court judgement discloses the various restructurings undergone by the group of companies controlled by ETA and created in order to finance its terrorist activities (cf. pages 150 et seq.). It also unveils the accounting irregularities and social security frauds of said companies, including a process of decapitalization to avoid a seizure of their assets.

Through KAS, ETA maintained an absolute control over Orain S.A., the publishing company of the newspaper EGIN. “The companies of the Orain Group and the newspaper EGIN ended up being totally dependent on ETA, to the point that members of ETA’s political structure came to be aware of matters which not even the members of Orain’s Board of Directors were fully aware of”. Financial aspects were mixed with other structures of the MLNV (Basque National Liberation

Movement), such as AEK (which coordinated adult literacy programmes), the so-called *herriko tabernas* (“Taverns” where radical nationalists meet. Spanish justice has still not been able to demonstrate that they are part of the financial framework of Batasuna), etc. This is proven by the existence of multiple economic flows between these structures. The Spanish High Court decision clearly shows, based on abundant and sound evidence, that the newspaper EGIN was completely subject to the guidelines of the terrorist organisation.

EGIN, instrument of ETA media’s front. The functions that EGIN performed

The newspaper EGIN was the mouthpiece of Herri Batasuna, defender of ETA’s ideas. In this respect, “taking advantage of the fact that all the members of the Board of Directors of Orain S.A., the publishing company of the newspaper EGIN, were also members of KAS, ETA took control over the newspaper and its publishing group, to the extent that they became the fourth front of struggle, that is, the media or information front, an ideal complement to the other fronts, all of which were subject to the resolutions of ETA’s Executive Committee (cf. pages 178 and 180).

For this reason, before going into court receivership in 1998, the media group Orain-EGIN performed three different functions. In the first place, the group was in charge of maintaining internal cohesion and of directing the activities of the MLNV, “magnifying and justifying all of ETA’s actions”; in the second place, the group served as “an instrument of coercion and intimidation, at the service of the other fronts of ETA, which was directed against those sectors of the population which were contrary to the ideology imposed by ETA”; the third function of EGIN was also of outmost importance: “It consisted in conveying to the public the idea that the exercise of violence was a natural phenomenon in the framework of the existing conflict”. As ETA itself underlines in its pamphlets, the aim was to disseminate a “pedagogy of violence” to the broadest extent possible, as can be seen from the documents seized from ETA and submitted as evidence in the proceedings. On the other hand, the examination of the so called Information Services of ETA, helping with the commission of terrorist attacks, confirms that the Information Service of EGIN played an important role in this regard (cf. page 198 et seq.). One of the basic functions of the newspaper was to intimidate citizens and to point out targets to ETA.

After 1991, the organisation considered that EGIN’s contribution to ETA’s project could be increased and, therefore, the EGIN project was restructured into a new front actively complementing the other three fronts (the armed front, the mass front and the institutional front). The informative front must “by all means support and encourage the other fronts”. For that purpose, ETA incorporated the publishing

company ORAIN and the newspaper published by said company into the KAS-controlled business structure. ETA decided to directly control the newspaper's ideological bias "to ensure that it was advantageous to achieve its intended objectives". Thus, a direct communication was established between ETA and the Board of Directors of Orain, S.A., which was "fully known and accepted" by all members of the Board, although the person responsible for said communication was X. Alegría. The High Court judgement sufficiently evidences that "after 1992, EGIN was completely subject to ETA's global strategy, both regarding its functions and its organisation, while operating under the cover of a plural and independent newspaper". Let it suffice to say that ETA did not only monitor the appointment of officers to Orain's Board of Directors, but did also "decide on the appointment of the management team of the newspaper EGIN". There is abundant evidence of all communications held between ETA and EGIN, in particular the documents seized from Dorronsoro, a member of the terrorist organisation (cf. pages 182-190).

This instrumentalization got to the point that terrorists such as Alonso Abad, a member of the editorial staff of the newspaper, "took advantage of the principle of inviolability of newspaper headquarters to conceal, mixed with information of a professional nature, other information on the potential targets of his terrorist activities." (cf. page 190).

However, regarding individual criminal liability, even though the submission of EGIN to ETA has been sufficiently proven, not all persons working as directors, managers, editors or collaborators of EGIN may be accused of collaborating with ETA. It is necessary to evidence that said persons were subject to ETA's rule, by cooperating or being affiliated with this terrorist organisation.

In this respect, point 49 of the Points of Law on which the High Court decision is based (cf. page 743 et seq.) evidences the fact that the chief editor and deputy editor of EGIN were appointed directly by ETA. On the 21st, 22nd and 23rd February 1992, J.M. Salutregui and Teresa Toda Iglesia held a meeting with the head of ETA's political structure in a hotel in Bidart, in order for the latter to consent to their appointments as chief editor and deputy editor of EGIN, for which purpose they were accompanied by R. Uranga, Managing Director of Orain S.A. According to the allegations of the accused, the meeting was merely for professional purposes, that is, to interview the terrorist, but the alleged interview was never published. The presence of the Managing Director of the publishing company at this interview was never explained nor justified. The fact is that the meeting was held, and 40 days later their appointments took place.

Many documents and meetings, the existence of which has been sufficiently proven, evidence the unquestionable link existing between EGIN and ETA. As an example, the document named "Info sur Garicoitz 92/02", sent by the accused

Javier Alegría to ETA's leadership in February 2002, about the "need to have a modem, with the appropriate security keys, in order to send and receive messages which were only to be known by the newspaper's chief editor, also enclosing a computer programme to compact the files in order to reduce the size of the documents sent and to prevent the police [whose members he calls *txakurrada*: dogs] from understanding their content".

The High Court's reasoning concludes by stating that "EGIN was the name of the newspaper which tried to demonise certain people by reason of their profession or their lack of ideological affinity with the methods and objectives of ETA and its related organisations, thus making them the target of the terrorist actions entrusted to ETA's armed front, or of other violent and coercive activities carried out by the organisation's mass front". The chief editor and deputy editor of EGIN did not only cooperate with ETA, but were also members of the organisation. "In order to verify the truthfulness of our statements, it is only necessary to be able to read", the judges of the Spanish High Court write in their decision. A careful reading of the High Court decision, more than 1000 pages long, will remove all reasonable doubt about such affiliation. In this context, any attempt to invoke the freedom of speech to justify the behaviour of a group of individuals whose mission was to identify and point out the persons which ETA was to kill, and to later justify the crime, is not only repulsive, but also indefensible from a strictly legal point of view.

Conclusions

It has been said that, in the light of this decision and according to the Spanish High Court, "everything is ETA". The Court, however, claims exactly the opposite. "Not everything is ETA, of course not. Nobody would believe such an outrageous statement. But the facts which are the object of the accusation do not say that. What they say is that the 52 people who have eventually been sentenced (...) either belong to the terrorist organisation ETA or have cooperated therewith". None of the accused was accused on grounds of "coincidentally pursuing the same objectives as the terrorist organisation ETA".

Throughout the proceedings, which were conducted with all guarantees available in a country where the Rule of Law prevails –which also explains the extremely long duration of the proceedings–, the accused tried to prove that KAS, its companies and its communication media did not have any relation whatsoever with ETA. However, the abundant evidence examined in the proceedings proves exactly the opposite.

Today, as always, in order to be regarded as a member or a collaborator of ETA in Spain, it is necessary to have a direct relationship with this terrorist organisation,

in accordance with the doctrine established by Spanish Constitutional Court decision 199/87. Regarding the persons accused in connection with the newspaper EGIN, this relationship has been more than sufficiently evidenced. Some have criticized the judgement (probably without reading it), arguing that it is based on an offender-focused criminal law, but nothing is further from the truth. The persons accused are not punished for what they are, but for what they have done. The direct relationship between ETA's leadership and the persons in charge of other fronts, such as the media front, has been sufficiently evidenced. The judgement does not endanger the freedom of speech, because that is not what is at stake. It is rather a late victory of the Rule of Law, achieved through hard and tedious work. As already warned by Felipe González, the first socialist prime minister of Spanish democracy "a newspaper such as "Egin" would be intolerable and untenable in any democratic country, due to the violation of the rules of the game entailed by the fact that it operates at the service of ETA".

The judgement of 19th December 2007 proves that EGIN was an instrument of ETA's media front and that the newspaper's publishing company was part of the terrorist organisation's financial structure. The fact that both the company and the newspaper were subject to ETA's directions and that they were used by ETA to achieve its purposes has been abundantly evidenced. Arguing that the closing of EGIN is an illegitimate restriction on the freedom of expression is an outrageous attempt at forging the judgement and reality itself. Paraphrasing the European Court of Human Rights, any impartial jurist will easily conclude that it was a "necessary and proportionate measure in a democratic society".

ALL IDEOLOGIES AND POLITICAL PROJECTS ARE NOT LEGITIMATE. Political Parties that Feed off or Use Terrorism to Achieve Political Goals

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Summary

The premise that all ideologies and political projects are legitimate merits consideration. Can one defend the legitimacy of political projects which foment racism, xenophobia, genocide, discrimination, fascism, Nazism, totalitarianisms of any kind, or that feed off or use terrorism to achieve their ends?

In Spain this issue is regulated by the Constitutional Law for Political Parties 6/ 2002. In due application of the Law for Political Parties the Supreme Court illegalised Batasuna. On 22 June 2003, Batasuna filed an appeal for protection before the Constitutional Court. The Constitutional Court rejected Batasuna's claim as it deemed credited that Batasuna had violated democratic principles looking to cause deterioration or destruction of the regime of liberties by "systematically promoting, justifying or exonerating attacks against the life or integrity of persons or the exclusion or persecution of people because of their ideologies"; "promoting, facilitating or legitimising violence as a means for attaining political objectives or for getting rid of the conditions necessary for the exercise of democracy, of pluralism and of public liberties"; "complementing or politically supporting the actions of terrorist organisations".

The Spanish Constitutional Law for Political Parties

As is well known, in Spain the question of whether any idea or political project is legitimate derives from the preparation of what would in the end be Constitutional Law for Political Parties 6/ 2002 of 27 June, within the framework of which the illegalisation of Batasuna was undertaken. This Law, we should not forget, was approved on 4 June 2002 by the General Courts with an overwhelming majority: 304 votes in favour (PP, PSOE, CiU, CC and PA) and 16 votes against (IU, PNV, EA and BNG).

As set out in the corresponding Statement of Reasons, the objective of this Law is to “guarantee the functioning of the democratic system and the essential liberties of citizens, impeding a political party from, in a reiterated and serious manner, attacking that democratic regime of liberties, justifying racism or xenophobia or politically supporting the violence and activities of terrorist groups.” Especially “if we consider that, because of terrorist activities, it is absolutely necessary to identify and differentiate with complete clarity those organisations which defend and promote their ideas and programmes, whatever they may be, even those which are looking to revise the institutional framework, while scrupulously respecting democratic methods and principles from those others which base their political actions on connivance with violence, terror, discrimination, exclusion and the violation of rights and liberties.

On 22 June 2003, Batasuna filed an appeal for protection before the Constitutional Court with regard to the Supreme Court Sentence which illegalised that party. The Constitutional Court, in the Court Order of 25 July denied the request for suspension of the aforementioned Sentence requested by Batasuna. The Constitutional Court retains that, in said Sentence of 27 March 2003, the Court deemed as accredited

“after evaluation of the Evidence presented during the proceedings, that the political parties referred to and, specifically, in what is of interest to the matter at hand, the political party Batasuna, through their activities have violated democratic principles, after the entry into force of the LOPP – Constitutional Law for Political Parties – thereby looking to cause the deterioration or destruction of the regime of liberties by carrying out, on a serious, systematic and reiterated basis, the conducts, inter alia, set out in article 9.2, a), b) and c) of the LOPP”²

² That is, respectively, “systematically violating fundamental liberties and rights, promoting, justifying or exonerating attacks against the life or integrity of persons or the exclusion or persecution of people because of their ideologies”; “promoting, facilitating or legitimising violence as a means for attaining political objectives or for getting rid of the conditions necessary for the exercise of democracy, of pluralism and of public liberties”; “complementing or politically supporting the actions of terrorist organisations in order to obtain their goals of subverting the constitutional order or seriously altering public peace, looking to subject the public powers, certain persons and groups in society or the general populace to a climate of terror, or contributing to multiply the effects of terrorist violence and of the fear and intimidation generated thereby”.

Additionally, the Constitutional Court highlights that the concurrence of the above mentioned conducts in the activities of illegalised and dissolved political parties was also observed by the Supreme Court, which considered duly accredited the repetition and accumulation of, inter alia, the following conducts, which are specifications of those described previously:

“giving express or tacit support to terrorism, legitimating terrorist actions in order to achieve political goals outside of pacific and democratic means, or exonerating and minimising their significance and the violation of fundamental rights such actions represent” [article 13.a) LOPP]; “accompanying the action of violence with programmes and acts that promote a culture of hostility and civil confrontation linked to the activities of terrorists, or which are aimed at intimidating those who oppose such violence, making them desist, neutralising or socially isolating them and forcing them to live in an environment of coercion, fear, exclusion or in which they are stripped of their basic liberties, in particular, of the liberty to voice their opinions and to participate freely and democratically in public affairs” [article 13.b) LOPP]; “using as instruments of party activities, together with their own or in substitution thereof, symbols, messages or elements which represent or are identified with terrorism or violence and with the conducts associated therewith” [article 13.d) LOPP]; “habitually collaborating with entities or groups that systematically act in accordance with a terrorist or violent organisation, or that protect or support terrorism or terrorists” [article 13.f) LOPP]; and, finally “promoting, giving coverage for or participating in activities which are aimed at rewarding, giving homage to or celebrating terrorist or violent actions or those who commit or collaborate in such actions” [article 13.h) LOPP].

Political Parties or Ideologies not compatible with Democracy

The concept that all ideologies and political projects are legitimate and, as a result, must be able to publicly defend themselves (especially if they have support from the citizens) merits consideration. First of all, common sense tells us that certain ideologies and certain political projects should not be tolerated, not even in democratic systems. Can the legitimacy of political projects which, for example, foment racism, xenophobia, genocide, extermination, discrimination, fascism, Nazism, totalitarianisms of any kind, or that feed off or use terrorism to achieve their ends, be defended? Should democracy give such ideas and projects channels for expression? As stated above, common sense would say no. But, what is more, prevailing Law would indicate the same. Good evidence of this, for example, are the international treaties which expressly prohibit some of these conducts, as well as the legislation of certain States which, also expressly,

not only prohibits certain ideas and political projects, but which also typifies them as crimes in their Penal Codes⁵⁸.

In conclusion, experience and the practice on which it is based, bring to light the fact that while democracy is the most satisfactory political regime for peaceful and free coexistence, it is also fragile. Consequently, as it subject to being attacked and destroyed, democracy also has the right – and the obligation – to defend itself. This issue, which could have been considered to be merely a theoretical question in Europe, has taken on importance. What is more, it has proven to be absolutely real.

Jurisprudence from the European Court of Human Rights (ECHR)

The ECHR has been taking on this issue for some time in relation to the measures to dissolve or illegalise political parties adopted by different governments in Turkey, but it wasn't until the Sentence of 31 July 2001, set forth in the case of Refah Partisi (The Welfare Party c. Turkey) and confirmed by the Grand Chamber of the ECHR in its Sentence on 13 February 2003, that this judicial body first issued a sentence declaring that a national measure for illegalisation or dissolution was in conformity with the European Convention.

This jurisprudence, apart from making it clear that not all political parties nor all ideologies are compatible with the democracy that serves as inspiration for the European Convention on Human Rights and do not merit protection under that Convention, acquires additional relevance from the perspective of Spain where, since 2002, the political branch of a terrorist organisation was able not only to participate in political activities, but even to govern certain institutions (on its own or in coalition with other nationalist Basque parties).

These circumstances and the consequences deriving from this situation were clearly described by the Council of Europe Commissioner for Human Rights in the Report resulting from his visit to Spain, and in particular to the Basque Country, from 5 to 8 February 2001. This can be summarised in the fact that in the Basque Country all members of the opposition in the Basque Parliament and all non-nationalist mayors and local representatives, as well as many citizens of all kinds have police protection on a daily basis or are persecuted for their ideas. Although it came late, the Law for Political Parties permitted the illegalisation of Batasuna and of the formations preceding it, many of the members of which have been condemned in the criminal courts for forming part – directly or indirectly - of the terrorist organisation.

⁵⁸- This is the case for the Spanish Penal Code which, for example, typifies the approval of terrorism, incitation to genocide and xenophobia as crimes.

In response to the argument set forth by the Basque nationalist parties and by the Basque government itself, that this Law persecutes ideas and that all political projects are legitimate, jurisprudence from the ECHR says just the opposite: that not all political projects or all ideologies are legitimate. What is more, some should be prohibited. In this case, additionally, with the guarantee that there is an international judicial body with obligatory jurisdiction which will ultimately be responsible for evaluating and determining whether or not the national measure for illegalisation or dissolution is in compliance with the international obligations set out in the European Convention on Human Rights.

However, Basque nationalists refuse to accept this and at the same time reiterate their opposition to the Law for political parties and demand that it be repealed⁵⁹.

⁵⁹- A final example of this attitude was the No to the Law Proposition presented and defended on 5 October 2004 by the Congressional Representative for Eusko Alkartasuna, Begoña Lasagabaster, which called for the repeal of the aforementioned Law, and contained a Motion requesting that ETA prisoners be moved to prisons near their place of origin. Both initiatives were rejected with the votes of PSOE, PP and CC. EA, PNV, CiU, ERC and Izquierda Verde voted in favour (*El País*, 6 October 2004, pg 18). The same scenario arose in the context of the debate on the state of the Nation in 2006



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.

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

AN ALTERNATIVE VISION OF THE BASQUE SOCIETY

Conference pronounced at Stanford University the 3rd April 2008

Joseba Arregi

Secretary of Culture and Spokesman for the Basque Government 1984-1985; 1987- 1995.
Sociology Professor, University of the Basque Country

Good evening, ladies and gentlemen. Gabon guziori eta milesker euskal gizarteko zati baten ordezkaritza neure bizkar hartzea ahalbideratu didazutelako. Buenas noches a todos y gracias por la invitación para presentar una visión alternativa de la sociedad vasca.

I want to thank Stanford University for allowing me to present a vision of the Basque society, a vision probably different from the one presented to you by the president of the Basque Government. My thanks too, to the Foundation for Freedom for having considered that I would be apt to the task of giving voice to an alternative vision of the Basque society.

I would like, if I may, to begin by giving you some information about myself. I am now 61 years old. All my life, one way or another, I have been involved in politics. I was born in 1946, in a village near San Sebastián, in the province of Gipuzkoa. It was in the heydays of Franco's dictatorship. I was born in a family where Basque was the only spoken language. Basque was my mother's and father's language. I spoke only Basque when I started school, I was six years old. I learned Spanish with difficulty, and also Mathematics and History. Basque is still my family's language today. I can't think of any other language to speak to my 3 sons. I am, at the present time, a professor of Sociology (knowledge sociology and culture sociology) at the public university of the Basque country, and I teach the subjects in the Basque language.

I was born in a very nationalist and catholic family. My family has had a long

tradition within PNV, Partido Nacionalista Vasco, Basque Nationalist Party. (Keep this name in mind).

My father fought against Franco in the civil war. He was sentenced to forced labor, and found it very hard to get work after the war. My oldest brother was imprisoned in the sixties, and I was jailed in 1968 - the same year in which ETA began the strategic use of violence, killing two police officers. I was prosecuted under military law at the beginning, and later on transferred to the special civil-political courts of the dictatorship.

Many years later, I began to work for the Basque Government, that was on January 1982. My main task was to design and enforce new policies for the development of the Basque language. After that, I was, for nine years, (Consejero) Secretary of Culture and the Speaker for the Basque Government. I was elected five times to the Basque Parliament, under the banner of the Basque Nationalist Party. About five years ago, I personally decided I could no longer be a member of my party. My decision - a hard one - had to do with my profound and deep political differences with the party. My party had signed the so called Estella/Lizarra agreement, an arrangement that excluded half of the Basque citizens from the possibility of taking part in the definition of the political future of the Basque society. After that, and knowing that my party was not ready to reconsider its error - that is, in signing that agreement, I decided it was time for me to leave the party. I am today an ordinary citizen.

I am a Basque and a Spanish citizen. A Basque citizen because much of my every day life is governed and administered by the Basque institutions. I am a Spanish citizen because these Basque institutions are articulated, defined and regulated by the Spanish Constitution. My every day life as a citizen is today governed by two fundamental laws: the Spanish Constitution of 1978, and the Estatuto de Gernika of 1980. For any citizen of the Basque society, the Spanish Constitution does not exist without the Estatuto de Gernika. The Estatuto de Gernika defines Basque institutions, and therefore the political power of the Basque society in many areas. And viceversa: for any Basque citizen the Estatuto de Gernika does not exist without the Spanish Constitution. That means that the Basque political institutions and Basque political power cannot exist without the Spanish Constitution. I am a citizen of the Spanish State, which is a complex, complicated and internally differentiated State, where the political power is distributed like in a federal system, according to the idea of the sovereign citizen on one side, and on the other side, to the idea of a plurality of territories integrated in one State.

What does all this mean and what does it look like in the real life? I would like to begin with the regulation of taxes, one of the most important areas in the life of any citizen and in the functioning of a democratic state. We, the Basque

citizens, don't pay any federal taxes. I live now in the province of Biscay. All the taxes that I have to pay do not go to the Spanish government, neither to the Basque Government: instead, they remain in the hands of the governing body of the province of Biscay, who pays, to be sure, a big chunk of its fiscal income to the Basque Government. And so the rules governing the taxes that I have to pay are decided by the province parliament of Biscay. According to these rules, the citizens in the Biscay province that have the highest yearly income have to pay two percentage points more than the citizens, say, of Madrid or Seville. On the other side, the corporate taxes that are to be paid by the enterprises incorporated in the province of Biscay, for example the most important energy corporation in Spain and one of the most important in Europe, Iberdrola, have to pay four percentage points less than the enterprises incorporated or established in other parts of Spain. This political capacity, this political power to set different percentages, goes as far as to allow some industrial corporations to pay in corporate taxes of only 2,5 percent.

The taxes, that all Basque society pays, are collected through our local institutions. These revenues are administered by the Basque institutions. A portion of the collected revenue goes to the central government to pay for areas such as defense spending, foreign policy, the Royal house and so on.

Keep in mind then, that the Basque society, through our local institutions, administers the revenues collected to pay for all the cost of our educational system, health system, law and order enforcement systems, public railway and transportation systems, roads and other infrastructures.

As you can see, Basque society pays for its police force, all the schools and the university, its medical personal, hospitals and related infrastructures, its public radio and television broadcasting system and so on. The Basque society not only pays for all of this but also has a wide range of political capacity to regulate each one of them, at any given stage. One example: the Basque government can regulate up to 55% of the academic curriculum taught in schools, and even more important: the Basque government can determine the academic language in which the whole curriculum has to be taught. My three sons have gone through kindergarden, elementary and secondary education being taught all the school subjects entirely in Basque. Spanish was taught as a second language, and was treated the same as English or German.

I am a professor at the Basque public university. I teach Sociology in the Basque language. Today, our university students can get their degrees having been taught only in Basque. I personally think this is a big mistake. I believe they should do their university studies being lectured in both languages. That is in Basque and Spanish. Nevertheless, they have the right to choose. The Basque government

has the powers to implement all kinds of policies, norms and rules regarding many other areas that affect our every day life. The Basque government, through its home secretary - interior ministry - has implemented a new policy, that is: any detainee held in Basque police custody, must be under camera surveillance at all times. And it has established this policy regardless of the rules applied to the rest of the Spanish police. And it has done so because it has the powers to create and implement as many policies as it wishes to.

What I'm trying to explain is that the Basque society has all sorts of tools and instruments to govern itself.

The term *autonomous community* is not an empty word. It means that the autonomous community has as far reaching possibilities to governing as it chooses to. But, I may say that this capacity of self government should be for the benefit of all its citizens, that is, to benefit a very mixed and complex society.

The term *Basque country* gives the idea of a homogeneous society. I prefer to speak in terms of Basque society, because the term society allows me to think in terms of inner differences, in terms of complexity. We often speak about the *Basque* society. How much is the Basque society really *Basque* if we bear in mind that it is the language what traditionally has defined the term in the Basque language? Keep in mind that not all of Basque citizens are able to express themselves in the Basque language. Not even a majority of them. There are approximately only 30% of the citizens of the Basque country who are proficient in Basque. According to Bernardo Atxaga, one of our most internationally renowned writers, if we consider someone as being Basque - in linguistic terms - only if he uses the Basque language at least two hours a day, and only this language, then the Basque people, *euskaldunak*, would account for 200.000 persons, less than 10% of the total population.

According to different sociological studies, 30% of Basque citizens see themselves as Basque speakers. This 30% of a total population of 2.100.000 citizens it is about 700.000 people.

Out of this 30%, the fact of the matter is that only 5% use Basque, for example, when they go shopping. This is the reality. These are the facts. And there is nothing wrong with it. If you allow me to play with words, I would say that Spanish is a very Basque language. It has always been that way. This is so not only after Franco's dictatorship, or because Franco's dictatorship as some people may insist. The fact is, that the Ancient Laws governing the Basque institutions at the end of the Middle Ages were written in Spanish. Through all the history, the Basque society has always been bilingual: one of the most important requirements to hold office in the Basque institutions used to be to have a full command of the Spanish language.

When I refer to different Basque societies, I want to say that there has never been a Basque united society, there has never been a politically united Basque country in the whole of its history (later on I will explain this point).

The linguistic situation can also be extended to other areas bearing important consequences as to the understanding of the political situation. When I say that the Basque society is a complex society, a very differentiated society, it does not mean that there are parts of the population who are only Basques and other that are only Spanish. It means that a large majority of Basques feels themselves as being both at the same time Basque and Spanish in a diverse degree of mixtures.

This feature of the Basque society is nothing new considering the history of the Basque territories. You can find along its history a profound sense of being different, together with a similar profound sentiment of being a part of something wider and bigger than its territories of Álava, Biscay or Gipuzkoa. The same characteristic is also true, with much more reason yet, if you take into account the ancient Kingdom of Navarra, and the Basque territories in France. To give you an idea of all of these, Saint Ignace (St Ignatious?) of Loyola was wounded in the city of Pamplona as he was fighting to defend the interests of the king of Castilla. Basque people were among the very first participating in the colonial adventures of the Kings of Castilla, and later on with the Spanish kings. Some examples: the founder of the city of Buenos Aires, Argentina, was Juan de Garay; the founder of the city of Montevideo, Uruguay, was Bruno Mauricio Zabala; the discoverer of the northern part of Argentina, San Salvador de Jujuy, was Agustín de Leiza, Lope de Aguirre was a Basque who revolted against the Spanish king while he was conquering territories in the Amazon; Legazpi, another Basque, colonized the Philippine islands; Juan Sebastián Elcano - accomplished the task started by Magallanes, and he was the first sailor to navigate around the world. Those that I have just mentioned and many others that you can find in the history books, participated in the colonial adventures of the kingdom of Spain, and it happened so because they felt they belonged to this kingdom.

You can not think of the development of the modern kingdom of Spain without an active participation of many of our ancestors. The history of the different Basque countries is profoundly intertwined with the history of Castilla, and later with the history of Spain. Intertwined for good and for bad. The civil wars in the XIX century in Spain, were also civil wars in the Basque country. In the first of these civil wars, from 1831 to 1836, the most important general who defended God, the King and the ancient laws, who defended the ancient regime against the liberals, was a Basque, named Zumalakarregi. On the other hand, his own brother, was actively participating with the liberals, writing the first Spanish Constitution in Cadiz, in 1812.

The civil war of 1936 was also a civil war in the Basque country: many Basques fought against Franco, and many others fought alongside of Franco. The second most important person developing the fascist ideas of Falange española was also a Basque from Bilbao. His name was Sanchez Mazas.

Most important of all: the best academic analysis of the emergence and building of a collective identity in the different Basque territories in the nineteenth century - the century of nation building in Europe, the century of collective identity building in Europe - all come to the conclusion that the most important characteristic of this identity lies in the so called double loyalty, double patriotism: that is, a clear sense of being different, but also asserting at the same time, as being very Spanish in their soul. The main characteristics of the collective identity, as developed during the nineteenth century in the different Basque territories, were: one, the Catholic faith - the Basque being the most faithful Christians from the beginnings and without either interruption or any heterodox tendencies; secondly, the awareness about their own institutional tradition and their special relationship with the kingdom of Spain; and thirdly, their profound sense of being Spanish and very proud of it indeed.

The difficulties that arise at the end of the nineteenth century are tied to the transformation of the Spanish kingdom to a constitutional and parliamentary state. According to the liberal tradition in Europe, Spain tried to build a nation-state with a central parliament as the expression of the popular sovereignty. After the last civil war in the nineteenth century, which was a Spanish and a Basque civil war - the then Prime Minister, Cánovas del Castillo, sought the unification of the state through a common law, a common market, a common language and a common culture. But he allowed the three Basque territories to continue with some of their institutions, especially with their special fiscal and financial relationship with the central government. (Navarra had already negotiated in 1841 the adaptation of its ancient laws to the new requirements of the constitutional situation).

It was the dictator Franco after his victory in 1939, who took away this special fiscal and financial relationship with the central government in the case of two Basque territories, Biscay and Gipuzkoa, because in his eyes this two territories had been traitors to his political and dictatorial project.

The Spanish Constitution of 1978, not only re-established the special relationship of the Basque territories with the central government in fiscal and financial questions, but also it went much further in the granting of many political powers, as I have tried to explain from the beginning of this lecture.

I want to underline that the Basque country, the Basque society to speak properly, has been recognized as a united political subject, and therefore has had the

possibility to act as a united political actor, only two times in its past: one in 1936 as part of the second Spanish Republic which undertook the task of structuring itself as an autonomic state, and second, after 1980, grounded in the Spanish Constitution of 1978. In both instances the Estatuto de Autonomía was an integral part.

There are two conditions that are indispensable for the emergence of the Basque society as a united one: first the acknowledgment of the structural complexity and plurality of the Basque society by all its political actors, and second, the existence of the Spanish State, as a democratic, social, constitutional and autonomic state. That is, a state that recognizes within itself different languages, different cultures, different identities, different nationalities, and on one hand allows them to have an institutional power which acts as a reference point to the pluralistic senses of belonging, and on the other hand makes them a part of the structures of the state.

I would like to stress that the structural complexity of the Basque society is nothing new in its history, it is not caused by the internal migration policies of the Franco's dictatorship. The few historical references that I pointed out earlier, should be enough proof of all of it.

Concerning the democratic nature of the actual Spanish State, I would like to stress only the most important points. First of all, the Basque society did not vote against the constitution of 1978. In fact, there were more *Yes* votes than the *No* votes. The Basque Nationalist Party asked the voters to abstain, never mind that their representatives in the Spanish constitutive parliament had voted a *Yes* in the (concerning) committee, and gave a *No* vote on the self determination right in the full assembly. The Basque Nationalist Party chose the way of the abstention vote due the following conditions: the historical leaders of the party, that is, the older party members with memories of the second Spanish Republic and the Spanish civil war, were all for a yes vote. And yet the then party boss, was against it. It was clear that the Constitution would collect a more than sufficient majority. And the Basque Nationalist Party acted on the ground that there was no doubt that after the Constitution there would be an Estatuto, a constitutional law establishing the political powers of the Basque society. These conditions made it very easy to propose abstention in the popular vote for the Spanish Constitution.

In December of 1980 the Estatuto de Autonomía was put to a referendum. And it was approved by a very large majority of Basque citizens. The Estatuto de Autonomía is the constitutional law establishing the self government powers never before known in the history of the Basque territories. One of the most important leaders of the Basque nationalist party, Mr. Arzalluz, used to refer to this law as one having powers like the powers of a state, and used to say, also,

that this law had given the Basque society powers beyond those of a German federal land or state.

The constitutional situation in which the Basque country is integrated today, is an entirely democratic one, not perfect, not one is, but with no structural democratic faults affecting its foundations. This does not mean that there are no problems concerning the development of the powers foreseen in the Estatuto de Autonomía. For example, there can be tendencies in the law making process of the Spanish parliament trying to limit the powers already devolved to the autonomies. On the other hand, there are tendencies too within the autonomies to go beyond and to try to exceed the powers foreseen in the Estatutos de Autonomía, that is in the execution of its powers. Such conflicts are decided by the Constitutional Court.

Some nationalist parties lately have accused the Spanish Government, or the Spanish State, for not being loyal to the Estatuto de Autonomía, and obstructing its full development. Let us take a look at this accusation: the only important transfer of power still pending from the central government is the one connected to the complicated questions of the laws governing Social Security and the ways to implement these laws. The Basque nationalists understand that what is written in the Estatuto must be interpreted in a parallel way to the fiscal and financial relations of the Basque country with the central government: we, the Basques, collect all the contributions of the workers and business to Social Security, and then we pay a chunk of it to the central government, a chunk that has to be negotiated each year.

This parallel was precisely excluded when the Constitutional Law of the Estatuto was negotiated and agreed. What the Estatuto says is that the laws governing Social Security are the responsibility of the central government and of the Spanish Parliament. The Basque institutions can collect the contributions of the Basque workers and business without affecting the unity of the financial management of the total contributions. To carry on these provisions there must be some agreements between the Basque and the Spanish governments. The Basque Government, instead of negotiating the means to materialize these provisions, is always trying to re-read or to re-negotiate what has been already agreed.

The Spanish Constitution recognizes the Basque society as a nationality, and it recognizes the Basque language as a Spanish language, and allows that the Basque language to be an official language in the Basque country. The Spanish Constitution gives very important powers to the Basque institutions, including an almost total sovereignty in fiscal matters and in public finances. The Spanish Constitution in doing so, answers to the complexity and plurality of the Basque society, a complexity and a plurality that makes it impossible for the Basque country either to be independent - for it would mean the exclusion of all the

Basque citizens who feel to be at the same time Basque and Spanish, nor to be included without the recognition of its difference in a entirely centralized state. The Spanish Constitution, and including the Estatuto de Autonomía, warrants the rights as citizens of all the people of the Basque society and also warrants their right to the difference - in language, in culture, in identity, and to the institutions that symbolize, with political power, these mentioned differences.

Why then, the permanent reference to the Basque conflict with Spain? What does it mean? What is the real meaning of it, what must be deduced from this political argument? First of all: the fundamental law governing the Basque country today was approved by a very large majority of Basque citizens, as I already explained.

The violent rejection of this fundamental and constitutional law became the organizing central point for all of those that had rejected the outcome of the referendum.

The main aim of this violent rejection was to make impossible the development of the Basque institutions foreseen by and in it: the Basque Parliament, the Basque Government, and the revitalization of the traditional institutions in the diverse territories. The main objective of the front rejecting the Estatuto was the revolution, the break away with the past. They did not want to go with the reforming path in politics, and instead they wanted to try, with memories OF THE WAR IN THE WAR BY Lenin, a revolution in the democratic transition. They who were against the Estatuto de Autonomia did not accept the word of the Basque society, a democratic election of the Basque society. In 1980 the Basque society spoke very clearly: the people wanted reforms and not a revolution. The citizens wanted compromises, the agreement implied by the Estatuto de Autonomia, and were against self determination and independence. It was an agreement first of all and fundamentally between the diverse sensibilities of the Basque society, an agreement based in the recognition of different visions of the Basque society, of being Basque, of the history and the future of the Basque society. And secondly, it was an agreement with the state. This second agreement was only possible because there had been previously or prior an agreement between Basques. The agreement among the Basque people on one hand, and the agreement between the Basque society and Spain are bound together: there is no agreement with the state if there is not an agreement between Basques; and there is no agreement between Basques if the links with the Spanish state are broken.

In this sense, the first meaning of the term **conflict** refers to the unwillingness of some Basques to accept the verdict of the votes, votes casted to confirm an agreement previously obtained by the representatives of the distinct visions of the Basque society. This unwillingness was expressed by the use of violence, killing

representatives of the Spanish state, members of the police forces, of the army, but also killing civilian people, university professors, politicians, city counselors, journalists, businessmen and so on. These assassinations went as far as killing a former vice president of the Basque government.

This is a conflict created by ETA and only ETA, by using violence and terror to upset the constitutional order approved by a very large majority of Basque citizens. It is a conflict created by ETA against the Basque society. It is a conflict first among the Basques, something very internal to the Basque society. It is, at its worst, an expression of the past history, a history full of divisions within the Basque society.

Secondly, there is a conflict between some Basque citizens and the Spanish state, a conflict because Spain does not recognize the Basque country as an homogeneous society, a society with an homogeneous sense of belonging only to the Basque nation. And therefore, because Spain does not accept the right to self determination of the Basque country. If the Spanish State would recognize the Basque country as an homogeneous society in terms of sentiments of belonging, it would cease to be a democratic state, it would deny the structural complexity of the Basque society, the structural complexity and plurality of the Basque identity. Without this recognition, the individual freedoms are put at risk, and democracy in the Basque society would be put into question.

As I already stated, the question regarding the Basque Country can not be defined in terms of not been recognized, because the Spanish Constitution does explicitly recognize the Basque Country as a nationality, also recognizes the Basque language as a Spanish language, and allows the Basque language to be declared an official language. The problem is that for many nationalists, there is only one way to recognize the Basque Country: as a nation with full rights of sovereignty, with the right to decide alone, and only alone, its own future. But keep in mind, that to recognize such a right means to break the links that most of Basque citizens have with the Spanish culture, with the Spanish language, and with all other citizens of the Spanish State. Clearly, about half of the Basque citizens do not want to decide the constitutional features governing Basque society just alone. They want to decide in conjunction with the other Spanish citizens.

But these same Basque citizens also want very much to have their own Basque parliament, a Basque government, special fiscal and financial arrangements with the central government, with all the powers devolved to the Basque institutions by the Spanish Constitution and the Estatuto de Gernika. Thanks to these distinctive Basque political institutions, there are enough identity references for the citizens who need them for constituting their own personal identity. But without denying no one's freedom. One does not exclude the other.

It is very important for the idea of citizenship to consider that the freedom of identity is a modern translation of the freedom of conscience, out of which all modern political liberties were born.

It is for me now a priority to track the idea of the conflict during the last years, and its use in the political debate. For the Basque Nationalist Party the best way to explain ETA's use of violence and terror has been, during many years, to refer to ETA as a revolutionary group with Marxist spirit. In 1998, an agreement between all nationalist parties and a representation of ETA was signed. The Basque Nationalist Party gave to the Basque people a very different explanation than the one given before. At this time the violence and terror carried out by ETA was the result of the existence of a political conflict between the Basque Country and Spain. They insisted, that this permanent conflict had become an unbearable one after 1836(??)

This second explanation did not last very long, at least apparently: the latest effort of the Basque Nationalist Party to explain ETA's use of violence and terror is a no explanation. It is simply an statement saying that there is no excuse for ETA to use violence any more, it is an statement saying that to achieve the right to decide alone the future of the Basque country as a nation, here ETA's violence and terror is precisely the main obstacle. Therefore, ETA must disappear as the main condition in order to achieve the recognition of the right to self determination of the Basque Country.

But on the other hand, the resolution of the Basque conflict continues to be the necessary condition for ETA's dissolution. In a letter sent by N.A.B.O., North American Basque Organization, to the Office of the President of this University, John L. Hennessy, one can read the following statement: - I quote- *"as a representative of the Basque people Mr. Ibarretxe and fellow officials came among us because they seek what we have: the opportunity to live in peace. They have tired of the decades of conflict, and they deeply yearn for a resolution that has evaded them to date. But rather than resign, they have come instead with a resolution to bring an end to this conflict once and for all"* -end of the quote-. In this statement you can find clearly exposed the link between the change of the constitutional arrangements and ETA's end. You can see the very real meaning of the conflict: ETA's use of violence and terror.

The two main nationalist parties apart from ETA, are PNB and EA. They are both deeply involved in this contradiction: they say, on one hand, that resolving the conflict between the Basque country and Spain is the way to persuade ETA to disappear, but on the other hand, sensing that this way is democratically illegitimate, they state that ETA's violence and terror is the main impediment to achieve the resolution of the conflict.

To understand this contradiction it is important to look in the past. It was in 1998 when the Basque Nationalist Party began with references to the need of a new frame of relationship with Spain, implying that the actual frame, Constitution and Estatuto de Autonomía, were not longer adequate to achieve ETA's dissolution. On one occasion, the mastermind of this agreement of 1998, the agreement of Estella/Lizarra, when he and I were both members of the Basque Parliament, told me that *there won't be a dissolution of ETA if we don't concede the right of self determination and the territorial demands* that include Navarra. By the way, in Navarra, 80% of its population are non-nationalist, and in the Basques territories of France the nationalists are about 10%.

Going back for a minute, I must remember that the agreement of Estella/Lizarra meant the union of all nationalist parties and ETA, and excluded the rest of the Basque citizens, those who are not nationalist, in order to define the political future of the Basque society.

For the Basque Nationalist Party the resolution of the so called Basque conflict with Spain has always been a way to satisfy the demands of ETA, and so a way to try to bring to an end ETA's violence and terror. Only later, when the agreement of Estella/Lizarra ended in a total failure, this is, with ETA breaking the ceasefire and reassuming the bombings and killings, the Basque Nationalist Party began to speak of the need of ETA's disappearance, in order to achieve the two goals formerly put on the negotiating table as the necessary conditions for ETA dissolving itself.

There is one clear reason for this contradiction, and it is the same reason for ETA's unwillingness to accept the decision of the Basque society: they are not ready to accept, with all the political consequences, the fact that the Basque society is a profoundly complex and plural society. They dream of an homogeneous Basque country, a country very well defined, close in itself, easy to identify, with a perfect continuity in history, always politically independent, even when there was no possibility of thinking in terms of independence like in modern times. They dream of some historical subject that could materialize this homogeneous unity - ETA speaks of itself as the founding event of the Basque people and of Basque history, implying that until the appearance of ETA there was neither a Basque people conscious of itself, nor there was a Basque history conscious of itself-. For the Basque Nationalist Party as they see it, there must be somewhere, somehow, something - as a referendum, or something like it - that would reveal that there is an homogeneous entity that must be recognized as such, even though, if after the recognition life goes on as usual. But this is a dangerous dream, because this dream takes place very near the violence and the terror of ETA.

In all of this, there is on the one side a fear caused by the complexity of the Basque society, caused by the plurality of the Basque society. A mixed society is contrary to the myth of unity, and of simplicity. Because in reality there is no one Basque Country, there are many Basque countries, as there are many visions of Basque history, as there are many visions of being Basque, as well as many visions of the future of the Basque society. But all the nationalists are after is a historical moment, a political instrument, a magical point that could provide the simplicity and the unity denied by reality.

Many democracies have had to learn that democracy is nothing more than the management of plurality and complexity, because only in complexity and plurality can the conditions for freedom be found.

Democracy is about citizens, not about identities: the rights of citizenship are not bound to one religion, to one ideology, to one political creed, to one linguistic or cultural identity.

In the end, the Basque conflict is, as it has always been, a conflict among the Basques, a conflict between freedom and imposition of unitary visions of identity, of culture, of language.

I want to thank you, all of you, for being here tonight, and specially to Stanford University for giving me this unique opportunity to present a different vision than the one given by others.





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