



ELDH European Association of Lawyers for Democracy & World Human Rights

WITH LAWYERS
IN 18 COUNTRIES

EJDM Europäische Vereinigung von Juristinnen & Juristen für Demokratie und Menschenrechte in der Welt

EJDH Asociación Europea de los Juristas por la Democracia y los Derechos Humanos en el Mundo

EJDH Association Européenne des Juristes pour la Démocratie & les Droits de l'Homme

EGDU Associazione Europea delle Giuriste e dei Giuristi per la Democrazia e i diritti dell'Uomo nel Mondo

Equality Privacy Social Rights
No Racism Peace No Torture No War
Self-Determination of Peoples Civil Rights Democracy
Human Rights Rights of Migrants

Bilbo, London, Düsseldorf

10th July 2013

ELDH Statement

on the situation of detainees and Basque prisoners in Spain and France

The European Association of Lawyers for Democracy and Human Rights (ELDH) is gravely concerned about the situation of Basque prisoners and detainees in Spain and France. Despite the fact that ETA declared the definitive cessation of its armed activities in 2011, the violation of the human rights of Basques continues.

During the last months, international institutions, international courts, human rights activists and NGOs have continuously criticized the exceptional legal measures used by the French and Spanish authorities against Basque prisoners and detainees:

- The CPT's (Committee for the Prevention of Torture of the Council of Europe) report¹ on Spain after a visit carried out in 2011, with concluding observations and recommendations, was published on 31st of April 2013. The CPT reported that they had received "credible and consistent allegations of ill-treatment from persons who had been held under incommunicado detention".
- In 2012 the European Court of Human Rights condemned Spain² in the case of the journalist Martxelo Otamendi for failing to investigate his allegations that he had been tortured.
- Amnesty International's 2013 Annual report³ also expresses its concern as to the use of "incommunicado" detention and informs that the UN's Committee against Torture found

¹ CPT/Inf (2013) 6 Report, available at <http://www.cpt.coe.int/en/states/esp.htm>

² *Otamendi Egiguran v Spain* Application No.47303/08, judgment of 16 October 2012, in French only; Press Release in English

³ Amnesty International; access to the report on Spain at: <http://www.amnesty.org/en/region/spain/report-2013>

ELDH European Association of Lawyers for Democracy & World Human Rights

President: Professor Bill Bowring, London | E-Mail: bill.bowring@eldh.eu | Phone +44 (0)781 048 34 39

Présidente d'honneur: Professeure Monique Chemillier-Gendreau, Paris

Secretary General: Thomas Schmidt (lawyer), Düsseldorf | E-Mail: thomas.schmidt@eldh.eu |

Phone +49 (0)172 68 10 888

Postal address: ELDH | Thomas Schmidt | Platanenstrasse 13 | D - 40233 Düsseldorf (Germany)

Website: www.eldh.eu

that Spain had failed to adequately investigate allegations of torture in the case of Orkatz Gallastegi⁴.

- In July 2012, the ECtHR condemned Spain I in the case of the Basque prisoner Inés del Rio Prada⁵. She was jailed for 30 years but was due for release in July 2008, having been granted remission. However, the remission rules were changed in 2006 (the “197/2006 HCS Doctrine”) and Spain decided to postpone her release until 2017. Spain was found to have violated Article 7 (retrospective criminal legislation) and Article 5. The Court ordered Spain to ensure that she was released at the earliest possible date
- During the 22nd session of the UN Human Rights Council in February 2013, a written statement⁶ was submitted denouncing the dispersal policy, the application of the 197/2006 Doctrine and the imprisonment of seriously ill Basque prisoners.
- On 25th of March 2013, a group of prominent worldwide jurists and human rights activists including ELDH President Professor Bill Bowring, launched the declaration “On the path to peace. Respect prisoners’ rights”⁷ asking Spanish and French authorities to end of the policy of dispersion, to release prisoners to whom the Spanish courts apply retrospective extension of their term of imprisonment (the Doctrine 197/2006), to immediately release seriously ill prisoners, Arnaldo Otegi and all those who have been imprisoned merely for their opinion or political activity.
- On 18 June 2013 the UN Human Rights Committee published its Views⁸ in which it condemns Spain for failure to investigate her allegation of torture committed against the Basque Maria Atxabal during her incommunicado detention.
- During the 23rd session of the Human Rights Council of United Nations an oral statement was presented in the General Debate denouncing Spain and France for keeping seriously ill Basque prisoners in prison , and denouncing the death of two prisoners last April.

Taking into account the content of all the above-mentioned sentences, recommendations by international institutions, opinions of NGOs and demands by Human Rights activists, the ELDH urges:

- Abolition by Spain of the use of “incommunicado” detention, and must allow all detainees to speak in confidence with a lawyer without police officers present; to have a lawyer of their choice who will be present during questioning; to be examined by a doctor of their choice; to have their families notified of their detention and location; and must make compulsory in all cases video and audio

⁴ Orkatz Gallastegi decision: ref number CAT/C/48/D/453/2011; Committee against Torture; Communication No. 453/2011; available at http://www2.ohchr.org/english/bodies/cat/docs/jurisprudence/CAT-C-48-D-453-2011_en.pdf

⁵ Application no. 42750/09 , judgment of 10 July 2012; Spain has been permitted to appeal to the Grand Chamber

⁶ Written statement with ref. number A/HRC/22/NGO/109 available at the UN website <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/113/44/PDF/G1311344.pdf?OpenElement>

⁷ On the path to peace; to see the declaration: <http://ontheplathtopeace.eu/>

⁸ Human Rights Committee (United Nations) Communication number 1945/2010 in the case Maria Atxabal v Spain (as María Cruz Achabal Puertas) , a case with reference number CCPR/C/107/D/1945/2010 at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/446/28/PDF/G1344628.pdf?OpenElement>

recording at all places where detainees may be present, except where this may violate their right to private consultations with their lawyer or doctor.

- The prompt and effective investigation of allegations of torture in order to assure the respect for Art. 3 of the European Convention of Human Rights.
- The end of the policy of dispersion, and compliance with the right of every prisoner to be incarcerated, when possible, at a reasonable distance from his/her place of residence, as recognised in Principle 20 of UN's "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment".
- Immediate release of the prisoners affected by retrospective extension of their sentence (the doctrine 197/2006) which violates Article 7 of the ECHR
- Release of seriously ill prisoners in accordance with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), as well as against UN's "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment".
- The dismissal of the trials related to all persons merely for their political activity and release of those imprisoned, such as Arnaldo Otegi, who could play an important role in a successful and peaceful resolution of the Basque Conflict.