

Press Release

3rd Day of the endangered lawyer – 24th January 2013

European lawyers demand: Basque lawyers in Spain must enjoy the free exercise of their professional duties

During the last two decades more than 20 Basque lawyers in Spain have been kept in pre-trial detention, several of them up to almost 2 years. All the arrested lawyers were charged with terrorist crimes connected with ETA, or with insulting the Spanish state. All of them were either defence lawyers or human rights lawyers representing alleged members or supporters of ETA organisations. Later it turned out that most of these arrests were unfounded and unlawful. In almost all of the above mentioned cases the suspected lawyers were acquitted afterwards, or the cases were dismissed.

By arresting these lawyers the Spanish state not only prevented them from exercising their professional duties but also denied their clients the right to be represented by a lawyer of their choice. Both acts were a violation of human rights, under the **European Convention of Human Rights** Art. 6, Para 2, c and the **UN Basic Principles on the Role of Lawyers**, 1. "All persons are entitled to call upon the assistance of a lawyer of their choice", 18. "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."

The organisations signing below have been informed that Basque lawyers, in politically sensitive cases were identified with their clients. In several cases where they had clients who were accused of ETA activities, the lawyers themselves were persecuted, arrested, detained and put under high pressure. Arrested lawyers were even detained incommunicado and could not even be advised and assisted by a lawyer of their own choice, on the days immediately after their arrest.

Spain is one of the countries where lawyers appear to be threatened because of the fact that some police officers, some media and even juridical authorities suggest that lawyers have to be persecuted in the same way as their clients. This is not only against the law and a threat to the Rule of Law, but it also creates the high risk that even lawyers falsely suspected of supporting ETA as well as real supporters are prevented from having a fair trial.

Therefore the organisations signing below ask that you pay close attention to these abovementioned violations of the rights of the defence – as guaranteed in many international and European Treaties (International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, Charter of Fundamental Rights of the European Union) ratified by Spain -, which are also a grave violation of the UN Principles on the Role of Lawyers, as adopted in Havana. AED and ELDH want to express their concern about the fact that these persecutions of lawyers which are continuing for many years have a structural character. We demand

1. The full implementation of all International and all European law ratified by Spain concerning the right to a fair trial, i.e. Art. 14 International Covenant on Civil and Political Rights, Art. 6 European Convention on Human Rights.
 2. The full implementation of the Basic Principles on the Role of Lawyers i.e. Art. 7, 8, 16, 18
- That all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

- All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.
 - That lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.
 - The Spanish State shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.
3. Full implementation of the conclusions in the reports of the European Committee for the Prevention of Torture and the UN Special rapporteurs.
 4. To abolish the use of incommunicado detention, cf. Art. 3 ECHR
 5. To stop the disproportionate use of pre-trial detention and pre-trial detention without a full consideration of whether detention is proportionate.
 6. To end the practice of secret legal proceedings, which severely restrict access to the details of the case, including the charges and evidence in the case until up to 10 days before the closing of the investigative phase. For example :refusal to explain the charges against the arrested and refusal to hand over the files)
 7. An independent commission to investigate the violation of the rights of lawyers in Spain, in particular of those who have been or are still are ,or will be kept in detention.
 8. The release of all lawyers whose detention is found unjustified by this commission and a compensation for human rights violations which they have suffered.

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Note--The Day of the Endangered Lawyer is a project, launched in 2010 by the commission *defence de la defence* of the AED/EDL (European democratic lawyer confederation). The goal is to direct once in a year international attention towards the worldwide harassments, persecutions killings and threatening of lawyers, while performing their professional duties. Since 2012 this is a joint project of AED and ELDH. Other Lawyers and Human Rights organisations are welcome to join.