

## **Human Rights and Politically-Motivated Violence in the Basque Country**

Jon-M Landa<sup>\*</sup>

*University of the Basque Country UPV/EHU*

The Basque Region has experienced politically-motivated violence in different forms for decades. However, public policies and legal tools utilized in addressing this violence have centered on counterterrorism strategies, while bypassing, or even covering up, the occurrence of serious human rights violations committed by, or in collusion with, State representatives. This contribution identifies different forms of politically-motivated violence that have taken place from the period of the civil war in Spain onwards, offering an up-to-date map of the most serious violations of human rights related to the Basque Country. Thereafter, it briefly presents the legal framework addressing human rights violations, highlighting its strengths and weaknesses. The central thesis points out that double standards are being applied when legally acknowledging victims of human rights violations resulting from political violence. It leads to victims of terrorism being adequately and fairly considered, while other victims of the State or actors connected to the State are subject to non-recognition and even discrimination.

**Keywords:** human rights; victims; Basque Country; Spain; politically-motivated violence; terrorism; historical memory

The violation of human rights in the Basque Country is a subject of controversy, particularly in relation to politically-motivated violence. Polarization within the political arena has prompted very different narratives about the so-called “Basque problem” that influence the terminology, data collection and even the methodological approach required for any attempt to fairly assess the situation. Therefore, it may be helpful to begin with a concise historical overview in order to put in perspective the different kinds of violence that have been—and still are—surrounding the case of the

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<sup>\*</sup> Associate Professor in Criminal Law, University of the Basque Country UPV/EHU. Email: [jonmirena.landa@ehu.es](mailto:jonmirena.landa@ehu.es). Website: <http://www.jmlanda.com>. This article has benefited from a research program funded by the Spanish Ministry of Economy and Competitiveness DER 2012-33215 ‘Factores postdelictivos y peligrosidad postdelictual en la individualización de la respuesta penal’ (Principal Researcher: Jon-M. Landa).

Basque Country. Moreover, this brief historical account will lead us to a key recent development worth mentioning from the very beginning: the ceasefire of ETA (the terrorist organization *Basque Country and Freedom*).<sup>1</sup> The significance of this ceasefire is based on how it radically changed the political environment in the Basque Region and, as a consequence, opened new perspectives for dealing with past violations of human rights. It is only in the post-ceasefire scenario that some important human rights issues, such as torture or police abuses, have begun to be discussed openly in public,<sup>2</sup> even to the extent that the possibility of approving new legislation to deal with their consequences is discussed.<sup>3</sup>

Following the historical overview (section 1), and before presenting any analysis of human rights violations (section 3) or considering the legal framework for human rights protection (section 4), it is helpful to clarify some key terminology featured in this text, which contribute to narrowing the content of this article both in terms of its territorial and personal scope (section 2). The structure and main thesis of this contribution will be also presented in section 2.

### **1. A brief historical overview**

Basque society is a divided society. From medieval times the Basque people have enjoyed some degree of political autonomy within both public and private law. There was a kind of autonomous institutional framework respected by the Kingdom of Spain (Bazán, 2006; Monreal, 2000a and 2000b). However, due to civil wars during the nineteenth century, the Basque Region was subject to attempts at assimilation and equalization within Spain, *i.e.* the basis of the Basque identity thus far was at risk through the abolition of a great deal of its own juridical status. At the same time, the industrial revolution and its inherent socio-economic changes attracted increasing migration movements to the Basque Region from other parts of Spain. Therein lies some of the key factors for understanding the birth of the so-called “Basque problem” that paved the way to the creation and development of different political identities related either to a higher degree of autonomy and independence for the Basque Region, or to a greater deal of identification with or integration in Spain (Montero, 1993; Tellidis, 2011).

During the twentieth century the situation did not improve. The Spanish Civil War (1936-1939) ended with victory for the Franco Regime, which exercised cruel repression against Basque culture, prohibiting its own language, sending thousands of

Basques to exile, killing dissidents, using systematic torture against the civilian population—in short, committing all kinds of violations of human rights inherent to a totalitarian regime (Preston, 2012b) but, in the case of the Basque Region, with an added ethnic and political motivation.<sup>4</sup> In this context of brutal repression ETA was born as a resistance movement in the last part of the dictatorship with overwhelming support from the Basque and even from the Spanish people (Tellidis, 2011: 184). At the very beginning of its armed activity ETA could be regarded as freedom fighters against a dictatorship. However, with time, especially after the birth of democracy in Spain in 1978, the violence of ETA evolved progressively until its activity had nothing to do with its origin: ETA became a terrorist group with decreasing support from the population (Alonso and Reinares, 2005).

The decreasing support of the people, the increasing criticism of civil society against terrorism, the review of the strategy by the political arm of ETA (the political party called *Batasuna*), pressure from police forces, exceptional laws and judicial enforcement prohibiting political parties and draconian criminal interventions were some of the key factors leading to the end of ETA. The terrorist group declared a ceasefire in November 2011, which so far seems to be the definitive one.

## **2. Preliminary issues**

The ceasefire is good news insofar as no more violations of human rights are expected to be carried out by the Basque armed group ETA, which seems to be about to disappear. At the same time, stopping terrorism has prompted society and especially political parties to discuss human rights issues more intensively, as well as the need for passing—or not passing—a new and more inclusive legal framework. The terrorism and counterterrorism approach that was dominant when ETA was in full operation has been superseded by a more comprehensive scheme, including every kind of politically-motivated violence. Thus, terrorism carried out by ETA, but also paramilitary activities by the State apparatuses, torture, police abuses and even prior abuses of human rights that took place during the civil war and the dictatorship in Spain, tend to be incorporated in considerations of the violence in the Basque Region.

This article attempts to present an account of some of the main violations of human rights that have taken place in the Basque Country. However, a first limitation has to be underlined: only politically-motivated human rights violations taken into consideration.<sup>5</sup> Other types of violations of human rights, regardless of their

importance, remain out of the scope of this contribution. A second limitation deals with the territorial scope. The cultural Basque Country extends its borders not only to the current political unit within Spain (*Euskadi* as a Spanish administrative region), but also to Nafarroa-Navarra (another Spanish autonomous community) and to a territory in France (Northern Basque Country: *Iparralde* or *Pays Basque*). The assessment of human rights violations, though, mainly relates to the current political territory of Spanish Basque Country. In exceptional cases, further data is included beyond the mentioned territorial scope if the principal motivation for bringing about a criminal action is clearly connected with the Basque political background, such as, for people, when counting the victims of terrorism of ETA. Thus, all victims are included despite the fact that some attacks took place outside the geographical scope of the Basque territory. The analysis of the legal framework, by contrast, includes also pieces of legislation applicable to the whole of Spain, although the perspective of analysis focuses on their impact in the Basque situation.

In the Basque Region there has been the full range of politically-motivated violence over the course of decades. Public policies and legal tools have been mainly concentrated, though, in pushing ahead counterterrorism strategies, leaving aside—even covering up—the existence of serious violations of human rights committed by or in collusion with State representatives. The central thesis of this contribution points to the fact that there are double standards when it comes to acknowledging victims of human rights violations resulting from political violence, which is reflected in the legal framework to the extent that, while victims of terrorism are adequately and fairly considered, other victims of the State or actors connected to the State are treated with lower standards or even not recognized at all. According to international and European regional law standards, though, there should be a common set of rights for all victims regardless of the source of their victimization, in order to comply with the general principles of equality and non-discrimination.<sup>6</sup>

In order to reach that conclusion, first of all, an account will be presented on the different types of politically-motivated violence that have taken place from the Spanish Civil War onwards, with particular emphasis on the period between 1960 and 2013, offering an up-to-date map of human rights violations related to the Basque Country (section 3). Then the article will briefly analyze the legal framework dealing with human rights violations (section 4). The contrast between the figures for the number of deaths and casualties and the existence—or absence—of records in the

administration of justice and legal regulation for granting support to the victims, will show the extent to which the double standards conclusion may be sustainable. Thus, the last part of this article (section 5) will briefly summarize the most important conclusions and provide some thoughts about future development.

### **3. Analysis: human rights violations in the Basque Region**

The transitional model in Spain after 40 years of dictatorship was one of total oblivion and impunity (Gil, 2009: 22 and 48ff; De la Cuesta, 2010: 987ff). There was no attempt at bringing the truth to light or prosecuting perpetrators for having committed crimes during the civil war or the dictatorship. Moreover, a general law of amnesty (Act 48/1977, October 15) was declared for such crimes, and actors of the former regime enjoyed the possibility to access and be fully active in the new democracy.<sup>7</sup> From a political point of view, an unwritten pact was made to not publically debate, or to consider in the political arena, the troubles of the past, in order to avoid, on the one hand, the risk of military revolt (which nevertheless finally happened and fortunately failed in February 1981) and to enable, on the other hand, a peaceful transition between right and left Spanish political parties.<sup>8</sup>

Once the Spanish Constitution (1978) was approved, it was not until the 1990s that the transitional model of impunity began to be at stake as a result of a popular movement. It was not the political parties that pushed ahead an agenda regarding truth, justice and reparation of war crimes or crimes against humanity. It was rather the victims (the third generation of the people who died during the civil war) who began to demand political attention. Perhaps the most clear and powerful image of that popular trend was the opening of mass graves (Ferrándiz, 2006) showing where the corpses of illegally executed people—between 70,000 and 100,000 and even up to 150,000—had been buried.<sup>9</sup> Finally, this popular demand for public discussion about the civil war and repression during dictatorship led to the approval of a new Act on Historical Memory (Act 52/2007, December 26, 2007), which will be subject of attention later on (Martín-Pallín and Escudero, 2009: 9-10).<sup>10</sup>

Apart from civil war and dictatorship, ETA as an armed group also contributed to increasing the figures on politically-motivated violence. After decades of violence the results are dramatic: in the period from 1960 to 2011 alone, more than 800 people were killed by ETA and more than 2,600 were severely wounded.<sup>11</sup> According to the most recent official Base Report on Human Rights Violations in the Basque Country

for the period of time between 1960 and 2013, the number of deaths amounts to 837: the vast majority of them as a result of terrorist attacks (811); 15 following abduction; 3 still missing; and the rest due to other circumstances (Carmena and Landa, 2013: 12). That report also includes data relating to people injured by the actions of ETA, reporting between 2,365 and 2,600 as the total number of casualties.<sup>12</sup>

The complete picture of the violence, however, cannot leave aside violations of human rights committed by the State or actors connected to the State before and after the establishment of democracy: counterterrorism abuses were added to the uninterrupted period of repression since the Spanish Civil War onwards. According to some reliable figures based upon data provided by human rights organizations, in the aforementioned period of time (1960-2011) alone there were more than 200 people killed and more than 1,000 wounded who were waiting for investigation, reparation and justice by Spanish authorities, who had denied their existence for decades.<sup>13</sup>

In an official report submitted by the Office for Human Rights of the Basque Government in 2008, a list of preliminary facts was drawn up and the identification of the victims was completed, to be checked afterwards in an individualized process. The high number of cases listed gives an idea of the scale of the problem: a total of 647 cases, of which 109 correspond to deaths and disappearances, were identified. Another 66 deaths were indicated in another preliminary report drawn up by the Office for Aid to Victims of Terrorism (Landa, 2009: 573, 595ff, 705ff and 809ff). The former report of the Human Rights Office had also identified 538 episodes of attacks, physical aggressions and kidnappings, in addition to the 57 in the list from the Office for Victims.

Moreover, recent investigations have contributed to shedding light on new cases. Pursuant to the latest official Base Report on Human Rights Violations in the Basque Country for the period of time between 1960 and 2013, the number of deaths carried out by the security forces has increased to 94: 9 whilst in police custody, 20 in police controls or similar, 17 as a result of incidents fraught with confusion, mistakes or abuses brought about by civil servants, 16 arising from disputes with off duty police officers, 30 in demonstrations and 2 due to the death penalty. The number for injured people is 746 (Carmena and Landa, 2013: 12). In addition to these deaths and injuries, political violence carried out by vigilantes and extreme right wing groups acting with the support, connivance or the impunity of State apparatuses must be considered. Thus, a further 73 deaths have to be added: 61 in terrorist attacks and

assaults, 3 within the context of mobilizations, 4 after having been abducted, 3 still missing today and 2 women who were raped and murdered. The list of casualties includes 426 injured persons (Carmena and Landa, 2013: 12).

We should also add to these figures an indeterminate number of people who were injured but not identified. Furthermore, there is a considerable number of people who assert that they have been victims of torture or physical abuse (Arzuaga, 2012).<sup>14</sup> Officially the Spanish authorities categorically deny the existence of torture either today or in the past. Nevertheless, according to impartial investigations by both official and non-official human rights organizations, torture in Spain was committed in a systematic way up until the 1980s and in a more than merely sporadic way from the 1990s onwards.<sup>15</sup> As can be inferred from official data and the analysis of sentencing, there are no more than 14 final convictions against civil servants involved in the torture or ill-treatment of detainees in the field of counterterrorism activities for the period of time from 1978 until the present day. All these convictions were imposed by applying the old Criminal Code of Spain (not the one in force) from 1973, which established a much more attenuating penalty framework to punish these kinds of violations of human rights. The first official conviction in this area was pronounced by the Supreme Court of Spain on June 19, 1985 and the last official one on November 19, 2003. However, if we take into consideration not the date of the judgments, but rather the facts that those rulings scrutinize, the official version of activities of torture mainly cover a period of time between 1979 and 1984. That means that officially since the 1990s there has not been any ill-treatment of detainees in the context of the fight against terrorism: in short, officially there has been no torture in Spain for at least the last 25 years.<sup>16</sup>

The mentioned figures on sentencing, however, do not reflect in any way the real picture of the phenomenon under consideration. As the full span of rulings from the Audiencia Nacional, the Supreme Court of Spain, the Constitutional Court of Spain and, most recently, the European Court of Human Rights have stated, the problem consists of a blatant lack of investigation when torture or ill-treatment by police officers is indicated.<sup>17</sup> Counterterrorism activities have remained outside any eventual intervention of the Administration of Justice because investigating judges have not been willing to consider suspicious cases of torture in relation to political violence. The official statements by police authorities point out that denouncing torture or ill-treatment is an element of the strategy that the terrorist organization ETA

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used to discredit counterterrorism policies, which has paved the way for turning a blind eye to the conditions and practices during preventive detention of suspected terrorists. When the intervention of judicial authorities was needed and compulsory, inaction took place. As a result there is no data available, as if torture was inexistent.<sup>18</sup>

Thus, serious violations of human rights committed by or in collusion with State apparatuses account for a total number of up to 167 deaths, 1,172 severe injured persons and thousands of victims of torture, which are awaiting public recognition, investigation and legal regulation by the Spanish authorities. Regarding this last block of data related to political violence, however, it is important to stress that the data comprises mere preliminary figures, not definitive ones, due to the difficulty of accessing data, an issue that is intrinsic to any situation of human rights violations. In fact, we are talking about a hidden reality, about facts that the authorities did not act on, *i.e.* either the events were not investigated, or if they were the investigation was insufficient, no sentence was handed down or, if it was, it resulted in impunity. In short, this created a situation in which the State denied the truth and covered up injustice (Gicchini and Khoury, 2012: 182ff; Woodworth, 2001).<sup>19</sup> After having shown the overall picture of politically-motivated violence and some preliminary but updated figures of its scale, it is time for presenting—and contrasting—it with its legal framework.

#### **4. Legal regulation and public policies against terrorism and human rights violations**

Regardless the gravity of human rights violations, it has been the perpetrator, not the crime that has been key factor in Spain when it comes to the State allocating support to victims. There are at least three different tracks of juridical regulation that provide very different content and rights depending on who is the victim, and not the criminal course of action that was at the origin of the victimization process. First, for the victims of ETA terrorism, the highest standards of protection have been granted through the Spanish Act on Victims of Terrorism (Act 29/2011, September 29, 2011).<sup>20</sup> Second, for the victims of political violence by the State from the 1970s onwards, no general legal instrument of any kind has been passed, with the exception of a particular ruling of the Basque Government (Decree 107/2012, June 12, 2012).<sup>21</sup> Third, victims of the Civil War and subsequent repression during the Franco dictatorship until the 1970s enjoy a certain degree of special protection through the

Act on Historical Memory (Act 52/2007, December 26, 2007)<sup>22</sup> but are far from being guaranteed the full protection provided to victims of terrorism. Let us analyze briefly the three juridical tracks mentioned.

#### **4.1. *Victims of the civil war and subsequent repression during the dictatorship***

The Act on Historical Memory was approved in 2007, not without a major controversy between the right- and left-wing political parties.<sup>23</sup> The Socialist Party pushed ahead the new act, but this was due to the pressure of non-governmental organizations and, especially, groups of victims. In fact, the socialists had not included such a legal initiative when they campaigned in the general elections (Martín-Pallín, 2009: 9).

When it comes to the personal scope of the Act on Historical Memory, recognition as victims and entitlement to certain rights are granted to those who suffered ideological, political or religious persecution and violence during the Spanish Civil War or the subsequent repression under the regime of Franco dictatorship (Articles 1-2). The type of recognition given to the victims is, to a great extent, of a symbolic nature because such recognition does not entail a general declaration of criminal conviction, sentencing or sanctioning of the dictatorial authorities and tribunals as null and void, but, instead, just as *illegitimate* (Articles 3-4). A great deal of the Act is devoted to establishing certain types of compensation and indemnification for widows, orphans of those who lost their lives during or after the war and prisoners deprived of liberty. Monetary relief includes special favourable regimes of taxation and extraordinary retirement pension schemes (Articles 5-9). It is important to highlight a provision that establishes indemnification of up to 135,000 euro for those who sacrificed their lives in the defense of democracy and liberties only within the period of 1968 to 1977 (Article 10).

Apart from economic reparation, the Act on Historical Memory enables and guides the identification and location of victims, but only when the relatives file a petition demanding to find them (Articles 11-14). Public symbols and monuments that contribute to, justify or praise the military revolt that led to the dictatorship, the civil war or the repression by the regime, could be subject to removal and destruction. For cases of disobedience, administrative sanctioning is established within the law (Articles 15-17). Last, but not least, official archives of documentation related to the

civil war and the dictatorship underwent a thorough process of reorganization with the aim of promoting public discussion on the matter (Articles 20-22).

The new law has been criticized from different political perspectives. For the conservative Popular Party of Spain the law broke the transition model and even put at risk, after more than 30 years of democracy, cohabitation in Spain. By contrast, for the rest of political parties and groups of victims, the law did not succeed in establishing minimum and acceptable standards in relation to a full range of initiatives (recovering of buried corpses, recognizing the status of victims, removal of antidemocratic symbols...) (Martín-Pallín, 2009: 9ff). It seems as if the Act on Historical Memory was not ready to take seriously those violations of human rights at stake,<sup>24</sup> and rather just offered support to the victims when they were determined to take action.

Furthermore, the law denies the possibility of establishing the truth and bringing justice at all.<sup>25</sup> The Act on Amnesty (Act 46/1977, October 15, 1977) is still in force and the Socialist Party did not take advantage of the opportunity to abolish it.<sup>26</sup> It is important to point out that the United Nations Human Rights Committee has recently demanded its abolition, in order to enable investigations into what happened (truth) and to establish responsibilities (justice).<sup>27</sup> In contrast, the Act on Historical Memory does not declare the criminal sentences pronounced during and after the civil war as illegal but only as *illegitimate* and, therefore, without juridical consequences. The declaration of illegitimacy can also only be made as a result of the private initiative of the victim (Terradillos, 2010: 156-158).

To summarize, on the one hand, the new Act on Historical Memory did provide for the first time a certain level of protection to the victims of the civil war and subsequent repression. On the other hand, the protection almost exclusively relates to aspects of economic reparation and neglects to a great extent the standards required to achieve justice and truth (Terradillos, 2010: 153, 157). Moreover, when victims do not receive both individual and collective reparation—instead of a purely personal one—and when an unavoidable strong public discourse supporting their memory and truth is lacking, awarding just economic compensation could be counterproductive. In fact, having granted only limited recognition of their suffering to these victims may have contributed to create a feeling of discrimination towards the victims of terrorism who instead enjoy, as will be shown now, a much higher level of protection.

#### 4.2. *Victims of terrorism*

Spanish counterterrorism policy<sup>28</sup> has experienced a radical change since 2000, when legislation was introduced with the aim of expanding the substantive criminal definition of crimes of terrorism with reference both to adults and minors.<sup>29</sup> In the period between 2000 and 2003 more amendments were added that affected not only legal definitions of crimes, but also their enforcement, criminal procedure rules, sentencing and penitentiary status.<sup>30</sup> Therefore, counterterrorism legislation experienced a clearly expansive development based on a new broad concept of criminality aimed against the Basque terrorist organization ETA. To that end, another law passed in 2002, the Act on Political Parties (Act 6/2002, June 27, 2002), was of remarkable relevance as it led to the banning of the political party *Batasuna*, considered the political arm of ETA (De La Cuesta, 2009: 23; Paredes, 2008: 1; Fernández, 2008: 187ff; Virgala, 2007: 243).<sup>31</sup>

As a result of these legal changes, Spain now has one of the most comprehensive arsenals available for combating terrorism in Europe.<sup>32</sup> Nevertheless, the fight against terrorism has been too focused on criminal policy and it was not until 1999 that a law was passed to provide special support to the victims. The Act on Solidarity with Victims of Terrorism (Act 32/1999, October 8, 1999) set for the first time a common framework regulation on the matter for the whole of Spain. Recently, this Act has been repealed by a new one: the Act on Victims of Terrorism (Act 29/2011, September 29, 2011).<sup>33</sup>

This legislation, in favour of victims of terrorism, gives them without any doubt a much higher level of protection than that to victims of the civil war or repression, if we take into account the full range of rights the former Act covers (Tamarit, 2013b: 20-25). For victims of terrorism, economic compensation (for deaths, injuries or even damages to property) is awarded. Furthermore, other complementary rights are covered as well: education grants for descendants of the victims, social aid in case the victims would like to move elsewhere in Spain to begin a new life, medical (physical, psychological or even psychiatric) care, and other types of compensation.<sup>34</sup>

However, the most remarkable difference with other kinds of victims is the fact that the administration of justice is in full operation when it comes to crimes of terrorism. For the last 10 years there has been a full range of new counterterrorism

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laws that provide a better and quicker reaction against these crimes. Moreover, the attitude of the prosecutors, police and judges has been very proactive in terms of effective investigation and support for the victims during the legal process. For example, the victims have the opportunity to be accompanied by representatives of the government when they have to testify before the judge (there is a federal office for victims of terrorism and a local one in the Basque Government, both of them located within the Ministry of Interior).<sup>35</sup>

Of equal importance are aspects of symbolic reparation. It could be stated that, at this symbolic level of political and public support, victims of terrorism have found the most powerful and effective response. Political and media reactions, demonstrations, and even awards recognizing the victims with a special civil merit, have been constitutive elements of the high sensitivity of public authorities towards this type of victims.<sup>36</sup> This sensitivity is fairly reflected in a double track of public protection by means of administrative law<sup>37</sup> and criminal protection in order to avoid discourses or expressions that may enhance the victimization process.<sup>38</sup>

Victims of terrorism have been subjected to dramatic suffering that entails without doubt all the support that the State, institutions and civil society are able, ready and willing to provide. It is not the high standards of protection for victims of terrorism as such that are the starting point for any criticism, but the fact that they have been exclusively reserved to these victims, while excluding other victims of political violence who suffered also the same violations of human rights. The principles of equality and non-discrimination are at stake because it is not the course of action, but rather the perpetrator that has been determinative for a higher, lower, or even an almost nonexistent standard of legal protection. The latter is the case of the last track of juridical status we are about to present.

### ***4.3. Victims of the State***

Although victims of terrorism have had a legal framework and a set of measures for the recognition, compensation and support with varying degrees of impact when they have to testify before the judge (especially through Act 32/1999—later replaced by Act 29/2011—on Solidarity with Victims of Terrorism), the recognition of violations themselves, their injustice or the victim's dignity have not been taken into account. Spanish public policies have not been developed and in many cases the facts have not even been investigated with sufficient legal or judicial guarantees.<sup>39</sup>

The approval of the aforementioned Act on Solidarity with Victims of Terrorism aimed at correcting a series of deficiencies in the recognition of the suffering of many victims, fundamentally those caused by ETA and other groups, who are recognized as victims of terrorism. Specifically, the aforementioned law is a response to the victims of acts of terrorism, or to facts perpetrated by people who were members of armed bands, or groups, or who acted with the purpose of seriously affecting peace and citizens' safety. Pursuant to the literal wording of this Act, its content was intended to cover every form of terrorism. In reality, however, the vast majority of people affected by violence executed by the State were left out of this legal field. In some cases, this is because violations of human rights committed by State agents acting within their official duties cannot be considered terrorism, technically-speaking. But even in cases where terrorist elements were used by the State (such as the armed band GAL), a restrictive application of the law of victims of terrorism was pushed ahead extracting from the concept of terrorism—and in turn that of the victim—anyone who opposed the political regime either during the dictatorship, the transition or the democracy.<sup>40</sup>

This whole situation has excluded many people from official history, denying public recognition to people who were killed or injured by actions from so-called uncontrolled groups, unknown individuals, far right groups, paramilitary forces or violations of human rights by State security agents who were not acting within their official duties.<sup>41</sup> The very few legal initiatives designed to deal with State violence have been prompted by different Basque—not central Spanish—authorities. On October 5 and 17, 2007, during the plenary sessions on victims of terrorism, the Basque Parliament decided to tackle the problem by giving the Office for Aid to Victims of Terrorism and the Basque Government Human Rights Board a double mandate. On the one hand, the Office for Aid to Victims of Terrorism had to draw up an exhaustive report on the real situation of the victims of terrorism practiced by all uncontrolled groups, extreme right groups and GAL, with a special emphasis on the identification of victims and studies into the degree of recognition of rights in the legislation in force. On the other hand, the Office for Human Rights had to compile an exhaustive report on the situation of other victims of human rights violations derived from politically-motivated violence, with a special emphasis on the identification of victims and studies into the measures needed for moral recognition and compensation (Human Rights Board, 2009: 198).

This double mandate therefore recognizes the existence of a set of victims of terrorism and human rights violations derived from politically-motivated violence, affirming that there are serious deficiencies in the official registration of victims and recognition of their rights. As a result of this mandate, preliminary reports on human rights violations with regard to the State were issued and presented before the Basque Parliament. Those reports led finally to regulation by the Basque Government, through Decree 107/2012, June 12, 2012.<sup>42</sup> This is an initiative of the Government, not of the Basque Parliament, without the rank of formal law, intended mainly to award monetary relief in cases of death and severe and permanent injuries that are not covered by the Spanish Act on Historical Memory.<sup>43</sup> Its temporal scope, parallel to the legislation of victims of terrorism, embraces the period from 1960 to 1978 and its territorial projection is reduced to the current political Basque Country, leaving aside those violations that could have happened in Nafarroa (culturally Basque although belonging to a separate political unit within Spain), the north part of the Basque Country in France or in other territories of Spain.<sup>44</sup>

## **5. Final thoughts**

Politically-motivated violence in the Basque Region, as has been shown, comprises of course the terrorism of ETA, but also terrorism and illegal violence by State-adjacent apparatuses, abuses and serious violations of human rights by civil servants while acting within their official duties and, last but not least, unresolved war crimes, executions and subsequent repression during and after the Spanish Civil War. The figures documenting this full array of violence vary notably in accuracy. While data related to terrorism brought about by ETA are well established in official records, other types of politically-motivated violence are still at a very initial stage of documentation. In this contribution, the latest attempts at clearing up the truth and filling the gaps of preliminary documentation have been analyzed and presented as mapping of violations of human rights in the Basque Country with regard to political violence.

The (preliminary) figures of violence and their legal regulation are at odds. Politically-motivated violence in the Basque Region and in Spain has received so far very different responses by the public authorities depending on whether perpetrators of the violations of human rights belonged to the terrorist organization ETA, to other terrorist groups involved in illegal counterterrorist operations, or to civil servants

abusing their official position with the support and protection of the State. The consequences of civil war and subsequent repression have in turn their own disappointing lower standards of legal regulation. Therefore, while some victims were recognized, other similar victims were not taken into account, through the denial of the existence or the justification of violations, within the context of transition to democracy and counterterrorism. However, the principle of equality needs to be applied by granting the same fundamental treatment to victims who have been targeted by the same types of human rights violations. All the victims should enjoy the same degree of public protection and support without any kind of discrimination based upon the ideology of the perpetrator. It is not the perpetrator, but the violation itself that counts.<sup>45</sup>

Public authorities have the duty to set an adequate juridical framework. The main content of the Spanish Act on Victims of Terrorism, and those complementary measures established by the Basque Act on the Recognition and Reparation for Victims of Terrorism,<sup>46</sup> offer an invaluable basis in order to establish a full range of rights for these kinds of victims. Yet the differences between legislation in favour of victims of terrorism and victims of civil war and repression during the dictatorship (Act 52/2007) need to be equalized. Moreover, there is a lack of a general regulation for victims of the State and elements who acted with its collusion because the existing Decree 107/2012, in force only at the Basque regional level, is very limited and does not live up to expectations.

Reconciliation, *i.e.* building a new future rooted in healing all the social wounds as foundation for a peaceful and respectful cohabitation (Lederach, 1997: *passim*),<sup>47</sup> demands an integral approach that should start with a firm foundation in considering violations of human rights according to the principles of universality, interdependence and indivisibility.<sup>48</sup> Unless the future policies for ETA victims and for the other victims of the civil war, the Franco dictatorship and the politically-motivated serious violations of human rights committed by or in collusion with the State are balanced and designed with equity,<sup>49</sup> there will not be any real chance for reconciliation in the Spanish and Basque societies. Therefore, an integral approach for all these victims, based upon international human rights law (Turner, 2008: 126-151) and particularly based upon the principle that grants the same rights to victims of the same kinds of human rights violations, would be a fair objective and, at the same time, a starting point for a new era not governed by juridical double standards.

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Notes

- 1 The ceasefire of ETA was declared on October 20, 2011 (*see* the full text at <http://www.theguardian.com/world/2011/oct/20/basque-ceasefire-statement-full-text>), only three days after the Donostia-San Sebastián International Peace Conference organized by Lokarri, a Basque citizens' organization (*see* the text of the declaration at <http://aiete.org/es/declaracion-de-aiete>).
- 2 *See*, for all, the extensive report ('Luz y taquígrafos' ['Openly']) about impunity of torture in relationship with the Basque Country in El País, at [http://sociedad.elpais.com/sociedad/2012/09/23/actualidad/1348420613\\_622029.html](http://sociedad.elpais.com/sociedad/2012/09/23/actualidad/1348420613_622029.html).
- 3 According to the recently presented Peace and Coexistence Plan of the Basque Government 2013-16 (*see* the full text at <http://www.lehendakaritza.ejgv.euskadi.net/r48-subpaz/es>), initiatives 5 and 6 have to do with future legal instruments dealing with the recognition and investigation of human rights violations during counterterrorism activities.
- 4 As a symbol of this special repression it is unavoidable to recall the bombing of Gernika. *See* Preston (2000a) and De La Granja *et. al.* (2011: 194ff).
- 5 Political violence in a wide sense: *i.e.* including terrorism strictly considered according to its definition in the Criminal Code of Spain (Art. 571ff) and human rights violations brought about by the State or State-adjacent elements with its collusion. Related to this later concept, the difficulty consists of identifying border cases as "politically-motivated" when there is no official information about the alleged facts and perpetrators. For an attempt to solve the problem in an operative way *see* Landa (2009: 597ff and 602ff), where in the search for common features of this type of politically-motivated violence the following accumulative criteria are suggested. First, the alleged perpetrators repeat their crimes, showing a pattern of intentional action and lack due respect for human rights and democracy. Second, their activity has a characteristic *modus operandi*, linked to the way in which the actions were carried out, their frequency—at certain times systematic and at others less so—and to the selection of people who were subject to violations for political or ideological reasons. Third, the actions affected significant sectors of the population, particularly during certain historical periods. Fourth, they aimed at frightening and causing terror, along with creating a sensation of impotence and vulnerability against the mechanisms of impunity which were at play: in many cases the official versions backed up, protected, justified, hid or avoided knowledge or investigation of the facts. And, fifth, an impunity context. Nevertheless, bringing together terrorism and human rights violations of the State in any way speaks against acknowledging their differences. For an interesting and recent attempt at identifying the unique characteristics of terrorism in contrast with the wider concept of political violence *see* Armbrorst (2013).
- 6 Fernandez de Casadevante (2012: 245ff) states as a fact the emergency of a kind of international status of protection for all types of victims—of crime, of abuse of power, of gross violations of human rights, international humanitarian law or international criminal law, of enforced disappearance, of trafficking and of terrorism—regardless of the course of action which caused the process of victimization. *See* also de Casadevante (2013: 175ff). In contrast with this position, Tamarit (2013a: 46) underlines the fact of having developed a fragmentary and sectorial policy of protection for some victims—such as those of terrorism or of gender violence—and not others, as one singular feature of Spain in the context of Europe. *See* also, for a recent analysis of the new European standards for the protection of every kind of victims, Garcia Mercader (2013: 113ff).
- 7 Aguilar (2013: 256) stresses the fact that the 'army's capacity to destabilize the democratic system was considerable, and this helps explain why the impunity of Francoist repressors went unchallenged at the time'.
- 8 For a thorough analysis of such a model of transition based upon amnesties and the international standards on impunity *see* Mallinder (2007). *See*, however, the position of the

- Spanish Supreme Court in the so-called Garzon case (Judgment 101/2012, September 27, 2012), denying any possibility to establish truth or justice (Maculan, 2012).
- 9 Ferrándiz (2006: 8) estimates, according to recent historical research, the total number of people executed by Franco's troops during and after the war at between 70,000 and 100,000 and even up to 150,000. Ferrándiz also summarizes the state of affairs related to the 'battle' of figures about the crimes of Franco troops and those of the republican side.
  - 10 See also *infra* section 4.
  - 11 For an overview of the figures related to the violence of ETA acquired through different official and non-official sources see Argituz (2011a). See also Alonso and Reinares (2005): 265ff.
  - 12 2,179 people injured in terrorist attacks; 15 abducted and shot in the leg; 41 abducted and released; 6 abducted and released by security forces; 97 abducted to steal a vehicle; 27 injured in the context of so-called street violence. Further relevant data deals with the number of terrorist attacks (around 3,600), economic extortion (thousands of people), people forced to use bodyguards (between 1,500 and 2,000) and incidents of street violence (Approx. 4,500) (Carmena *et. al.*, 2013: 12).
  - 13 For an overview of the whole picture related to politically-motivated violence in the Basque Region from 1968 onwards see the reliable report of the human rights non-governmental organization Argituz (2011a). See also Argituz (2011b) See also, mostly on violations of human rights committed by the State, Landa (2009).
  - 14 See Arzuaga (2012), where the estimate of people who have been subjected to torture amounts up to 10,000 for the period of time from the transition to democracy up to 2012. Since the ceasefire of the terrorist organization ETA, the number of reported cases of torture dealing with political violence has decreased dramatically. According to TAT (a non-governmental organization that fights against torture in the Basque Region), the last two reported cases of torture took place in February 2012. See Berria (2013). See also Carmena *et. al.* (2013: 12), who acknowledges at least 5,500 public complaints of torture.
  - 15 See the exhaustive and updated reference to different reports in Landa (2012: 93-98).
  - 16 It is important to stress that even in those cases in which there was an official conviction, punishment, however, was not severe and, breaching the guidelines of the Committee for the Prevention of Torture (CPT) and case-law of the European Court of Human Rights (ECtHR), the vast majority of the perpetrators were pardoned and reintegrated into the police; in some cases police forces were awarded honors. For details on convictions and pardons see Landa (2012: 87-91).
  - 17 The last conviction of the ECtHR is the case *Otamendi v. Spain*, App. no. 47303/08, October 16, 2012, where the ECtHR held there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention of Human Rights in its procedural aspect (investigation). See also previous similar convictions: *Martinez Salas and others v. Spain*, App. no. 58438/00, November 2, 2004; *Argimiro Isasa v. Spain*, no 2507/07, September 28, 2010; *Beristain Ukar v. Spain*, App. no. 40351/05, March 8, 2011.
  - 18 An innovative approach, casting doubt on the official version of Spanish authorities denying all accusations of torture or ill-treatment, can be found in Morentin and Landa (2011).
  - 19 See also *Vaquero Hernández and others v. Spain*, App. nos.1883/03, 2723/03, 4058/03, November 2, 2010.
  - 20 Ley 29/2011, 22 Septiembre, de Reconocimiento y Protección Integral a las Víctimas del Terrorismo [Spanish Act 29/2011, September 29, on Recognition and Integral Protection for the Victims of Terrorism].
  - 21 Decreto 107/2012, de 12 de Junio, de declaración y reparación de las víctimas de sufrimientos injustos como consecuencia de la vulneración de sus derechos humanos, producida entre los años 1960 y 1978 en el contexto de la violencia de motivación política vivida en la Comunidad Autónoma del País Vasco [Decree 107/2012, June 12, on the Declaration and Reparation for the Victims of Unfair Suffering derived from Violations of

- Human Rights that took place from 1960 to 1978 in the Basque Country within the Context of Politically-motivated Violence].
- 22 Ley 52/2007, 26 Diciembre, por la que se reconocen y amplían derechos y se establecen medidas en favor de quienes padecieron persecución o violencia durante la Guerra civil y la dictadura [Act 52/2007, December 26, for the Recognition and Expansion of Rights and for setting Measures in Favour of those who Suffered Persecution or Violence during the Civil War and the Dictatorship].
  - 23 For a thorough analysis of this Act *see* Martín-Pallín and Escudero (2008).
  - 24 Attempts to bring crimes committed during the Spanish Civil War to the European Court of Human Rights have also failed so far (Gil, 2012).
  - 25 *See* Gomez Isa (2006) pleading for a triad—justice, truth and reparation—as a whole not to be separately or partially regulated according to the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted and proclaimed by General Assembly resolution 60/147 of December 16, 2005.
  - 26 For a good summary of the main reasons for the abolition of such a law *see* Zapico (2010: 257-260).
  - 27 The Human Rights Committee of United Nations demanded the abolition of this law in its periodical report about Spain in the context of a positive evaluation of the existence of Act 52/2007, December 26, on Historical Memory. CCPR/C/ESP/CO/5, January 5, 2009.
  - 28 For an historical overview of the counterterrorism policy in Spain *see* Lamarca (1985). *See* also generally Masferrer (2011).
  - 29 Terrorism Act 7/2000, December 22. Regarding the changes approved for youth offenders, *see* Gómez (2002: 3) and Barquin (2006: 66). For the related treatment of adults, *see* Bernal (2001: 1627) and Cancio (2010: 19ff).
  - 30 Act 5/2003, May 27; Judicial Organic Act 6/2003, June 30; Act 7/2003, June 30. *See* also Landa (2006) and Asua (2003: 23).
  - 31 *See* also the Decisions of the ECtHR which did not find any fundamental breach of the European Convention in the enforcement of the Spanish Act 6/2002, June 27, on Political Parties: *Herri Batasuna and Batasuna v. Spain*, App. nos. 25803/04 and 25817/04, June 30, 2009; *Etxebarria and others v. Spain*, App. nos. 35579/03, 35613/03, 35626/03 and 35634/03, June 30, 2009; *Herritarren Zerrenda v. Spain*, App. no. 43518/04, June 30, 2009; *Eusko Abertzale Ekintza-Acción Nacionalista Vasca (EAE-ANV) v. Spain*, App. nos. 51762/07 and 51882/07, December 7, 2010.
  - 32 *See*, though, a critical and very accurate analysis of Spanish counterterrorism legislation in Scheinin (2008). *See* also Human Rights Watch (2005).
  - 33 Ley 29/2011, 22 Septiembre, de Reconocimiento y Protección Integral a las Víctimas del Terrorismo [Spanish Act 29/2011, September 29, on the Recognition and Integral Protection for the Victims of Terrorism]. *See* also Real Decreto 671/2013, de 6 de septiembre, por el que se aprueba el Reglamento de la Ley 29/2011, de 22 de septiembre, de Reconocimiento y Protección Integral a la Víctimas del Terrorismo [Royal Decree 671/2013, September 6, approving the Regulation for Act 29/2011, September 29, of Recognition and Integral Protection for the Victims of Terrorism]. The decree expanded on the core regulation of the 29/2011 Act, according to its Additional Provision 1.
  - 34 Articles 8-13 (on immediate reaction measures following a terrorist act), 17-30 (compensation for personal and material damages), 31-32 (medical aid), 33-35 (labour aid and social security), 37 (preferential access to housing), and 38-40 (grants for education) of Act 29/2011, September 22, on Victims of Terrorism.
  - 35 Act 29/2011, September 22, Articles 48-51.
  - 36 Act 29/2011, Articles 52-63.
  - 37 Act 29/2011, Articles 61-63.
  - 38 Organic Act 10/1995, November 23, on the Criminal Code, Article 578: ‘Apologism or justification by means of public expression or diffusion of the felonies included in Articles 571 to 577 [on terrorist organizations and groups] of this Code, or of anybody who has

- participated in commission thereof, or in perpetrating acts that involve discreditation, *disdain or humiliation of the victims of terrorist offences or their relatives shall be punished with a sentence of imprisonment from one to two years. In the judgment, the Judge may also order any one or a number of the penalties foreseen in Article 57 of this Code for the term he may set.*' (Official translation of the original in Spanish by the Ministry of Justice that may be consulted online at <http://www.mjusticia.gob.es/cs/Satellite/es/1288774502225/ListaPublicaciones.html>.)
- 39 Aguilar (2013: 245ff) stresses the relationship between a higher degree of—and a more direct involvement in—legal and judicial repression in the past in Spain, and the resistance to prosecuting those responsible for human rights violations or establishing truth.
- 40 In those exceptional cases where there has been prosecution of human rights violations committed by a State-adjacent actor there has been a resistance even to label their criminal actions as terrorism. *See* the so-called *Amedo case* [30/91 Judgment of National Court (Audiencia Nacional), Section 3, September 20, 1991, upheld by 2677/1992 Judgment of Supreme Court (Tribunal Supremo), March 12, 1992]; *see* also the accurate criticism against it by Lamarca (1993). The mentioned Judgments denied the existence of terrorism in the first course of actions carried out by the paramilitary group GAL (Counterterrorism Group for Liberation).
- 41 *See supra* section 3.
- 42 Decree 107/2012, *see* note 21.
- 43 Decree 107/2012, Articles 10-12.
- 44 Decree 107/2012, Articles 1 and 4.
- 45 Against a 'hierarchy' of victims *see* McEvoy and McConnachie (2013). The authors stress, though, the main idea against such a hierarchy from the point of view of a possible distinction between victims who are innocent and not innocent.
- 46 Basque Act 4/2008, June 19, on the Recognition and Reparation for Victims of Terrorism fulfils a mere complementary function in relation to Spanish Act 29/2011, September 22, granting better standards for Basque victims beyond the minimum established by the State.
- 47 Particularly important could be the possibility of an expressive reparation in the sense pointed out recently by Walker (2013, 205ff).
- 48 According to the Vienna Declaration and Program of Action adopted by the World Conference on Human Rights in Vienna on June 25, 1993: '5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.' *See* also Ramcharan (2011: 173ff) and Smith (2012: 43).
- 49 A departing point for such an endeavor might be Directive 2012/29/EU of the European Parliament and of the Council of October 25, 2012, establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. *See* also de Casadevante (2012: 245ff), Tamarit (2013a) and Garcia Mercader (2013: 113ff).

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