

Spanish anti-terrorist policy, with the wind blowing in its favour

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The anti-terrorist policy implemented by the Spanish government over several decades already, has the fundamental objective of combating the activity of the Basque armed organisation ETA and of its 'entorno' [term used by some judicial and political actors to refer to social scenes in the Basque nationalist left that are deemed to be its infrastructure]. The goals to be pursued, the police and intelligence structures to be developed, the necessary legal architecture and even the political alliances were already firmly established. Against this backdrop, the changes introduced after 11-S have basically consisted in going further, and more quickly, down the path that had been marked, with the backing of a more favourable public opinion and of the increased availability of international cooperation.

Pre-emptive justice

During the years prior to 2001, one of the pillars of the antiterrorist policy has consisted in the application of a sort of *pre-emptive* justice. This is the term that we use to refer to the trend that is developing in criminal justice which, lately, has been often referred to in the legal and intellectual media, characterised by the growing relevance of the figure of the suspect as a subject for penal action. It is a trend towards a system of *pre-emptive* penal control. In connection with the antiterrorist struggle the State, as an element of affirmation of its strength, as a feature of its own identity, adopts a policy that progressively eats up legal normality and expands its scope for action, presented as an exception, to other areas that are ever-growing: the social peace, drugs, sexual freedom, immigration... This drift is causing the establishment of certain prior social controls that leave the old liberal State severely affected. Overall, it constitutes an underlying trend in the States under which we live.

On the basis of this logic, and with the cooperation of several judges who are willing to adopt it, among whom the figure of judge Baltasar Garzón stands out (he is known beyond our borders for bringing charges against Pinochet when he was in London), several lines which were previously more or less respected were crossed, already prior to 2001. Thus, the closure on 15 July 1998, first of several businesses, then of a

radio station and of the newspaper Egin,¹ was carried out following general charges of their belonging to ETA. Until then, the existing legal restraints in the field of press freedom made the mere possibility that a newspaper could be shut down without a previous firm sentence [being passed against it] unthinkable. Well, in this case, the mere opening of the investigation was enough for the judge to decree the closure of the newspaper, without this giving rise to protests from the entire profession which might have been expected. During twenty years of democracy, nobody had dared to do such a thing, under the conviction that this was not legally viable. At the time, in 1998, and in the midst of the madness of the anti-terrorist measures [that were being adopted], this measure sat comfortably with public opinion and the political class.

Following the same manner of proceeding, and generally guided by the hand of the same judge, Garzón, several organisations likewise found themselves in illegality from the moment when they were placed under investigation (Ekin, Haika, Xaki, Jarrai and Gestoras pro amnistía) and some of their directors ended up in prison. What Garzón does is, simply, to state their *terrorist* character, and that's it, rather than showing that they have the scope of committing some criminal act, or that they employ illegal methods, or violent ones... an entire, ample segment of the Basque people which, legitimately, expresses various forms of solidarity with ETA prisoners, is being criminalised. In this way the judges, rather than being the guarantors of freedom, take on a role as vehicles of the discourse of the Interior Ministry, violating not just the freedom of certain persons, which is protected by the right to the presumption of innocence, but also violating freedom of association, and the freedom to gather around a given project. It is not a matter of criminalising individual persons, but rather collectives and fields of action. To highlight the most absurd aspect of these measures, it is not rare for the original charges to be subsequently modified. In the case of Egin, several years afterwards, on 3 July 2001,² judge Baltasar Garzón changed the accusation of "membership" to one of "collaboration". To date, seven years later, the trial has not yet taken place.

¹ See: "Garzón cierra Egin por ser un 'instrumento del entramado delictivo de ETA-KAS'", *El País* 16/07/1998, and "El cierre de Egin es arbitrario y carece de amparo legal" in <http://www.contrast.org/egin/19jul-7.html>

² See "Egin aldizkariaren itxiera, legez kontrakoa", (El cierre del periódico Egin, contrario a la ley - author's translation), in *Gara*, 4/07/2001.

The climate that was created after 11-S provided further encouragement to this policy, so that on 21 November 2002,³ in an order issued by the judge of the Audiencia Nacional Baltasar Garzón, twenty officials of Herri Batasuna (HB) from the last 15 years were charged of membership of ETA. On 20 February 2003, and in line with the Egin closure, the judge of the Audiencia Nacional Juan del Olmo shut down Egunkaria,⁴ the only Basque language newspaper, detaining nine of its directors, and arresting five of them, all of whom were persons who are well known in cultural circles, including its director, Martxelo Otamendi, who complained about having been tortured.⁵

However, it must be highlighted that in June 2002, a Ley de Partidos⁶ (Law of political parties) was born that was destined to illegalise anybody who moved in the izquierda abertzale (the Basque nationalist left) milieu, who were under suspicion of being ETA sympathisers. The precedent dates back to March 1997 when, at the request of judge Baltasar Garzón, a sentence of seven years imprisonment was passed by the Supreme Court⁷ against the 23 persons who composed the leadership of Herri Batasuna, a political organisation that had a wide electoral backing and hundreds of representatives in different elected institutions. Later, on 21 July 1999,⁸ the Constitutional Court annulled the sentence and ordered their release after they had spent some months in prison.

This law, which was promoted by the Spanish parliament, allowed the illegalisation of the successive political organisations that arose in this political space, even though they had not committed any crime. The mere suspicion that they were successors of the previously illegalised organisations was enough to do likewise with them. And this was not only with regards to political organisations that were legally registered like Batasuna,⁹ the last one to be illegalised. In the last local council elections in May 2003, the Supreme Court carried out the illegalisation of 225 lists

³ See “Garzón imputa a 20 dirigentes de Herri Batasuna por pertenencia a ETA ‘con pleno conocimiento’” in *El País*, 21/11/2002.

⁴ See “dossier cierre de Egunkaria” in <http://www.gara.net/dosierak/euskalgatazka/egunkaria/index.php> and “El juez Del Olmo cierra el periódico Egunkaria por ser ‘instrumento’ de ETA”, in *El País*, 21/02/2003.

⁵ See “El director de Egunkaria presenta denuncia por malos tratos” in *El País*, 26/03/2003.

⁶ See “La ley de partidos para ilegalizar a Batasuna aprobada sin modificaciones en el Senado”, in *El País*, 26/06/2002.

⁷ See the sentence by the Tribunal Supremo, dated 27.03.2003, http://www.gara.net/dokumentuak/fitxategiak/senten_supremo_bata.rtf

⁸ See “El Constitucional anuló la sentencia de la Mesa de HB por la desproporción de la pena” in *El País*, 22/07/1999.

⁹ See “El Supremo cancela el registro de Batasuna y ordena liquidar sus bienes” in *El País*, 29/03/2003. And the Sentence in http://www.gara.net/dokumentuak/fitxategiak/senten_supremo_bata.rtf

out of the 249 that applied to run in the local council elections¹⁰ as electoral groups arising from most of the towns in Euskal Herria following the collection of thousands of voters' signatures. They were annulled through a very summary procedure in which, with peremptory deadlines, the judges decided which of them could not run using police reports as their only source, which, in turn, considered that the maximum burden of proof needed to annul a candidature was to confirm the presence within an electoral list of any member who, at any time, had been a candidate, in any election, in the electoral list of any of the organisations arising from the *izquierda abertzale* (nationalist left). In the elections to the Basque parliament that were held on 17 April 2005, there was the caricaturesque occurrence of the successive illegalisation, first of the political organisation *Batasuna*, and subsequently of a voters' collective, *Aukera Gustiak*, that had presented its candidature after collecting the signatures of thousands of voters. Finally, an unknown political organisation that had presented its electoral list to run for Parliament (the Communist Party of the Basque Lands) was used as a receptacle for the votes that had been the object of an attempt to silence them, and obtained more votes (150,000) and representatives (9) than anyone expected.

Overall, what has been established is a kind of justice that is very much subordinated to the reigning opinions in the political circles that are dominant in the Ministry of the Interior and which is fundamentally based upon its own *moral conviction* or upon the one of the law enforcement circles that are closest to it: "this [person] *looks* like he is from the ETA 'entorno' (see above), so he's probably from ETA". It is something that is somewhat like a kind of *anthropological justice* in which, more than the acts committed by the person who is charged, it is his/her attitudes, culture, relations, emotions... that are evaluated.

Moreover, the 11-S attacks consolidated the silence that was established around the practice of systematic torture, which is repeatedly denounced but only finds the backing of the justice system on rare occasions and, when this happens, the relevant ministerial pardons arrive, in support of sentenced policemen. A case serves as an example: on 26 April 2000, the former Guardia Civil general Enrique Rodríguez Galindo and the former civil governor Julen Elgorriaga were sentenced¹¹ to 71 years in prison, alongside three former guardias civiles, for the kidnapping, torture and

¹⁰ See "El Tribunal Constitucional, confirma la ilegalización de 225 candidaturas de AuB y de las plataformas locales", in *El País* and *Gara* 10/05/2003.

¹¹ See "Galindo y Elgorriaga condenados a 71 años", in *El País*, 27/04/2000.

murder of two Basques, José Antonio Lasa and José Ignacio Zabala. In spite of the odious nature of the crime and the lengthy sentence, four years later, in September 2004, Galindo was released from prison¹² “for health reasons” and was allowed to stay at home rather than in prison. In turn, Elgorriaga had already left prison on 23 June 2001,¹³ also for “health reasons”, only a year after he had been sentenced by the Audiencia Nacional, and even prior to the decision [on his case] by the Supreme Court (which finally increased the sentence from 71 to 75 years). The collective Torturaren Aurkako Taldea (Group against Torture), when it presented its summary for 2004,¹⁴ indicated that the prisoners held in an incommunicado regime were 138 in total, of whom 57 had been tortured. Their claim is emphatic: “Without the incommunicado regime there would be no torture”.

With regards to international cooperation, the Spanish government used its turn as rotating Presidency of the EU, which it took up in the first semester of 2002, to promote agreements to facilitate the handing over of people sought by judges without having to undergo the legal proceedings for extradition, at the same time as they would eliminate the possibility of [denying extradition by] resorting to political reasons between EU member states.

Behind Northern Ireland, the Basque Country is the second most highly militarised region in Europe. The presence of 23,000 agents of the different police and military bodies (excluding the local police) means that there is one policeman or soldier for every 125 Basque citizens.

Islamist terrorism: the mark left by 11-M

On 11 March 2004, a series of four explosions in six minutes left a horrifying trail of blood in Madrid: 191 dead and 1,500 injured. The Aznar government, three days away from a general election, desperately attempted to attribute the autorship of the attacks to ETA in spite of the growing evidence of their autorship by fundamentalist groups with an Islamist ideology. Aznar attempted to gain a political advantage in the ballot boxes, in case ETA’s autorship were to be accepted, and to avoid the negative reaction that could result if any kind of connection were to be established with the Spanish government’s political backing for the occupation of Iraq. It is well known

¹² See “El ex general Rodríguez Galindo saldrá de prisión por motivos de salud”, in *El País*, 30/09/2004.

¹³ See “El ex gobernador civil de Guipúzcoa queda en libertad”, in *El País*, 24/07/2001.

¹⁴ See <http://www.stoptortura.com/>

that this strategy failed, and it eventually cost him, to the point where he surprisingly lost the elections at the hands of the Socialist Party.

When talking about the reaction to this attack, it must be stressed that a calm reaction that is far removed from stereotypes and generalisations that could fuel xenophobic reactions is prevalent. In spite of its authors' fundamentalist ideology of an Islamist kind, and their predominantly Moroccan nationality, even though these traits have been repeatedly mentioned and have entered the population's subconscious, there has been a policy that has been expressly directed at avoiding this kind of reaction on the part of the authorities, the media and different kinds of organisations.

Thus, the reaction (official, by the police, and media) to the 11-M attacks has not fuelled xenophobic reactions (in spite of its unquestionable effect on the collective subconscious). The problem is rooted in the fact that it is raining on fertile ground. That is, because previously (and afterwards) there has been a discourse (official, political, and in the media) that tended to establish a direct relationship between immigration and crime. It is on this equation that the basis for the equation of immigration-terrorism-Islamism lies.

The perception of immigration as a security problem, which is present in the bulk of EU policies concerning immigration was, as a Spanish contribution, strengthened during the period in which the Aznar government exercised the presidency of the Union in the first semester of 2002. At the summit of Seville, in June of that year, the sealing of the borders through police activity gathered pace, with the proposed creation of a Border Guard and the earmarking, between 2002 and 2006, of over 400 million euros for the scope of strictly police-minded controls; the visa system was hardened through the creation of a single visa database and the opening of Joint Visa Offices equipped with a common IT system, the modification of visa forms to introduce a digital photograph and the creation of a central fingerprint database (Eurodac); the coordinated expulsions of undocumented residents; the subordination of cooperation agreements with third countries to the signing of readmission agreements...

At a national level, in the first semester of 2002 we witnessed the criminalisation of immigration in public opinion. With the manipulation of police reports about crime as

a starting point, the idea that crime increases, and that the people responsible for this are immigrants¹⁵ was aired by the Dirección General de la Policía (General Direction of the Police). This position was quickly divulged by the media and it was not until **four months later** (!) that the data which served as a basis for the formulation of this discourse was questioned.¹⁶ Eventually, the falsehood of this claim was established but, by then, this idea had already seeped into public opinion. Moreover, the practice by the media of systematically mentioning the nationality, ethnic or religious characteristics of the people who commit crimes, gave rise to a sea-change in public opinion on this issue. At the beginning of this year, concern over this issue hardly appeared in polls. On the other hand, in October 2003, the results of a poll conducted in the Madrid autonomous region by Sigma Dos for the newspaper El Mundo threw up the following results: 48% of the polled persons believed that illegal immigration was a factor that had “a lot” of influence on the increase of crime; 36.9% felt that it had had “quite a lot” of influence, and 10% felt that it had had “little” influence. In other words, 84.9 % linked irregular immigration and crime. Almost unanimously. We had gone full circle.

This establishment of a relationship between immigration and crime was promoted from the very highest bodies of the EU, with an important Spanish involvement in this direction. Thus, in a meeting held on 19 May 2003 in Jerez de la Frontera (Cádiz), the Interior ministers of Germany, Spain, France, Italy and the UK linked immigrant trafficking networks with Islamic terrorism:¹⁷ “Giuseppe Pisanu, the head of the Italian ministry, declared that ‘there is proof’ that the mafias that illegally introduce foreigners into the EU are a vehicle for criminal activities such as ‘drug trafficking, terrorism and organised crime’”. “In fact, the informal meeting in Jerez had as its objective the joint analysis of the two subjects, whose relationship had always been suggested but had never been exposed with such clarity by an interior minister...”. The scope of the measures that were proposed was, according to the Italian minister, to erect a political wall against illegal immigration. As can be seen, the anti-terrorist hysteria that was aroused by the U.S. administration after the 11-S attacks has not ceased to have effects on EU policy concerning immigration issues.

¹⁵ See “El ministerio del Interior atribuye a la inmigración el aumento de la criminalidad en más de 9,8%”, in *El País*, 03/01/2002.

¹⁶ See “El fiscal pide cárcel para los extranjeros” in *El País*, 29/04/2002 and “Aznar pide blindar la UE contra la inmigración ilegal. El sindicato policial acusa a interior de inflar los datos de extranjeros detenidos” in *El País*, 21/05/2002. Dani Wagman. 2002. *Estadística, delito e inmigrantes*, San Sebastián, Tercera Prensa. Peio M. Aierbe. 2002. *Inmigrantes delincuentes: una creación mediática*, San Sebastián, Tercera Prensa

¹⁷ See “Cinco países de la UE vinculan el terrorismo con las mafias de la inmigración clandestina”, in *El País*, 20/05/2003.

The governmental administration has begun implementing several measures to re-organise the police forces in order to pay greater attention to this phenomenon. It is a matter of reaching beyond the traditional ineffectiveness in this field that was exposed in the accumulation of errors that was ascertained in relation to the treatment by the police of information that was available concerning the preparation of 11-M, as well as in the Operación Lago.¹⁸

The CNI (Centro Nacional de Inteligencia, National Intelligence Centre, formerly CESID) has been in charge of combating Islamist terrorism and, for example, it is responsible for the investigations (which began in 1994) relating to the trial against 24 suspected Al Qaida terrorists that began on 22 April 2005.¹⁹ On 19 May 2004, the government created the Centro Nacional Antiterrorista (National Anti-terrorist Centre) to establish an effective coordination of information concerning international terrorism, especially Islamist, whose staff is composed by around thirty specialists from the CNI, the National Police Force and the Guardia Civil.²⁰ In the General Budget of the State for 2005, the CNI's budget was increased by 17%, basically devoted to this goal, and the creation of 150 posts for police officers and 150 for Guardias Civiles to combat Islamic terrorism is envisaged, at the same time as a further 350 police officers are to be assigned to the information services for its prevention.²¹ In turn, the CNI has begun instructing local police forces to counter this activity.²²

Another field in which the Administration seeks to establish a presence is in the network of 'mezquitas' (mosques) that exists in Spain. Here, a concern has emerged over the existence of many establishments that are used for prayer, and play the role of mosques, in which there are no controls over the people who lead the prayers. According to the police, many of them transmit a fanatical discourse that is close to the arguments put forward by Islamist terrorist organisations.

¹⁸ Which started with the detention, on 24/01/03, in Catalunya of 24 personas, of whom 16 were placed in prison, charged of belonging to Al Qaeda, and from whom chemical and explosive material had been allegedly confiscated which turned out to have been cleaning products, detergent and thinner: (www.nodo50.org/csca)

¹⁹ See <http://www.e-defensor.com/secciones/dossiers/temas/11-M/humo.asp>

²⁰ See *El Periódico*, 20/05/04.

²¹ See *El Mundo*, 28/09/04.

²² See "Especialistas del CNI instruyen a 40 jefes de la Policía Local de la Comunidad Valenciana para hacer frente al terrorismo islámico", in *Las Provincias*, 02/02/05.

Against this backdrop, it would not be surprising if traditional working methods (telephone interception, infiltration...) were to be complemented by a police practice which tends to detain [people] on the basis of physical traits²³ and even if the use of torture were not to be infrequent, as alleged by Amnesty International.²⁴

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²³ As has been reported by several NGOs, see *Informe anual 2005 sobre el racismo en el Estado español*, SOS Racismo, Icaria.

²⁴ España. *Crisis de Identidad, Tortura y malos tratos con componente racista a manos de agentes del Estado*, Informe de Amnistía Internacional, en web.amnesty.org/