

FOLLOW-UP REPORT TO THE RECOMMENDATIONS OF THE COMMISSIONER FOR HUMAN RIGHTS FOLLOWING HIS VISIT TO THE BASQUE COUNTRY FROM 5-8 FEBRUARY 2001

From 5 to 8 February 2001 the Commissioner for Human Rights visited Madrid and the Basque Autonomous Community (Bilbao, San Sebastian and Vitoria) in response to the continuing violation of human rights as a result of the terrorist activity. The ensuing report, submitted to the Committee of Ministers and the Parliamentary Assembly of the Council of Europe on 9th March 2001, reflects the concerns brought to the Commissioner's attention by various sectors of the Basque population, notably by non-governmental organisations, trade unions, leaders of Basque political parties, various authorities, members of Basque Government and Parliament and the Ararteko (Ombudsman), as well as by members of the Government, spokespersons of the Congress of Deputies and the President of the General Council of the Judiciary that the Commissioner met in Madrid.

This report refers to the follow up to the recommendations included in the report of 9th March 2001. It is based on information requested to this end and provided by the Government of Spain and by the Department of Interior of the Basque Government.

The Government indicates that it pursued and reinforced its policy aiming at the elimination of all impunity, not only for those who commit directly terrorist acts but also for those who cooperate in or encourage such acts, those who provide financial support (even when the funds come from public financing) or any other kind of support and, in general for those who spread terror by threat, exclusion or fear. This policy resulted in several legislative initiatives referred to in the Government's reply appearing in Appendix A. The Government further recalls its international initiatives to combat impunity of terrorist criminal activity and its fundamental lines of action for its presidency of the Committee against terrorism of the Security Council of the United Nations. From 5 to 8 February 2001 the Commissioner for Human Rights visited Madrid and the Basque Autonomous Community (Bilbao, San Sebastian and Vitoria) in response to the continuing violation of human rights as a result of the terrorist activity.

The Government of Spain indicate the following:

"In respect of the concrete problems raised by Commissioner Gil-Robles with regard to the increase of urban violence "kale borroka" or "urban terrorism", the above mentioned legislative measures, and in particular the revision of the Penal Code – by virtue of which actions of urban violence are qualified as terrorist acts - as well as the amendments to the Law on the responsibility of minors for acts of terrorism, allowed to achieve a radical decrease of urban terrorist acts as shown by the statistics below. The heavier penalties and the requirement of effective compensation provided for in the new legislation further increased the remarkable dissuasive effect:

<i>In 2001</i>	<i>370</i>
<i>In 2002</i>	<i>180</i>
<i>In 2003</i>	<i>55</i>

Even though the concerns and fears generated by terrorist acts and the “Kale borroka” have decreased, the Government maintain that there still exists an intolerable degree of threat and that it is necessary to continue to fight against this type of criminality by increasing escorts and by reinforcing the protection of persons under threat. The Government consider it of utmost importance that the Ertzaintza (the Basque autonomous police) reinforces its action qualified as decisive in this field.

The Department of Interior of the Basque Government submitted a detailed reply, including precise statistics, that appears in Appendix B. The figures provided indicate a significant reduction in the number of violent incidents and an equally important increase in the number of arrests effected in their respect. Whilst there were 536 incidents of street violence of a terrorist nature related to the “kale borroka” in 2001, this number decreased to 353 in 2002 and stood at only 22 for 2003 by 17th March. The number of arrests by the autonomous Basque Police rose from only 56 in 2001 to 105 in 2002 and 10 until March 2003. The information regarding the arrests and prosecution of the suspected perpetrators of several of these crimes is of note, especially as concerns the dissolution of particularly dangerous organised structures, such as the groups “Y”, to which many persons referred during the Commissioner’s visit. This dismantling and significant reduction of this branch of the terrorist activity in the Basque Country is to be greatly welcomed.

The Department of Interior further indicates that at this moment 903 persons in the Basque Autonomous Community require police escorts and a further 310 have police protection outside their homes.

Finally, both the Government of Spain and the Department of Interior of the Basque Government refer to judicial action affecting the legal existence of political parties linked to the action of ETA:

First, the Supreme Court annulled 241 electoral platforms (electoral groupings) and the Constitutional Tribunal confirmed this decision as far as 225 of these groupings are concerned.

Moreover, the Supreme Tribunal declared illegal and dissolved the parties Batasuna, Herri Batasuna and Euskal Herritarrok (the last two having latterly been integrated into the first) in a judgement of 27th March 2003, in accordance with the dispositions of Art. 9 of the Organic Law 6/2002 on Political Parties of 27 June. This article provides for the declaration as illegal of all political parties that ‘promote, encourage or justify violence’, that “consider terrorist acts to be political” and that “promote, spread or participate in homages” to those who commit acts of violence. The decision of the Supreme Court is currently being appealed before the Constitutional Court and it is not for the Commissioner to comment on a case in which the final decision is still pending.

In general, the information provided shows the extent to which the terrorist activity placed an unbearable pressure on Basque population in general and on the individuals mostly directly threatened by ETA in particular. It also shows the scale of ETA's terrorist activity and the large number of crimes committed over the last two years, to which must now be added the two recent assassinations in the Autonomous Community of Navarre. It is only right under such sad circumstances to express once again one's respect and solidarity with the victims of terrorist attacks and their families; to recall at all times their sacrifice and the need to fight effectively against the criminal acts of terrorists and the organisations that justify and harbour them, whilst fully respecting democratic values and the guarantees of the rule of law.

APPENDIX A

REPORT

(Original document: unofficial translation into French)

I. Action taken following the report

Following Commissioner Gil-Robles' report of 9 March 2001, the Spanish government has maintained and stepped up a policy aimed at eliminating any scope for impunity, not only for those who commit terrorist acts but also for those who collaborate in or encourage such acts, provide the perpetrators with funds (even drawn from public funding and grants) or any kind of support, and, in general, those propagating the effects of terror through threats, exclusion and fear.

The tangible result of this policy has been a series of legislative initiatives, most of which have already been passed by Parliament and have entered into force:

- **Organic law³¹ 7/2000 of 22 December amending Organic law 10/1995 of 23 November, the Criminal Code and Organic law 5/2000 of 12 January, governing the criminal liability of minors in relation to terrorist offences.** Its aim is to make it easier for the State to adopt new instruments to effectively combat outbreaks of violence and acts of praise or support for or complicity with terrorism, for which, owing to the complexity of interpretation or the shortcomings of the existing norm, there were no adequate criminal law solutions, in the interests, for example, of providing better legal protection for the members of local authorities in the legitimate exercise of their representative functions.
- **Organic law 1/2003 of 10 March guaranteeing democracy in town councils and the security of municipal councillors**, amending the Criminal Code, Organic law 2/1986 of 13 March on Security forces and agencies, the Law on Criminal Procedure, Organic law 3/1987 of 2 July on the funding of political parties, Organic law 5/1985 of 19 June of the general elections system, and Law 7/1985 of 2 April regulating the bases of the local government system.
- **Law 11/2003 of 21 May regulating the joint criminal investigation teams within the framework of the European Union, and Organic law 3/2003, of the same date**, complementing the first one as regards the transposing of the European Union Framework decision of 13 June 2002 to the Spanish legal system.
- **Law 12/2003 of 21 May preventing and stopping the funding of terrorism, and Organic law 4/2003, of the same date**, complementing the previous law.
- Reinforcement of administrative procedures to ensure that those sentenced for terrorist offences pay victims the compensation fixed by the courts. The draft **Organic law on measures of reform to ensure the total and effective application of sentences** recently went before the Senate, once the procedure before the Congress of Deputies was complete. In addition to amending articles 36, 76, 78, 90, 91 and 93 of the Criminal Code and article 989 of the Law on criminal procedure, the bill is also aimed at amending article 72 of the General law on prisons, with a view to linking the present or future wealth of convicted terrorists to the payment of compensation and damages to victims.
- Draft **Organic law amending Organic law 1/1979 of 26 September on the General law on prisons** recently submitted to the Senate. This aims to improve conditions and guarantees for prisoners regarding access to higher education, establishing quality standards based on special

³¹ Constitutional law requiring a reinforced majority.

circumstances within the penitentiary system, while making such arrangements compatible with the fact that terrorist prisoners are not granted any benefits or privileges.

- **Organic law 5/2003 of 27 May, amending Organic law 6/1985 of 1 July on the judiciary, Organic law 1/1979 of 26 September on the General law on prisons and Law 38/1988 of 28 December on judicial demarcation and planning**, which are creating **Central courts for prison supervision** in order to unify criteria concerning supervision of sentences relating to offences investigated and judged by the *Audiencia Nacional* and to avoid any problems arising between the centralisation of the investigation and the procedure corresponding to the latter's court bodies, as well as supervision of sentence application within a different framework and court.

- The reform introduced by the Law on political parties is of crucial importance, its aim being to guarantee and require that parties' activities are in line with elementary democratic principles, respect individual rights and freedoms and do not promote violence and terror. After completion of the parliamentary formalities, **Organic law 6/2002 of 27 June on political parties**, unanimously declared constitutional by the Constitutional Court in its judgment 48/2003 of 12 March, gave rise to the decision of the Supreme Court chamber of 27 March 2003, which held unanimously that the Herri Batasuna, Euskal Herritarrok and Batasuna political parties were illegal and to be disbanded. Furthermore, this decision ordered the annulment of those parties' entries in the Register of political parties, the ceasing of all activity and the opening of the corresponding property liquidation process.

On 3 May the Special chamber of the Supreme Court annulled the proclamation of 241 electoral platforms, and 225 of those annulments were confirmed by the Constitutional Court. These measures brought about the dismantling of ETA's "political front", excluding it from institutions and enabling the vast majority of citizens in the Basque country and Navarro to participate in the electoral process of 25 May in conditions that were freer and more dignified.

With a similar intention of putting an end to impunity, there is also a drive to encourage stronger political and judicial teamwork in combating terrorism at international level. It is for this reason that, during the Spanish Presidency of the European Union, there was emphasis on a series of initiatives designed to consolidate an area of security, freedom and justice that gave rise to such important decisions as

the approval of the Framework decision on the European arrest warrant, which obviates the need for any extradition proceedings between member states, and the Framework decision on the harmonisation of the criminal offence of terrorism.

Also noteworthy is the stepping up of bilateral relations between Spain and France, apparent from the present operational cooperation between the two countries, now bearing fruit with the arrest of several ETA leaders and the heads of different cells; safe houses (*pisos francos*) and cars used by terrorists have been discovered and operational equipment of various types has been seized. Since the beginning of this year alone, there have already been 20 arrests linked to ETA, including important figures in the military wing, such as Juan Antonio Olarra Guridi, Ainhoa Música Goñi, Ibon Fernández Iradi (later escaped) and Ainhoa García Montero.

The Spanish government considers terrorism and all its manifestations as criminal and unjustifiable acts whatever the supposed grounds. Terrorism represents a serious threat to civilisation, democracy and peace in general, and all States must unite their efforts to counter it. That is the idea underlying the entire policy promoted and developed by the Spanish government both domestically and within the international forums in which Spain participates in one way or another.

At present Spain holds the chairmanship of the Counter-terrorism Committee (CTC) set up within the United Nations Security Council, where priority strategies are developed. These are the following:

- reinforce the committee itself,
- broaden the means of supervising and assisting less well prepared countries,
- cooperate with disarmament agencies, particularly those dealing with weapons of mass destruction,
- consider the possibility of authorising the Committee to draw up a general list of terrorist organisations,
- encourage coordination where international and regional bodies are concerned.

II. Specific questions on which a report is requested

Concerning the specific pattern described by Commissioner Gil-Robles on the practical aspects of development of violence in the streets - *kale borroka* or urban terrorism - the aforementioned legislative measures, particularly the reform of the Criminal Code, in which actions generated by street violence are considered as an act of terrorism, and the change in the law governing the criminal liability of minors in relation to terrorist offences, have led to a substantial drop in terrorist acts in the streets, as shown by the figures below. The length of sentences and the effective levying of compensation established by the new laws are having a highly dissuasive effect in this respect:

year 2001	370
year 2002	180
year 2003	55

Both the national police force and the *Guardia Civil* have made numerous arrests in this lapse of time linked to commando units that have infiltrated Spain (Donosti in September 2002, or Madrid in December) and also to collaboration with the armed group or urban terrorism itself. The *Ertzaintza* has also made several arrests on this last count.

The result of all this has been a fall in the number of terrorist attacks (two this year) and in activism in the streets (see above).

Even so, the terrorist threat remains real for every local community figure designated by ETA as a target in several of its communiqués (chiefly policemen, journalists and intellectuals, judges and prosecutors, prison authority officials and politicians of non-nationalist parties). And, albeit selectively, it is against members of local communities that the vast majority of acts of urban terrorism have been directed.

This means that, although decisive advances are being made in the fight against terrorism and a quantitative reduction has been achieved in the level of worry and fear in everyday life, there are still intolerable levels of constraint and persistent threat that we must continue to tackle as energetically as possible. It should not be forgotten in this connection that, over the period concerned, the number of bodyguards assigned to protect individuals had to be increased given the higher risk during an election year when ETA's communiqués named as targets municipal councillors and officials of the Popular Party, the Socialist Party, the UPN and the UA, as well as the headquarters of those parties and any of their political and electoral events.

That is why the State security forces and agencies keep up their intense activity. And it is also why we think it desirable that the *Ertzaintza* step up its efforts too, particularly as, through its powers and territorial coverage, it is the body that best knows the situation in each village, is first to

examine the clues left behind by each terrorist attack or act of violence in the streets of the Basque country and has the strongest capability for avoiding or preventing the illegal use of public areas to support terrorism and heighten fear among citizens.

To conclude, it is worth pointing out that this need to restore public order in the streets, at all levels, is seen as having decisive importance in this phase of combating terrorism, since the citizens' and human rights movements actively involved in defending freedom and democracy are already numerous and taking on growing social significance. The members of these movements have become yet more names on the blacklist of individuals under threat, as can be seen, sadly, from the assassination of the socialist militant and leader of *Basta Ya*, Mr Joseba Pagazaurtundua.

APPENDIX B

INFORMATION FOR THE FOLLOW -UP TO THE REPORT OF THE COMMISSIONER FOR HUMAN RIGHTS OF THE 9TH MARCH 2001.

Information provided by the Department of Interior of the Basque Government. Translation from Spanish by the Office of the Commissioner for Human Rights

In a letter received by this department on 7th February 2003, the Commissioner for Human Rights of the Council of Europe requested information for the follow up to his Report of 9th March 2001 regarding "... the respect for human rights in the light of the terrorist activities of ETA and the street violence referred to as "Kale Borroka".

To this end, the following information is provided.

Number of attacks carried out by the terrorist organisation ETA by year

	Basque Autonomous Community	Rest of the Country
2000	36	29
2001	24	23
2002	12	15
2003	2	-

Number of people assassinated by the terrorist organisation ETA by year

	Basque Autonomous Community	Rest of the Country
2000	8	15
2001	10	5
2002	1	4
2003	1	-

Number of attacks carried out by the terrorist organisation ETA by group affected **Basque Autonomous Community**

GROUP	2000	2001	2002	2003
Ertzaintza	1	4	2	1
Other Police	3	2	-	1
Army	1	1	-	-
Politicians	7	4	3	-
Businessmen	2	-	-	-
Economic Interests	16	4	3	-
Judges and Prosecutors	-	1	-	-
Journalists / Media Outlets	2	2	3	-
Civil Servants	1	-	-	-
Public Buildings	2	5	1	-
Others	1	1	-	-

Rest of the Country

GROUP	2000	2001	2002	2003
Ertzaintza	-	-	-	-
Other Police	5	1	3	-
Army	7	3	-	-
Politicians	7	2	-	-
Businessmen	-	-	-	-
Economic Interests	5	12	9	-
Judges and Prosecutors	2	-	-	-
Journalists / Media Outlets	2	-	-	-
Civil Servants	-	-	-	-
Public Buildings	1	3	3	-
Others	-	-	-	-

Number of Persons provided with police escorts in the Basque Autonomous Community

- Number of Persons with escort: 903
- According to an existing agreement between the Basque Government and the Junta de Seguridad of the National Government the police escorts are distributed evenly between both administrations
- In addition to the police escort services, the Ertzaintza provides 310 further purposes with exceptional preventive protection measures (guarding of houses etc)

Information on the street violence terrorist acts (“Kale Borroka”)

	Number of acts
2001	536
2002	353
2003	22

Arrests made by police services

*Only arrests made for acts of street violence classified in the Penal Code as terrorist offences are included. Arrests made for disturbing the peace, public disorder, and which would raise statistics considerably, are not included.

	2001	2002	2003	Total
Ertzaintza	56	105	10	171
National Police	5	13	-	18
Guardia Civil	3	27	-	30

Targets of street violence by group

GROUP	2001	2002	2003
Ertzaintza	57	36	2
National Police / Guardia Civil	14	3	-
Municipal Police	2	-	-
Military Personnel	6	2	-
Private Security	-	1	-
Partido Popular	10	4	1
Partido Socialista	16	5	-
Unidid Alavesa	3	1	-
Eusko Alkartasuna	1	2	-
Basque Nationalist Party	7	8	4
Unions / Associations	2	2	-
Banks, Cash Dispensers, Economic interests	198	98	5
Communication networks	7	3	-
Public Buildings and enterprises	66	28	1
Means of Transport	71	65	3
Other / Urban Infrastructure	76	95	6
TOTAL	536	353	22

Conclusions on the action of the Ertzaintza against street violence

1. There has been a significant decrease in the number of acts of street violence since the publication of the Report of 9th March 2002.
2. This quantitative decrease has also been accompanied by a qualitative reduction in the threat represented by terrorist activities. The vast majority of attacks have been directed against public buildings, transport networks, cash dispensers, banks and urban infrastructure (286 out 353). Even if this does nothing to diminish the criminal nature of the offence, since according to law they are also defined as terrorist actions, it is nonetheless clear that the pressure exerted by this kind of attack on threatened organisations is quite different from that which results from actions against individual houses and private vehicles. The large-scale deployment of police escorts and the preventive security measures of the Ertzaintza in specific areas has contributed directly to this improvement.
3. The attacks against private property (homes or vehicles) have almost exclusively targeted members of the Ertzaintza. This clearly represents a violent and degenerate response to the effective and constant measures taken by the police against those who commit terrorist acts in any of their penal forms.

4. The security measures taken by the Ertzaintza have clearly had a positive effect. This is evidenced by the comparison with results obtained by other police forces responsible for combating terrorism in Euskadi, with the most revealing statistic being the number of arrests made during 2002 (calculated, excepting the possibility of error, on the basis of publicly available statistics). It ought to be borne

in mind, moreover, that the Guardia Civil and the National Police are able to concentrate almost all their efforts on its antiterrorist activity since they do not have the additional responsibility for ordinary urban security, which is a matter exclusively within the competence of the Basque Government.

5. In addition to the preventive measures, which, as described above, have resulted in a reduction in urban violence, it is worth stressing the effectiveness of the investigations undertaken. These investigations have enabled the arrest and trial (before the Audiencia Nacional) of the perpetrators of a significant number of acts of urban violence and, notably, those considered to have been amongst the worst to have been committed in 2002 in virtue of their public repercussions, the degree of organisation behind the attacks and the extent of the damage caused.

In addition to individual arrests, this investigative work has enabled structures responsible for the organisation of street violence operations to be broken up (the “Y” groups).

Of the many police interventions carried out by the Ertzaintza of Euzkerraldea, a number are worth mentioning specifically in virtue of their importance in breaking up organised structures and the judicial proceedings brought in respect of the offences committed. These include the interventions in the Left Bank (Biscay, October 2002) and the Right Bank (Biscay, October 2002), Duranguesado (Biscay, November 2002), Ibaizabal (Biscay, November 2002) and Donostialdea (February 2003).

6. The effectiveness of the response of the Ertzaintza has been recognised and appreciated by the vast majority of Basque society. Thus, to give but one example, a sociological study of March 2002 revealed that, of all institutions, the Ertzaintza was the most appreciated and highly esteemed (78%), which represents an increase of 12 points on a similar study conducted in 1999; the Ertzaintza was thus rated above the Parliament, the Judiciary, the trade unions and political parties.

The media has amply reported the operations of the Ertzaintza and a brief press review is appended to this note.

Vitoria-Gasteiz, 17 March 2003

Fdo. Javier Balza Aguilera

Consejero de Interior