

## Were They Tortured or Did They Make That Up? Ethnographic reflections on torture allegations in the Basque Country in Spain

CAROLIJN TERWINDT\*

### Abstract

Academic literature about torture has addressed a wide range of questions. An important facet, however, has not yet received sufficient attention. Given that torture tends to occur in secrecy, there is a lack of information that is perceived to be objective and authoritative. How does the resulting uncertainty affect the societal response to allegations of torture and the social consequences of such allegations? In this article, the controversy about torture allegations in Spain is used to examine this issue and to explore the insidious effects this uncertainty has on society. The Spanish state is unable to provide a generally accepted account in response to the continuous torture allegations from Basque prisoners accused of terrorism or street violence. Based on ethnographic research, this article describes how Spanish and Basque society can be divided into believers, non-believers and people who do not care about torture allegations. Because of the centrality of such allegations in many criminal cases, this division also polarizes public perceptions of the entire criminal justice system.

### Keywords

Torture allegations, Spain, ethnography, Basque conflict, polarization, criminal justice system, confessions

---

\* Carolijn Terwindt, Doctoral Candidate, Columbia Law School, [cterwindt@yahoo.com](mailto:cterwindt@yahoo.com).

**Table of contents**

Introduction .....	3
1. A different question about torture .....	3
2. The debate about torture allegations .....	5
3. Many competing arguments, few established facts: the seed for polarization .....	6
4. Believers, non-believers and those that do not care .....	8
5. The consequences for criminal cases and polarization in society .....	9
6. Conclusion .....	10
Acknowledgments .....	11
Bibliography .....	11

## Introduction

In December 2010, four Spanish policemen (from the Guardia Civil) were convicted for torturing two detainees, Igor Portu and Martín Sarasola. Earlier that year, in May 2010, Portu and Sarasola were convicted as members of terrorist organization Euskadi Ta Askatasuna (ETA) and held responsible for the 2008 bombing in the Madrid airport in which two people died. The policemen received sentences varying from two to four-and-a-half years in prison. The reception of this sentence in the Spanish and Basque societies is typical. The Asociación Pro Guardia Civil, for example, criticized the sentence and argued that the accused policemen were at a disadvantage as the trial took place in Guipúzcoa-Gipuzkoa, in the Basque Country. The group expressed its unconditional support for the convicted policemen (Moran 2010). At the same time, while the movement for amnesty in the Basque Country welcomed the conviction, it was reported to criticize the fact that this conviction is an exception, whereas 63 other allegations of torture were filed during 2010 alone. The amnesty movement also criticized the court's rejection of the allegations of torture during the incommunicado interrogations (G.M. 2010). These diverging criticisms show that court verdicts are not necessarily accepted as authoritative in establishing the truth by either of these two groups. This article examines the impact on society of this inability to provide for a shared truth.

### 1. A different question about torture

Torture is prohibited. The right to freedom from torture is one of the few absolute human rights, meaning that it cannot be limited when it conflicts with another human right. In contrast, for example, the right to free speech is not absolute. While the theory seems clear, in practice, it turns out that many questions surround the issue of abusive police behavior. For instance, one question that has been publicly debated during the past years is how far police can go in their interrogations of suspected criminals or "terrorists." Such discussions about limits and possible justifications of torture (for a critical discussion, see Taylor 2007) are fomented by the very real situation in which the United States government has openly defended "waterboarding" as a "harsh interrogation technique" (see Sonderegger, forthcoming).

In this article, I want to draw attention to a very different issue, originating in a different case: torture allegations in the Basque Country in Spain. The government of Spain rejects any such allegations and claims to uphold a strict prohibition on torture. During interviews that I conducted with officials at the Audiencia Nacional<sup>1</sup>, they explicitly rejected any of the practices occurring at Guantánamo Bay, contrasting that "lawless" place with liberal Spanish interrogation practices.<sup>2</sup> While the waterboarding debate is about the qualification of facts (does waterboarding constitute torture?) and the public defense of "harsh interrogation techniques", in Spain the very facts are contested. I draw upon the Spanish case in order to explore questions about torture that have not received sufficient consideration. I want to draw attention to the inherent difficulty to ascertain and prove the existence of torture and the impact of this uncertainty on society. Those who have experienced or are accused of torture know very well what was really going on, but to anyone else, the reality is invisible. As an ethnographer, I take on the perspective of all those people that were not there, and have to rely on second-hand information to determine what happened. I argue that the very dispute and uncertainty surrounding the question of whether torture took place can have an

---

<sup>1</sup> The Audiencia Nacional is a specialized court with exclusive jurisdiction over terrorism offenses in Madrid.

<sup>2</sup> Interviews with author, May 2008, Madrid.

enormous impact on society. Indeed, it can play an important role in continuing polarization and contention.<sup>3</sup>

Academic literature on torture has focused on a variety of questions.<sup>4</sup> Scholars have analyzed the ways in which torture is defended by drawing on hypothetical scenarios as well as the spectacle-message of torture (e.g. Taylor 2007). The ticking bomb scenario has provided food for thought for philosophers on this issue. Legal literature has dealt with issues like the definition of torture and the process to outlaw it in various countries. There has even been literature on the question of whether torture is actually effective (Hajjar 2009). Psychologists have published about the effects of torture on individual victims, whereas sociologists have focused on the societal effects of widespread and systematic torture, for example in Guatemala. Medical journals have paid attention to the ethics of medical involvement in torture. Little attention, however, has been paid to the potentially contentious public recognition of torture, and the possibility of widespread societal debate about its very existence in the face of torture-allegations that are argued to be fabricated.

Already in 1980, Franck and Scott Fairley addressed the difficulties around fact-finding in human rights issues. They distinguished between “real” fact-finding on the one hand and the amassing of evidence in favor of some political conclusion on the other.<sup>5</sup> Building upon such efforts to problematize fact-finding as such, I take the inquiry one step further. As fact-finding is inherently problematic, how do societies deal with the continuous uncertainty when competing “facts” are presented regarding allegations of torture?

In 2008 I was engaged in ethnographic fieldwork in the Basque Country and Madrid for my dissertation about competing narratives in criminal prosecutions in relation to the Basque conflict. This reflection is based on the data from this larger research project. I specifically draw upon various interviews with victims and representatives of victims of ETA, self-declared victims of torture, and interviews with the Chief prosecutor at the Audiencia Nacional and an investigative judge at the same court. I further analyzed various trial transcripts related to torture allegations, and profited from six months of participation in Basque public life, including many informal conversations with a variety of people while engaging in various activities like attending a meeting organized by Gesto por la Paz, visiting an exposition devoted to ETA-victims in Vitoria-Gasteiz, and attending the trial against the prisoner support organization Gestoras pro Amnistía. In addition, I based this reflection on media reports, scientific literature, and other documents related to torture produced by the government, the United Nations and NGOs.

During my fieldwork I found that if it is very difficult to know when and whether torture has actually taken place, the debate about it becomes far more difficult than I imagined. Instead of talking about agreed-upon-facts, I was constantly talking about contested facts, supposed facts, assumed facts or desired facts, and often neither I nor my conversation partner would really be sure which was which. The situation in Spain is instructive to learn about the nature and consequences of this uncertainty, how the contention permeates social life and creates both polarization and indifference. Most importantly, it has to be kept in mind that in a place like the Basque Country, the answer to the question of whether or not torture took place is not an academic exercise, but for many, has a very real impact on their daily choices.

---

<sup>3</sup> Torture can have different purposes, such as the punishment of an individual, the terrorization of a population, or to get information about a “ticking bomb” (Sonderegger, forthcoming). In this article, I focus on torture allegations that allege torture occurred at the moment of detention or in the process of interrogations to obtain confessions regarding past crimes.

<sup>4</sup> The following references are merely intended as illustrations. It is not my intention here to provide an exhaustive overview of the available literature on this topic.

<sup>5</sup> They also addressed the importance of rightly differentiating between “givens” or valid assumptions and that which is not-given, but should be investigated.

## 2. The debate about torture allegations

"As long as they don't come out with an arm or a leg missing, I don't really care," said Oier.<sup>6</sup> We were talking about the alleged torture of ETA-militants or otherwise detained Basque youth suspected of street violence for the cause of Basque independence. He was very honest and might seem particularly blunt. But his opinion is not unique. Had he told me his stance a few months before, I might not have believed him saying this. Now I am almost sorry that I have come to understand where he was coming from. Oier is 28 years old, born and raised in the Basque Country. He has a Basque name, but is not fluent in the language. This makes it difficult for him to find a job as a biology graduate. Government jobs often require a certain level of Euskara, the Basque language. Like many of his peers, he is not interested in politics. More than anything else, he is tired of it, just as he is tired of the violence. He does not know what to think of the torture allegations, but "as long as they don't come out with an arm or a leg missing", he does not really care anymore.

I have seen several documentaries and read many testimonies in which Basque people, young and old, testify about the abuse and torture they have suffered at the hands of the Spanish Guardia Civil while detained "incomunicado" in Spanish police stations. For example, Iker reports in 2005 that:

[t]he worst part was hearing the other detainees' screams. At one point, while I was in the cell, I heard another detainee, who, when they opened his cell door, shouted at the Guardia Civil officers, "leave me alone, leave me alone!" I could also hear screams when I was under interrogation. [...] They suffocated me with a plastic bag many times, always when I was on my feet. At times they also made me do stand-ups while the bag was over my head, which made me retch and feel like throwing up. (TAT report 2005, p. 13, translation by author)

His testimony is followed by 46 other lengthy testimonies recounting similar or worse experiences in 2005. Horrible.

The front page of the TAT yearly report in 2002 shows a picture of Unai Romano. The photo is horrible to see, as his face is swollen, his eyes bruised black, and he wears a brace around his neck. On the web, you can find the picture next to a picture of Unai Romano before the alleged torture occurred (Koldomikel 2008). He is unrecognizable. If that would seem undisputable evidence of torture, the reaction of the judge may seem cynical. The judge claims that Unai has inflicted the injuries himself.<sup>7</sup> A lawyer representing an organization of victims of ETA is equally unmoved by the picture. As I discuss the torture allegations with her, without any doubt in her voice she claims that the picture has been photo-shopped.<sup>8</sup> The organization Basta Ya published a document called "the false torture of Unai Romano" claiming that Unai and his supporters went to great lengths to falsify documents so they could allege the torture (Basta Ya 2006). On the other hand, an elderly man present at a demonstration in Pamplona about another alleged case of torture says: "here no one believes that Romano would have injured himself like that."<sup>9</sup>

This debate also takes place at the highest levels of government and in supra-governmental agencies. The 2004 report by the United Nations Special Rapporteur on Torture Theo van Boven about his visit to Spain has created a controversy. He concluded that whereas charges of torture may be trumped up, he does not believe

<sup>6</sup> Conversation with author, Bilbao, May 2008. Name is not the real name, for privacy reasons.

<sup>7</sup> Decision taken in May 2005, Instruction Judge nr. 25 in Madrid, 'El Juzgado de Madrid archiva la denuncia de Romano y amenaza con actuar contra él' in: *Gara* 4 June 2005. <http://www.nodo50.org/tortura/boletines2005/Boletin-81.htm> [accessed 17 August 2010].

<sup>8</sup> Conversation with author, Bilbao, May 2008.

<sup>9</sup> Conversation with author, Pamplona-Iruñea, January 2008, during a demonstration because of torture allegations by Portu and Sarasola; the same allegations that led to the conviction of the police officers in December 2010.

that they are all fabricated, and moreover he believes that the abusive incidents are “more than sporadic and incidental” (van Boven 2004, p. 19). Spain’s reaction to this conclusion was swift and condemnatory. To give an indication of the tone of this debate, I cite from the response from the Permanent Mission of Spain to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights. In this response, Spain claimed that:

the Special Rapporteur has collected alleged statements from sources identified only as ‘former detainees’, whose anonymity the Government believes is completely unjustified. The Special Rapporteur considers these sources to be credible precisely because ‘a certain pattern had emerged’ from their statements. From this Mr. Van Boven goes on to conclude that these statements cannot be considered to be ‘fabrications’. It is outrageous that the Special Rapporteur should have failed to consider that the versions of these ‘former detainees’ might agree precisely because they were acting on the basis of instructions from the organization to which they belonged. (Permanent Mission 2004, p. 2)<sup>10</sup>

In 2008, a journalist for newspaper *El País* called Theo van Boven an “ambassador for ETA” (Barbería 2008). In this way the issue polarizes Spanish and Basque society.

### **3. Many competing arguments, few established facts: the seed for polarization**

Arguments are provided on all sides. For example, an investigative judge at the Audiencia Nacional maintained that single incidents of police abuse or torture are not a sign of systematic abuse but simply involve a rogue police officer who can and will be prosecuted, and if proven, punished.<sup>11</sup> He frequently gives his fiat to a period of incommunicado-detention. On the other hand, a Basque human rights lawyer questions why ETA-prisoners who are detained in France never file torture allegations, which would be expected if it were the ETA-policy to do so.<sup>12</sup> I could go on listing the arguments that I have heard on the various sides. It is not my objective here, however, to go into detail and examine the arguments supporting one or the other position. I only want to indicate the existence and intensity of the debate to illustrate how difficult it becomes to achieve a shared truth inside and outside the courtroom.

Like me, many if not most people in Spain have no way to be certain of whether torture exists, and if so, to what extent. They have no way of really knowing the answer to any of the following questions (and existing claims): Does systematic torture exist? Is any existing abuse simply the work of isolated, frustrated or angry “rogue” police officers?<sup>13</sup> Is torture part of an attempt to extract confessions from (possibly innocent) people? Is torture a specific policy in the Basque Country to intimidate potential or real radical separatists? Is Spanish police behavior generally as abusive as testimonies from immigrants would indicate?<sup>14</sup> Do Basque prisoners

<sup>10</sup> When the Mission writes “the organization” it can be assumed they refer to ETA.

<sup>11</sup> Interview with author, May 2008, Madrid. In 2001 the Spanish government writes in its Fourth Periodic Report that torture or maltreatment does not exist in the country, “isolated cases apart” (p.4, #10). It should be noted that the current debate about the existence of torture is about today’s conditions. Various interviewees have acknowledged that torture has taken place, but that problem is supposed to have been solved by now. For example, in 1994 the attorney general acknowledges that torture has taken place before 1986 (Memoria Anual, 1994:155).

<sup>12</sup> Conversation with author, March 2008, Bilbao-Bilbo.

<sup>13</sup> Defense lawyers of accused police officers have invoked the “syndrome of the north”, a condition of constant fear, as an excuse for harsh police treatment. This excuse was rejected by courts (Vercher, 1991:426).

<sup>14</sup> Whereas the complaints of Basque human rights and prisoner support groups might make it seem as if torture is a specific problem of Basque activists, one look at the long list compiled by the Coordination for the Prevention of Torture opens up the possibility of a more institutional problem in the Spanish security forces regarding the treatment of detainees. The Coordinator for the Prevention of Torture is made up of a large list of organizations from all over Spain. Each year they produce a report listing all the incidents of torture that were alleged, analyzing these allegations according to the repressive body responsible for the treatment and the incidence per region (“Informe sobre la Tortura en el Estado

accused of terrorism systematically lie about torture allegations? Are these lies induced by an ETA-policy or "manual" to discredit the Spanish state? Are torture allegations a way for detainees to save face after having provided information on fellow *etarras* in interrogations? Are many currently imprisoned Basque youth accused of street violence (*Kale Borroka*) unjustly convicted based on coerced confessions?

I reiterate that the objective of this article is not to discuss the validity of the different answers to these questions, but to emphasize that the Spanish and Basque society is highly polarized due to the different answers they give to these questions, and to explore the nature and consequences of this polarization. In this article I will provide some insight into the way in which these different answers lead to fundamentally different beliefs about reality, contested evaluations of the Spanish criminal justice system and continued contestation. This pernicious effect is mainly due to the central role that torture is alleged to play in the extraction of confessions. The close connection between the torture allegations and the validity of other criminal proceedings was already recognized in 1984 by the attorney general who pronounced himself about the issue of torture allegations and the "Kafkaesque" situation which this produces (*Memoria Anual 1984*, p. 138). He wrote that, on the one hand, there will be a criminal proceeding in the Audiencia Nacional investigating a crime based on a declaration made at a police station. This same declaration, however, is also subject to a criminal investigation at one of the local courts (with jurisdiction in the case of a crime of torture) which may end up disqualifying the declarations and thus the principal procedure. The attorney general called it "dysfunctional" (1984, p. 138).<sup>89</sup>

Facing the difficulty of retrieving the truth about torture allegations, human rights organizations call for transparency, improvement of formal proceedings regarding the conditions of incommunicado-detention, such as forensic doctors (see on this issue for example Morentin et al. 2008) and appointed lawyers as well as the sincere investigation of alleged cases of torture (e.g. Amnesty International 2009; Ararteko 2003). Special Rapporteur on Torture Theo van Boven made recommendations in this regard, such as providing for video-recording of interrogation sessions to prevent practices like hooding and blind-folding (2004, p. 21). Rather than solving the issue in this way, these calls for procedural improvements in themselves become new sources of contention. For example, an investigative judge at the Audiencia Nacional opposes video cameras in the interrogation chambers on the grounds that (false) torture allegations would continue to be filed for what can happen in the hallways of police stations and on transports.<sup>15</sup> Similarly, criminal cases investigating torture allegations are seldom resolved to the satisfaction of claimants. Instead, like in the case of Romano, these cases often lead to further contention.<sup>16</sup> In order to counter the continuing stream of what are thought to be false denunciations, in some cases, charges were made

---

Español" 2008). To give an example of these numbers, I will mention some from the report regarding 2007. In that year, there were 138 allegations of torture in Madrid and 100 in the Basque Country (CPT, 2008:13). It should be noted that the CPT emphasizes that many people do not file a complaint because of torture: especially immigrants without papers and prisoners. CPT notes that this has become especially true for people who were detained after participating in a social movement, as they are fearful to become involved in a counter-complaint by the police and because they lack the confidence that the judicial organs will deal with their complaint (CPT, 2008:9). Explaining the high incidence of immigrants filing complaints, in 2002, newspaper ABC reported that police in Madrid believe that many of the complaints that they receive of torture is because now people are "copying the conduct of *etarras* [ETA-militants]." The police claim that now many immigrants use this strategy (ABC, 3 November 2002).

<sup>15</sup> Interview with author, Madrid, May 2008.

<sup>16</sup> In 2008, out of the 21 complaints against Ertzaintza, 9 were acquitted, and 1 was convicted. Out of the 425 complaints against the National Police, 129 were acquitted, and 28 were convicted for charges of injury, maltreatment, or torture (CPT, 2008:23). Human rights lawyers complain that the sentences in cases of conviction are very low. They also refer to specific instances where officials convicted for torture received a pardon or early release, such as Enrique Galindo, or the decoration for Melito Manzananas (see also report Amnesty International, 2004).

for the crime of “false complaint” against several of the lawyers who filed such a complaint. An example of such a charge is the case against Begoña Lalana in 1992 which was later dropped (3289/92 Instruction Court #34 Madrid).<sup>17</sup> The incommunicado-detention likewise has become controversial as proponents emphasize its necessity because of criminal collaboration by lawyers close to ETA and the danger of information leading to the destruction of evidence.<sup>18</sup> People opposing the incommunicado-detention argue that the circumstances are conducive to torture and abusive treatment.

#### 4. Believers, non-believers and those that do not care

Does systematic or habitual torture exist in Spain, specifically so in the Basque country because of the struggle against terrorism? Spanish and Basque society can be quite neatly divided into believers, non-believers, and people who do not care. The first believe that there is widespread if not systematic torture against Basque citizens accused of terrorism or *Kale Borroka*, especially during the incommunicado detention. This means that many people confess to crimes they did not commit and give false information on other people just to stop the torture. Believers in the allegations claim that Spanish justice is a farce and that a big injustice is inflicted on a section of the Basque people.<sup>19</sup> The second group absolutely does not believe that there is such a thing as systematic torture, let alone something that is planned, coordinated and stimulated from above. Of course they would not deny the possible existence of rogue police officers, but they claim that such officers are punished whenever that happens. This means that the allegations of torture are part of the bigger strategy of ETA and just an execution of what ETA's manual tells people to do.<sup>20</sup> The last group really has given up on believing or non-believing. They have given up on the hope that the Basque conflict or the violence will be solved. And actually, even if there were torture, they would not really care.<sup>21</sup>

What people believe significantly determines the way they interpret the events in the conflict and the intervention of the criminal justice system, as well as potential evidence of maltreatment. In 2007, the decision was taken to tape police interrogations in Catalunya. Swiftly, a video turned up on You Tube in which one can see a girl who is ordered to remove her t-shirt until she is in her bra. The video “Police Brutality Mossos D'Esquadra<sup>22</sup> beat young cute girl” showed shocking images that were viewed by 199,389 people.<sup>23</sup> Watching the images, I am upset. Julen, however, laughs my indignation away. He does not see what I see. He comes from a small village in the heart of the Basque Country and is well familiar with street demonstrations and the behavior of his friends who can provoke the police. He thinks the police behavior may not be justified, but is nothing to get all upset about, while speculating about what the girl may have done to have the police react

<sup>17</sup> The complaint dated 22 May 1992 relates among other things that José Angel Iniciarte was received in the Carabanchel Hospital after recommendation by the forensic doctor. Another of the detainees told that they had put electrodes and hit him on the head and testicles.

<sup>18</sup> In the response from the Spanish government to the Special Rapporteur, the Spanish government emphasizes the need for incommunicado-detention from “an operational standpoint” and they claim that it “avoids the destruction of proof or relevant evidence, the disappearance of the means employed in attacks, the flight of accomplices or collaborators, all of which occurred in the past due to the criminal collaboration of lawyers close to the ETA environment” (cited in HRW, 2005:28).

<sup>19</sup> Conversations and interviews with various defendants and family members and friends of prisoners accused or convicted of terrorism charges.

<sup>20</sup> This view was for example expressed by various representatives of organizations of victims of ETA as well as by the prosecutor in the trial against Gestoras pro Amnistía.

<sup>21</sup> This view turned up in various conversations that I had especially with youth in the Basque Country who are not politically engaged. Years of violence may have led to detachment and indifference among some sectors in the Basque Country.

<sup>22</sup> Autonomous police force in Catalunya.

<sup>23</sup> The video has been removed from You Tube (“This video has been removed due to terms of use violation”). I viewed the video with Julen in Bilbao-Bilbo, April 2008. This name is not his real name, for privacy reasons.



in this way.<sup>24</sup> He voiced the position of indifference that I found is not unusual in Spain and the Basque Country. It goes beyond the unresolved debate about whether or not there is torture. Tired of that battle and the eternal uncertainty, these people have become profoundly indifferent to the possible existence of torture. Reasoning more or less goes as follows: ETA violates human rights, so they cannot claim human rights; the anger of police officers in the face of blatant attacks on them is understandable; demonstrators and ETA-militants know what they are getting into; some force may be the only way to intimidate them and make them calmer. Thus, events are interpreted according to this belief system.

The non-believing Spanish government similarly fits new information into their chosen framework. Theo van Boven describes an interaction with the Minister of Interior:

In response to a question about the freedom of the press to discuss the question of torture, the Minister of the Interior told the Special Rapporteur that if there was a credible complaint of torture it would be discussed publicly; however, in counter-terrorism cases it was standard practice for a person who has been detained systematically to allege that he/she has been tortured. Consequently, most press agencies did not report the case as they knew the claim to be false, except for those newspapers linked to terrorism. He stressed that ETA acted not only through gunmen and bombers, but also had members in political parties, in the media and in NGOs. (van Boven 2004, p. 32)

The Spanish Ombuds Institution also can be categorized as non-believers. In an investigation by Human Rights Watch, the first Adjunct of the Ombuds Institution is quoted when they asked her whether they ever go to the detention places to check upon the conditions: "It is not our job to disrupt the work of the National Police; in principal we have no reason to believe that a person in incommunicado detention will be mistreated. Our national police and civil guard enjoy prestige among the public and their work is good until it is proven otherwise. Our assumption is that there will not be problems" (HRW 2005, p. 39). It is clear how frameworks thus tend to be self-perpetuating. Proceeding from the non-believing framework, a prosecutor claimed that expressions by the mayor of Hernani in which she accuses members of the security forces of the systematic use of torture, constitute a crime of defamation and slander. The mayor was reported to have said: "In Euskal Herria everyone knows: here they torture, all police corps and repressive organs utilize torture systematically against the Basque independentists" (in: 19/2008 *Juzgado central de instrucción* 1).

## 5. The consequences for criminal cases and polarization in society

As frameworks of truth are thus erected, they do not mean much to people who do not believe an essential part of that framework. This explains the lack of legitimacy that the Spanish court system has among the substantial part of the Basque population who believe there are more than incidental events of torture.<sup>25</sup> Many criminal cases are built upon confessions whose authors allege they resulted from coercion. During a trial in the Audiencia Nacional where the defendant claims that his declarations were taken after torture, the police officer declares that "the accused responded spontaneously relating about some fifteen actions of 'kale borroka' in which he had participated" (Judicial decision 51/2005). The court decides to find the declarations credible. It considers that the torture complaint that the defendant had filed in the Audiencia Provincial from Alava was rejected. That court in Álava-Araba decided on 30 March 2004: "Relevant is that (the complaint) does not deserve any credibility, given that it reports the existence of some grave physical aggressions, while the forensic doctor did not see any, therefore one can

<sup>24</sup> We both wonder whether the police knew they were taped. If so, apparently they thought their behavior was more routine than outrageous.

<sup>25</sup> And also outside of the Basque Country I encountered actors that voiced the notion that torture is more than an incidental problem.

reasonably doubt his entire report" (cited in Judicial decision 51/2005). Believers in the existence of torture easily dismiss the role of forensic doctors, pointing to various deficiencies in their documentation, such as the lack of supervision or protocol (TAT 2005, p. 124), thus questioning not only the rejection of the torture allegations, but also the validity of the conviction in judicial decision 51/2005.<sup>26</sup> Iñaki has no doubts that torture exists. "You have seen the pictures; do you think they do that themselves? And why else would they confess?" He tells me that the Spanish trials are just theatre. He is by no means the only one who believes that many Basque youth are innocently imprisoned.<sup>27</sup>

In this way, the dispute between believers and non-believers goes beyond the specific instances of alleged torture and maltreatment and creates its spin offs infecting other criminal cases and the response to events. Resorting to the safe position of "improving formal procedure" cannot prevent this infectious process of continued contention and polarization. Believers and non-believers inhabit their own frameworks interpreting all events by fitting it into what they believe to be the truth. Cynically, searching for an alternative to this practice of "fitting in" has led many to become entirely indifferent to the issue. Everyone deserves better than that.

## 6. Conclusion

This short description of the conundrum that torments the Spanish and Basque society should serve to show that more research is necessary to better understand these pernicious effects of the uncertainty about torture claims and a real need to come up with effective ways to prevent this uncertainty from arising in the first place. Do similar issues also play a role in other countries? How do other societies deal with this problem of inherent uncertainty about torture allegations? What is the impact there? If it does not play a role, how can be accounted for the different dynamic?

On 28 September 2010, the European Court for Human Rights sent a strong signal.<sup>28</sup> The court reported that a Basque applicant complained that he had been subjected to ill-treatment during his arrest and while in detention, including blows to the head, suffocation with a plastic bag over his head, sexual harassment and humiliation and threats of death and rape. The court decided that these specific allegations were not proven, but declared that the Spanish state failed to effectively investigate the complaint. It convicted the Spanish state for violation of article 3 of the Convention because of a lack of effective investigation.

Different sectors in society can build their regimes of truth and conveniently fit new information within these frameworks. The state, however, has a greater responsibility and a duty to actively investigate all complaints. The European Court for Human Rights ordered Spain to pay 23,000 Euros to the complainant. While the lack of an effective investigation may violate the rights of the individual complainant, in this article I have argued that it ultimately affects the entire society. The debate about torture allegations has accompanied the entire course of the Basque conflict. ETA may now have declared a permanent ceasefire, but this debate and the polarization between believers and non-believers have not ended.<sup>29</sup>

---

<sup>26</sup> Interestingly, in 1984 the prosecutor pronounces himself about the issue of torture and the "Kafkaesque" situation which this produces (Memoria Anual, 1984:138). He relates that on the one hand there will be a criminal proceeding in the Audiencia Nacional investigating a crime based on a declaration made at a police station. This same declaration however is also subject to a criminal investigation at one of the local courts (with jurisdiction in the case of a crime of torture) which may end up disqualifying the declarations and thus the principal procedure. The prosecutor calls it "dysfunctional" (1984:138).

<sup>27</sup> Interview with author, Oñati, June 2008.

<sup>28</sup> *Affaire San Argimiro Isasa c. Espagne (Requête no 2507/07)*, European Court of Human Rights.

<sup>29</sup> An example of such continuing public debate can be viewed in this video available on You Tube about a plenary session of the municipality in a small town in Navarra-Nafarroa on 26 February 2011, where several attendees called for attention by putting a bag over their head, alleging this is one of the

## Acknowledgments

I would like to thank the Oñati International Institute for the Sociology of Law, the Marie Curie (HUMCRICON) fellowship, the Prins Bernhard Cultuurfonds and the Max Planck Institute for Foreign and International Criminal Law for their financial support to the research that made this article possible. I would like to thank Javier Martin and Rubén Cañadas for their invaluable comments on earlier versions.

## Bibliography

Amnesty International, 2009. *Document - Spain: Out of the shadows - Time to end incommunicado detention* [online], London, Amnesty International Publications. Available from:

<http://www.amnesty.org/en/library/asset/EUR41/001/2009/en/2a63a649-0af0-4f5e-a75b-d4ab8b99e803/eur410012009eng.html> [Accessed 9 February 2011]

Amnesty International, December 2004. *España. Acabar con la doble injusticia. Víctimas de tortura y malos tratos sin reparación* [online]. Madrid: Amnistia Internacional. Available from: <https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/Espa%C3%B1a%20Acabar%20con%20la%20doble%20injusticia.%20Victimas%20de%20tortura%20y%20malos%20tratos%20sin%20reparaci%C3%B3n?CMD=VEROBJ&MLKOB=24969593030> [Accessed 5 July 2011].

Ararteko, 2003. *La prevención y erradicación de la tortura y malos tratos en los sistemas democráticos* [online]. Available from: [http://www.ararteko.net/RecursosWeb/DOCUMENTOS/1/0\\_204\\_1.pdf](http://www.ararteko.net/RecursosWeb/DOCUMENTOS/1/0_204_1.pdf) [Accessed 9 February 2011]

Barbería, José Luis, 2008. Las 'embajadas' de ETA. *El País* [online], 1 June. Available from: [http://www.elpais.com/articulo/reportajes/embajadas/ETA/elpepusocdmg/20080601elpdmngrep\\_1/Tes](http://www.elpais.com/articulo/reportajes/embajadas/ETA/elpepusocdmg/20080601elpdmngrep_1/Tes) [Accessed 13 January 2011]

Basta Ya, 2006. Las falsas torturas de Unai Romano. *Bastaya.org* [online], 21 April. Available from: <http://www.bastaya.org/uploads/noticias/index.php?id=1306> [Accessed 8 July 2011]

Boven, Theo van, 2004. "Civil and political rights, including the question of torture and detention," E/CN.4/2004/56/Add.2, 6 February. [online], Available from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/107/16/PDF/G0410716.pdf?OpenElement> [Accessed 7 July 2011]

Coordinadora para la Prevención de la Tortura (CPT), 2008. *Informe sobre la Tortura en el Estado Español* [online]. Available from: <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/InformeCPTSpain93.pdf> [Accessed 7 July 2011]

España. Fiscalía General del Estado, 1984. *Memoria Anual de la Fiscalía General del Estado, 1984.*

España. Fiscalía General del Estado, 1994. *Memoria Anual de la Fiscalía General del Estado, 1994*

Franck, Thomas M. and H. Scott Fairley, 1980. Procedural Due Process in Human Rights Fact-Finding by International Agencies. *The American Journal of International Law*, 74 (2), 308-345.

---

common torture techniques used by the Spanish police [http://www.youtube.com/watch?v=X\\_ztrx5HifM](http://www.youtube.com/watch?v=X_ztrx5HifM) [accessed 5 May 2011].

- Gara, 2005. El Juzgado de Madrid archiva la denuncia de Romano y amenaza con actuar contra él. *Gara* [online], 4 June. Available from: <http://www.nodo50.org/tortura/boletines2005/Boletin-81.htm> [Accessed 17 August 2010]
- G.M., 2010. Penas de cárcel para cuatro guardias civiles por torturar a Portu y Sarasola. In: *Gara* [online], 31 December. Available from: <http://www.gara.net/paperezkoa/20101231/240718/es/Penas-carcel-para-cuatro-guardias-civiles-torturar-Portu-Sarasola> [Accessed 9 February 2011]
- Hajjar, Lisa, 2009. Does Torture Work? A Sociolegal Assessment of the Practice in Historical and Global Perspective. *The Annual Review of Law and Social Science*, 5, 311-45
- Human Rights Watch (HRW) 2005. Setting an Example? Counter-Terrorism Measures in Spain. 17 (1), 1-65.
- Koldomikel, 2008. La tortura. *Askatasuna* [online], 8 August. Available from: <http://haciaeuskalherrialibre.wordpress.com/2008/08/08/la-tortura/> [Accessed 16 August 2010].
- Morán, Unai, 2010. Cuatro guardias civiles, condenados por torturar a los etarras Portu y Sarasola. *El País* [online], 30 December. Available from: [http://www.elpais.com/articulo/espana/guardias/civiles/condenados/torturar/etarras/Portu/Sarasola/elpepuesp/20101230elpepunac\\_3/Tes](http://www.elpais.com/articulo/espana/guardias/civiles/condenados/torturar/etarras/Portu/Sarasola/elpepuesp/20101230elpepunac_3/Tes) [Accessed 9 February 2011]
- Morentin et al, 2008. A follow-up investigation on the quality of medical documents from examinations of Basque incommunicado detainees: The role of the medical doctors and national and international authorities in the prevention of ill-treatment and torture. *Forensic Science International*, 182, 57-65.
- Permanent Mission of Spain to the United Nations Office at Geneva to the Office of the United Nations High Commissioner for Human Rights, 2004. Sixtieth session of the Commission on Human Rights, item 11 (a) of the provisional agenda E/CN.4/2004/G/19, 4 March.
- Sonderegger, Linus. Torture and the Fight against Terrorism. *Crime, Law and Social Change*, forthcoming 2011.
- Spain, 2001. 'Fourth Periodic Report' in relation to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (CAT/C/55/Add.5).
- Torturaren Aurkako Taldea, 2002. *Torture in the Basque Country*. Torturaren Aurkako Taldea
- Torturaren Aurkako Taldea, 2005. *Torture in the Basque Country*. Torturaren Aurkako Taldea
- Taylor, Diana, 2007. Double-Blind: The Torture Case. In: *Critical Inquiry*, 33(4), 710-733.
- Vercher Noguera, Antonio, 1991. Antiterrorismo en el Ulster y en el País Vasco. In: J. Bustos Ramirez and H. Malarée, eds. *El Sistema Penal*. Barcelona: PPU.