



SPAIN: ADDING INSULT TO INJURY

POLICE IMPUNITY TWO YEARS ON

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Cover photo: Police attack a protester during a demonstration in Madrid on 22 May 2006. © Eduardo León

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INTRODUCTION

“Obviously it’s difficult to incriminate the police when it’s the police who carry out the investigation. So, as they’ve closed the case, well I guess that’s it.”

Sandra Guzmán

In November 2007 Amnesty International published the report *Spain: Adding insult to injury: the effective impunity of police officers in cases of torture and other ill-treatment* (Index: EUR 41/006/2007), which documented a pattern throughout Spain of complaints against law enforcement officials from national, autonomous and local police forces, frequently being closed by investigating judges after minimal investigation. Since that time Amnesty International has continued to investigate cases of torture and other ill-treatment in Spain and campaign for effective mechanisms to prevent such human rights violations from taking place.

Amnesty International does not believe that torture is carried out systematically in Spain but the organization’s investigations have indicated that cases of torture and other ill-treatment in Spain are not isolated incidents but examples of structural failings that affect all aspects of the prevention, investigation and punishment of such acts.

This report provides an update on the cases highlighted in *Adding insult to injury* which were still in progress when the original report was published. Since November 2007 of 11 open investigations into allegations of torture and other ill-treatment, only two have now resulted in a conviction (both of which are under appeal). Of the remaining nine cases, six were closed without ever reaching trial and two are still under investigation (one of which has now been open for more than seven years). One of the cases which failed to reach trial stage in Spain has been submitted to the European Court of Human Rights on the grounds of violation of a right to fair trial, as well as violation of the prohibition of torture and non-discrimination. In the last case, it was found at trial that torture had taken place but the accused officers were all acquitted on the grounds that it was not possible to identify which of them had personally participated in the assault.

DEVELOPMENTS SINCE 2007

Since November 2007 there have been a number of developments relating to the prevention and investigation of torture and other ill-treatment by law enforcement officers in Spain. These developments have occurred at both the national and autonomous community level.

Whilst these new measures represent important improvements, further progress is still needed in many areas.

CCTV

At the time of publication of *Adding insult to injury*, the Basque autonomous community police force, the Ertzaintza, was the only law enforcement agency in Spain using CCTV as a matter of policy in the interrogation rooms and corridors (but not inside individual cells) of its police stations. Ertzaintza officials told Amnesty International that since the October 2005 introduction of this measure, which serves not only to protect detainees from possible ill-treatment by law enforcement officers, but also to protect law enforcement officers from false allegations of such ill-treatment, there had been a significant decline in allegations of ill-treatment. While welcoming this precedent-setting measure, Amnesty International called on the Ertzaintza to extend it further to include CCTV-recording in individual cells, and to include audio recording (except where this would violate a detainee's right to consult confidentially with their lawyer). To date, these proposed modifications have not been implemented. The Basque department of interior informed Amnesty International that they considered the current system sufficient as it records who enters and leaves the cells. However, in light of the findings in the case of Driss Zraidi (see below) Amnesty International considers that this may not be sufficient to prevent or effectively investigate instances of torture or other ill-treatment.

In early 2007, following a number of allegations of ill-treatment at the Les Corts autonomous police (Mossos d'Esquadra) station in Barcelona, the autonomous Catalan government authorized the installation of hidden CCTV cameras. These cameras recorded at least two further incidents of apparent ill-treatment, in March and April 2007, which led to criminal prosecutions. Following these incidents and the publication of Amnesty International's *Adding insult to injury* report, the autonomous Catalan government announced in late 2007 that it would be installing CCTV cameras in all Mossos d'Esquadra stations, in communal areas, interrogation rooms, and cells.

In April 2009, Amnesty International had a meeting with the Catalan government Councillor of Interior, who confirmed that CCTV cameras had been installed in all of the largest Mossos d'Esquadra police stations and recordings would be kept for six months. Only the smallest police stations which do not have cells for prisoners had no CCTV facilities. It was reported in the media that as of 10 July 2009 more than 2,500 cameras (some with sound, some visual recording only) had been installed in Mossos d'Esquadra police stations in cells, custody areas, search rooms and corridors. There are no cameras in the toilets or rooms where detainees can converse with their family or lawyer.¹

Despite initial opposition, the measure has now been welcomed by trade unions and police authorities who recognize it as an important means to protect detainees from harm and police officers from false accusations. In March 2009 a national non-governmental organization (NGO) network, the Coordinator for the Prevention of Torture, reported that in 2008 it had recorded an almost 40 per cent reduction in complaints of ill-treatment by the Mossos d'Esquadra – 45 complaints compared to 72 in 2007.² Furthermore, none of the complaints recorded by the NGO network in 2008 related to ill-treatment which was alleged to have occurred inside a police station.

The national Human Rights Plan presented by the Spanish government in December 2008

contained a commitment, in Measure 97, to install the necessary equipment to record detainees held *incommunicado* in police custody for the duration of their detention. However, no such measure was announced for “ordinary” detainees, not being held *incommunicado*.

IDENTIFICATION NUMBERS

On 14 September 2007 the Spanish Minister of Interior issued an instruction concerning the obligatory display of visible identification numbers by all uniformed National Police and Civil Guard officers, scheduled to come into effect within six months of the date of the instruction (March 2008).

In November 2008 the autonomous Catalan government passed a similar decree (Decree 217/2008 of 11 November) obliging all uniformed *Mossos d'Esquadra* officers (including riot police, but excluding those in ceremonial dress) to wear their professional identification number clearly marked on their uniform at all times. Previously, only certain units of the *Mossos d'Esquadra* were required to do so. This decree came into force in May 2009.

Amnesty International has welcomed these measures which the organization believes will help prevent torture and other ill-treatment by law enforcement officials by ensuring no officer can act under protection of anonymity, and calls on the autonomous Basque government to implement similar rules. At present, *Ertzaintza* officers do not wear an identification number on their uniform.

STATISTICS ON PROSECUTIONS

Following the recommendation made in the report *Adding insult to injury*, in 2008 the Office of the Public Prosecutor dedicated a special chapter in its annual report to allegations of torture by law enforcement officials for the first time.³ The purpose of this recommendation was to ensure the collection of comprehensive data on this issue and thereby help identify difficulties in prosecuting such cases which could in turn lead to systemic reform aimed at preventing ill-treatment and improving access to an effective remedy for victims. The Public Prosecutor's 2008 annual report⁴ (reporting on cases from 2007) included information from 18 regional public prosecutor's offices in 11 autonomous communities. Thirty-five regions did not report any complaints or investigations into allegations of torture.

Whilst the inclusion of this special chapter is a welcome first step, a number of methodological questions need to be addressed in order for it to be of most use. Whilst some of the regional public prosecutor's offices reported all cases newly opened in 2007 others did not provide exact figures. Some included cases opened in previous years which came to trial in 2007, while others did not. More importantly, the Office of the Public Prosecutor itself noted that the cases cited in its report were not exhaustive as criminal complaints of torture or other ill-treatment were often recorded under different, more generalized categories, such as assault. This makes it impossible for the relevant public prosecutor's office to extrapolate data retroactively on cases relating to accusations of unlawful violence specifically by law enforcement officials. A clear conclusion from this is that all allegations of unlawful violence committed by on-duty law enforcement officials, whatever the degree of gravity, should be charged as a distinct category of crime.

As a result of these discrepancies in recording it is not possible to perform any in-depth analysis of trends. What can be stated, however, is that in 2007 an absolute minimum of 75 different cases of suspected torture or other ill-treatment by law enforcement officials were under investigation or brought to trial in Spain. From the limited information available in the regional public prosecutor's reports of these 75 cases, just four resulted in a conviction and seven in acquittal. Twenty-one cases (66 per cent of all concluded cases) were dismissed by the public prosecutor or investigating judge without reaching trial stage. The remaining cases had not reached an outcome at the end of the period under review. This strong tendency for cases to be dismissed without reaching trial was explicitly highlighted in the report of the Madrid autonomous community public prosecutor, who stated that "Numerous complaints on this topic were made in 2007, the majority of them dismissed without trial".

The failure to of such a large percentage of complaints to reach trial stage raises serious questions. Whilst there is no obligation of result – that is to say, no expectation that all or even the majority of such complaints will result in conviction – the failure to gather sufficient evidence to bring forward a prosecution is cause for concern as it is unlikely that 66 per cent of complaints are totally ill-founded. Consequently, close attention should be given to ways of improving oversight of law enforcement work which would provide evidence of wrongdoing or exculpatory evidence where relevant. Measures such as the introduction of comprehensive CCTV recording of all areas of police stations where detainees may be present are essential steps in this regard.

EXTERNAL OVERSIGHT BODIES

One of the principal recommendations of the 2007 *Adding insult to injury* report was the creation of fully resourced independent police complaints bodies, as also recommended by the Council of Europe Committee for the Prevention of Torture following its 2001 visit to Spain, which would have the power to conduct independent investigations into all allegations of human rights violations by law enforcement officials (including unlawful killings, torture and other ill-treatment). Such bodies would have the power to order disciplinary proceedings to be instigated against law enforcement officials and to refer a case directly to the judicial authorities for criminal prosecution where appropriate. Amnesty International regrets to note that no action has been taken on this recommendation at the national level, nor in the majority of autonomous communities which have devolved competencies for policing.

In Catalonia a "Police Ethics Committee" was created by decree of the autonomous government on 16 October 2007. Its mission includes suggesting improvements in matters relating to ethical conduct of the Mossos d'Esquadra and local police forces operating in Catalonia; creating a Code of Ethics for Catalan police forces; receiving and examining complaints from individuals; and providing input to police training courses. The Committee is also mandated to produce an annual report on the complaints it has received and advising on trends, to be presented to the Department of Interior and made publicly available.

The relevant public authorities are obliged to report to the Committee all complaints they receive concerning behaviour which violates the Code of Ethics and the result of any action taken in response. The Committee also has the power to demand from such authorities any documentation, information or testimonies it requires to carry out its role.

The Committee consists of a president and four members. The members are to consist of one former judge or prosecutor, a jurist of good public standing, one local police force official and one Mossos d'Esquadra official (still in active duty or not). All members and the president are appointed by the autonomous government's head of public security following consultation with the Catalan Security Council. The Committee may also invite whatever experts, advisors, police professionals or human rights specialists it chooses to attend its sessions.

Amnesty International welcomes the innovative creation of the Police Ethics Committee in Catalonia and strongly encourages the creation of independent police oversight bodies in the rest of Spain. However, Amnesty International regrets that the Committee is not mandated to conduct its own investigations into complaints of human rights violations by law enforcement officials, which would provide valuable independent and objective evidence for use in criminal prosecutions. In the current situation, the public prosecutor must continue to rely on investigations conducted by the internal police inspectorate when prosecuting such cases, which may lack impartiality and independence. This problem was examined in depth in Amnesty International's 2007 report *Adding insult to injury*.

In addition, the Committee does not have the power to order an internal investigation to be conducted or reopened if the internal police inspectorate has failed to investigate a complaint properly, nor can the Committee refer a case it receives to the public prosecutor for criminal prosecution.

Amnesty International is also concerned that the presence of police force representatives (who may still be on active duty) may prejudice the impartiality of the Committee due to a sense of dual loyalty. Serving police officers may well be reluctant to criticize the behaviour of other officers or the police force as an institution, for fear of possible personal or professional repercussions.

In October 2008 Amnesty International hosted a conference in Madrid bringing together representatives of existing police complaints bodies from outside Spain, international expert human rights bodies, academics, national and autonomous law enforcement agencies, and government authorities to share technical expertise on independent police accountability bodies and consider how such an institution could be established and operate in Spain. The seminar was well attended by, among others, international participants and officials from Spain but Amnesty International regrets that no representatives of the Ministry of Interior, Civil Guard or National Police attended, despite having been invited.

OTHER

Amnesty International was informed by the Basque Department of Interior of a number of initiatives taken by the Ertzaintza to improve policing practices in recent years.

All detainees are given questionnaires at the end of their period in Ertzaintza custody in which they can comment on specific questions relating to their detention, such as the conditions of the cell, food, etc. Lawyers who attend police station interviews are also regularly asked to complete similar surveys. The results of these surveys are publicly available on the Ertzaintza website. Amnesty International welcomes this initiative but

regrets that the questionnaires do not ask detainees about any experience of torture or other ill-treatment in custody.

Since 2001 the Ertzaintza has operated an internal “Quality Control System” which conducts periodic internal audits in order to develop (and ensure implementation of) detailed procedural guidelines, including in relation to detention procedures. Complaints made by detainees are also examined under this system.

The autonomous Basque government has also created a body, known as EKINBIDE, to study and implement (where approved) proposals for improvements to the Ertzaintza submitted directly by members of the public. Any individual or organization can propose an initiative by submitting it directly to the EKINBIDE office, and a decision on their proposal is given within two months of receipt.

Whilst these initiatives may improve standardisation of police procedures and increase transparency, Amnesty International regrets that there have been no steps taken as yet to introduce measures which may more directly contribute to preventing torture and other ill-treatment, in particular the establishment of an independent and impartial body to examine complaints against Ertzaintza officers.

“ADDING INSULT TO INJURY” – POLICE IMPUNITY TWO YEARS ON

The following cases were first published in the Amnesty International report *Spain: Adding insult to injury: the effective impunity of police officers in cases of torture and other ill-treatment*.⁵ What follows below is an update on the current status of those cases which had not reached a final conclusion in 2007; see the original report for full background details on each case.

THE CASE OF LUCIAN PADURAU

Lucia Padurau was arrested on 27 July 2006 by five Mossos d'Esquadra officers outside his house in Barcelona, in a case of mistaken identity. The officers beat him on the street as he was being arrested and his pregnant wife, who was with him at the time, was also physically assaulted. He was physically assaulted again while in the police car on the way to the Les Corts police station, as well as being threatened with a gun. He was released from custody the following day after the police realized he was not the man they had been seeking.

Lucian Padurau is a haemophiliac. After being released from custody he was admitted to the Vall d'Hebron hospital on 30 July where he received a blood transfusion as a result of the injuries he had suffered and remained hospitalised for two days.

UPDATE:

In October 2007 five Mossos d'Esquadra officers were put on trial at the Barcelona Regional Court accused of injury, assault, illegal detention, and torture. According to Lucian Padurau's lawyer, the court usually advises the media of the cases about to be heard a week in advance but in this instance no such notification was given. The court upheld Lucian Padurau's allegations and those of his pregnant wife who was dragged into a police car by her hair by two of the accused officers. In its ruling the Court noted that Lucian Padurau “was beaten and threatened in a totally gratuitous and unnecessary manner, and, undoubtedly, using more than the necessary force to detain him... with no other aim than humiliation and denigration” and noted “Certainly, this is not the behaviour one expects from police officers in a state where the rule of law prevails” In particular, the Court drew attention to the failure of the police officers (who were not in uniform) to identify themselves during the arrest; the complaints and attempted interventions of passers-by who witnessed the scene and called on the police officers to stop their assault; and the failure of the officers to cease beating and punching Lucian Padurau after he repeatedly told them that he was a haemophiliac and could die as a result of the injuries they were inflicting on him.

All five officers were convicted and sentenced to between two years and three months and six years and seven months' imprisonment, together with prohibition from public office, fines, and an order to pay damages totalling €18,000 to Lucian Padurau and his wife. Following the ruling the Catalan Department of Interior announced the officers would be suspended

without pay from their posts pending appeal. Simultaneously, the autonomous Catalan government hired and paid for lawyers to appeal the sentence to the Supreme Court. According to information published in the press two of the five officers were promoted while awaiting trial.⁶ Amnesty International wrote to the Catalan Department of Interior in July 2009 to request confirmation of this information, but as of September 2009 had received no reply.

Lucian Padurau also appealed to the Supreme Court against the sentence on the grounds that the compensation awarded to him by the court – €18,000 – was insufficient. His own lawyer had originally requested €80,000 in respect of the harm suffered by him. At the time this report goes to print, both Lucian Padurau and the convicted officers are waiting to find out if the Supreme Court will admit their appeals. The public prosecutor does not support either appeal.

As a result of his detention and subsequent injuries, Lucian Padurau lost his job. He and his wife returned to Romania in July 2008 and said they have no intention of ever returning to Spain.

THE CASE OF SANDRA GUZMÁN

On 27 December 2006 Sandra Guzmán registered a complaint at the Basque Department of Interior concerning an incident she had witnessed on 25 December, during which she says a police officer from the Ertzaintza partially strip searched, hit and kicked several men of North African origin in a park in La Casilla, Bilbao. A few days later she registered a criminal complaint at Investigating Court 1 of Bilbao. Sandra Guzmán told Amnesty International that in mid-January 2007 a police officer from the internal affairs unit of the Ertzaintza visited her parents' house in Bilbao, and tried to convince her mother that Sandra Guzmán should withdraw the complaint. The following day Sandra Guzmán spoke to the same officer by phone but when he started questioning her on the incident she refused to speak with him further on the matter without consulting her lawyer, commenting on the lack of impartiality that she was being questioned by an officer of the same force as the agents she had reported and who had, in addition, appeared at her parents' house and recommended that she withdraw the complaint.

UPDATE:

At the end of 2007 Sandra Guzmán discovered that her complaint against the police officers had been closed by the court without further investigation on 29 May, supposedly because it had been impossible to locate the men who had allegedly been assaulted by the officers. Sandra Guzmán found this strange as she had recently appeared as a witness in the trial of one of the men for robbery, which would indicate the court was aware of his whereabouts.

Sandra Guzmán told Amnesty International that on 24 December 2007, and again two days later, an officer stating he was from the Ertzaintza internal affairs unit phoned her at her parents' house. She said they told her they had read the Amnesty International report and were investigating whether it was true that an Ertzaintza officer had visited her parents to pressure her not to make a complaint. During a long conversation she told the officer that

there was no point investigating further as it would simply be their word against hers and as it was already a year after the event she doubted her parents would be able to remember all the details. She told Amnesty International that she had given up on the issue because “obviously it’s difficult to incriminate the police when it’s the police who carry out the investigation, so as they’ve closed the case, well, that’s it”.

UNITED NATIONS HUMAN RIGHTS COMMITTEE

In October 2008 the United Nations Human Rights Committee issued its concluding observations following its evaluation of Spain’s periodic report on compliance with the International Covenant on Civil and Political Rights. The Committee noted with concern “that there continue to be reports of cases of torture and that the State party [Spain] does not seem to have prepared a comprehensive strategy or taken adequate steps to eradicate this practice once and for all. The State party has not yet set up an effective mechanism to prevent torture, despite the recommendations to this effect by various international bodies and experts”.⁷

THE CASE OF BEAUTY SOLOMON

Beauty Solomon submitted two criminal complaints of physical assaults by the same two national police in Palma de Mallorca in July 2005. Her complaints included medical certificates issued by a public hospital recording evidence of her injuries.

Both of her complaints were dismissed without thorough investigation. The courts which dismissed her complaints based their decisions exclusively on two self-contradicting reports from the Mallorca chief of police. With the aid of Women’s Link Worldwide, an international NGO, Beauty Solomon appealed against the closure of the investigations but her appeals were rejected by the court without any further examination of her allegations.

On 10 April 2007 Women’s Link Worldwide presented an appeal to the Constitutional Court on behalf of Beauty Solomon on grounds of violation of her rights to due process (as well as non-discrimination, physical and moral integrity, dignity, and not to be subjected to torture or other inhuman or degrading treatment) as enshrined in international human rights law and the Spanish constitution.

UPDATE:

The Constitutional Court rejected Beauty Solomon’s appeal on 21 April 2008 on the grounds that the court did not consider it to raise any constitutional issues. The court did not examine her allegations of ill-treatment. In April 2008, Women’s Link Worldwide made a complaint on Beauty Solomon’s behalf before the European Court of Human Rights alleging a violation of the prohibition against torture, the right to a fair trial, and the right to freedom from discrimination. At the time of publication, she is waiting to be informed whether the case will be admitted for examination.

THE CASE OF JORDI VILASECA

On 1 April 2003 Jordi Vilaseca was arrested by Mossos d'Esquadra officers on suspicion of having vandalized a bank cash machine. He was taken to the Mossos d'Esquadra station in Lleida, where he says he was forced to remain standing in his cell facing the wall for approximately 10 hours, at which point he collapsed from exhaustion. The following morning he says he was made to kneel without resting on his heels for approximately four hours. He was then aggressively interrogated and threatened by a national police officer⁸ who told him he would be sent to prison where he would catch AIDS and that police officers would rape his girlfriend.

He was later admitted to hospital after he lost consciousness. When he woke he was unable to speak, walk or control his bowels. He was then sent to the Santa Maria psychiatric hospital where he remained until being discharged on 8 April 2003.

An investigation was opened into his allegations of torture by Investigating Court 2 of Lleida, but in May 2005 the investigating judge ordered the provisional discharge of the investigation at the request of the public prosecutor. Jordi Vilaseca appealed against the decision and on 18 November 2005 the Provincial Criminal Court ordered the investigating court to reopen the case. However, in February 2007 the investigating court closed the case again. Once again an appeal was introduced against the decision but it was rejected on 12 May 2007. Jordi Vilaseca lodged a case with the Constitutional Court at the end of May 2007.

UPDATE:

In January 2009 Jordi Vilaseca's appeal to the Constitutional Court was rejected. No further appeal is possible. In October 2008 Jordi Vilaseca presented an administrative complaint to the Catalan Department of Interior, but this was rejected.

In April 2009, six years after Jordi Vilaseca's detention, the main officer accused of torturing him was remanded in custody pending investigation and trial on unrelated charges of corruption and obstruction of justice.

THE CASE OF SERGIO LD⁹

Sergio LD was arrested in March 2002 at an anti-globalization demonstration in the centre of Barcelona, suspected of public order offences. He says he was threatened, beaten, stamped on and violently handled after being pushed into a police van by four national police officers. He was then taken to La Verneda police station, where he says he was taken to a cell and three officers kicked and punched him all over his body until he began to have muscle seizures, vomited and became temporarily incontinent. He says one officer stamped on his head.

After being examined in the police station by a doctor who recommended he be taken to the emergency ward at the hospital due to his head injuries, Sergio LD says he was interrogated by a police officer who threatened him with a knife and he was beaten on the soles of the feet with a whip. The next day he was charged with public disorder, damage to property and

assaulting a police officer.

On 6 September 2002 Sergio LD made a complaint to Investigating Court 2 of Barcelona regarding torture, assault on personal integrity and injury. The case was provisionally discharged in January 2003 on the basis of a lack of evidence. Sergio LD presented an appeal against this decision to the Provincial Criminal Court of Barcelona which ruled, on 9 December 2003, that the actions of the lower court had been incorrect and “absolutely unacceptable” and ordered the lower court to open an investigation into a possible crime of torture.

UPDATE:

In June 2007, Sergio LD was convicted by Barcelona Criminal Court 18 of public disorder, damaging property and assaulting police officers, solely on the basis of police testimony and some video footage which appeared to show him being arrested (but not committing a crime). The police officers who testified against him are the same officers who are accused of torturing him. He was sentenced to a total of two years and nine months’ imprisonment and fines and damages totalling over €15,000. Sergio LD’s appeal against the sentence was rejected but the sentence itself has been suspended pending a decision on his request for a “pardon”. If this fails, he will have to serve the prison sentence. He maintains his innocence of all charges against him.

At the time this report goes to print, Sergio LD’s own complaint against the police is still in the investigation phase. As time passes, he says he is losing hope of ever seeing someone convicted or even brought to trial for the torture he suffered. He told Amnesty International, “It’s easy for them to convict you, but almost impossible to see a police officer convicted. They’re untouchable”.

For the past seven years, Sergio LD has been receiving counselling for the psychological harm he suffered as a result of his detention. In March 2008 Sergio LD was examined by an independent psychiatrist specializing in cases of ill-treatment and abuse. The psychiatrist, after interviewing Sergio LD and examining the medical reports issued immediately after his detention by the forensic doctor at the investigating court, concluded in his medical report that “Given the total congruence between the facts related and the psychological, somatic and behavioural repercussions, in my capacity as expert, I consider that it is possible to affirm with the greatest degree of conviction, despite the time that has elapsed, that the facts related by [Sergio LD] are true.”¹⁰

MIKEL IRIBARREN PINILLOS V. SPAIN, 8 JANUARY 2009

On 8 January 2009 the European Court of Human Rights ruled in the case of Mikel Iribarren Pinillos v. Spain that Spain had violated the prohibition of inhuman or degrading treatment and the right to a fair trial within a reasonable time.

On 15 December 1991 Mikel Iribarren Pinillos, aged 19 at the time, was permanently and severely injured after being hit at close range by a smoke bomb thrown by national riot police during disturbances in

Pamplona. A judicial investigation was immediately opened into the incident but the investigating judge twice closed the case claiming that Mikel Iribarren Pinillos had been participating in violent disturbances and the identity of the officer who threw the smoke bomb could not be established. In 1995, the regional court of Navarra finally ruled that although the identity of the officer involved was unknown, it was duly established that the security forces as a whole were responsible for the crime of assault occasioning bodily harm.

Mikel Iribarren Pinillos subsequently tried to obtain compensation for his injuries from the Ministry of Interior but this was rejected on the grounds that the identity of the officer responsible for the injuries was unknown. On appeal in January 2003 the Supreme Court ruled at final instance that the actions of the security forces had been legitimate and the injuries suffered by Mikel Iribarren Pinillos were the result of chance.

In its decision, the European Court of Human Rights noted that it was an established fact that Mikel Iribarren Pinillos' injuries, constituting actual bodily harm, were caused by a police officer and therefore the liability of the Spanish state. The European Court of Human Rights considered that the use of the smoke bomb and the way it had been fired created a risk of physical injury and even death to those present, and the Spanish Courts had not established whether its use was necessary and proportionate in the circumstances. Nor had they conducted sufficient investigations to establish whether Mikel Iribarren Pinillos could be considered jointly liable for his own injuries.

The European Court of Human Rights found that the failure to conduct an effective investigation into the incident constituted a violation of the prohibition of torture and inhuman or degrading treatment (Article 3 of the European Convention on Human Rights, ECHR). In addition, it ruled that Spain had violated the right to a fair trial within a reasonable time (Article 6 of ECHR), as the proceedings had lasted almost 12 years.

THE CASE OF DRISS ZRAIDI¹¹

Driss Zraidi, a Moroccan national, was detained and tortured in Mossos d'Esquadra station of Roses, Catalonia, on 3 August 1998. He suffered several fractured ribs and numerous head injuries.

In January 2003, 10 officers were charged with torture and bodily harm and four more were charged for failing to prevent the crime. However, on 20 May 2004 all 14 of the accused were acquitted by the Provincial Criminal Court of Girona. The court found that the incident "without doubt constituted the crime of torture" but claimed that it was impossible to determine which of the accused officers was personally responsible for the attacks.

The case was appealed to the Supreme Court, which confirmed the ruling of the Provincial Criminal Court. A case was filed on 26 October 2005 in the Constitutional Court claiming violations of due process and the prohibition of torture and other inhuman treatment.

UPDATE:

In resolution 365/2008 of 17 November 2008, the Constitutional Court rejected Driss Zraidi's appeal. The Court concluded that the acquittals pronounced by the lower courts did not violate Driss Zraidi's right to physical and moral integrity, or the prohibition of torture, as

there is no right to obtain a conviction of those responsible for violating such rights. Consequently, the Court also ruled that there had been no violation of the right to due process. No further appeal is possible. Driss Zraidi continues to seek compensation from the autonomous Catalan government through the administrative courts for the physical and psychological harm suffered.

THE CASE OF DANIEL GUILLÓ CRUZ

On the night of 11 January 2007 Daniel Guilló Cruz says he was assaulted by two plain clothes national police officers who stopped him without identifying themselves as he was walking home with his girlfriend in Madrid. As a result of the assault he suffered a broken nose. Believing he was being mugged, Daniel Guilló's girlfriend called the police. When uniformed police arrived, Daniel Guilló and his girlfriend were arrested for allegedly assaulting a police officer and taken to the police station. The following day, Daniel Guilló was told he was also being charged with attempted homicide. It was alleged that he had taken a gun from one of the police officers' holsters and tried to shoot one of the officers.

On 19 January 2007, Daniel Guilló made a complaint against the police for ill-treatment. He denied that he tried to take a gun from one of the officers, and his testimony was corroborated by local residents who were present at the scene and a forensic report on the gun which showed no fingerprints.

UPDATE:

In July 2009 Daniel Guilló's family told Amnesty International that the charges against him of attempted homicide had been dropped. Both the assault charges against Daniel Guilló and his friends and his own complaint against the police officers continue in the investigatory stage at Investigating Court 36 in Madrid. They are still waiting to be notified what charges will be brought and if or when the case will come to trial. In March 2009 Daniel Guilló's lawyer told him he would probably have to wait at least another year for any further progress.

THE CASE OF RODRIGO LANZA HUIDOBRO, ALEX CISTERNA AMESTICA AND JUAN DANIEL PINTOS GARRIDO

Rodrigo Lanza Huidobro, Alex Cisterna Amestica and Juan Daniel Pintos Garrido were arrested on 4 February 2006 after a local police officer was gravely injured in disputed circumstances outside a party in a house in Barcelona. All three men deny any involvement in the incident and have also claimed they were subjected to serious physical ill-treatment during arrest and while in detention at the Mossos d'Esquadra station. They say that they were beaten, hit with truncheons, racially insulted, kicked, dragged by the hair and threatened by Mossos d'Esquadra and local police officers. As a result, Rodrigo Lanza required stitches to his head and Juan Pintos's hand was put in plaster.

On 6 February Rodrigo Lanza, Alex Cisterna and Juan Pintos were remanded in pre-trial detention under investigation for attempted homicide. The three men all made complaints of

ill-treatment against the Mossos d'Esquadra and local police officers, which were examined by the same judge who was investigating the charges against them.

The investigation of the charges against the three men was completed in June 2006 and sent for trial. In July 2007 the investigations of the allegations of ill-treatment were closed after minimal investigation; all three men appealed the decision to the Provincial Court of Barcelona. Representatives of the Mossos d'Esquadra internal affairs unit told an Amnesty International delegation in June 2007 that no internal investigation had been launched into the incident.

UPDATE:

The appeals submitted against the closure of the torture allegations were unsuccessful. In 2008 the Provincial Court of Barcelona closed the investigations without sending them for trial, stating that the police officers' use of force was "the minimal force necessary" and therefore lawful. No further appeal is possible.

Rodrigo Lanza, Alex Cisterna, and Juan Pintos (along with several other individuals who were charged with lesser offences) stood trial from 7 to 11 January 2008 at Court 8 of the Provincial Court of Barcelona –the same court that had earlier approved the closure of the investigations into the complaints of torture and other ill-treatment. The trial court had also upheld the investigating court's denial of numerous petitions for admission of evidence by the defendant's lawyers and had also heard and rejected the appeals against the continued detention on remand of Rodrigo Lanza, Alex Cisterna and Juan Pintos. The defence therefore raised concerns about the possible lack of impartiality of the trial court due to its excessive knowledge of, and pre-involvement in, the investigation of the case but these arguments were rejected (by the same court). Amnesty International is concerned that the trial of the accused by the same court which ruled on the closure of the investigation of their allegations of torture and other ill-treatment and ruled on defence appeals of the failure of the investigating court to admit defence evidence violated the rights of the accused to a trial before an impartial tribunal guaranteed by Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 6(1) of the ECHR. Some of the trial court's rulings excluding evidence and crediting disputed evidence in the course of the trial and judgment, which are highlighted below, heighten the organization's concerns in this regard.

On 15 January 2009, the Provincial Court of Barcelona convicted all five defendants. Rodrigo Lanza was convicted of assault, and sentenced to four years and six months' imprisonment. He was ordered to pay €1,070,000 in compensation to the injured local police officer and his family. Alex Cisterna and Juan Pintos were also convicted of assault and sentenced to three years and three months' imprisonment and a fine of €240. Alex Cisterna and Juan Pintos were immediately released from remand imprisonment as they had already served more than half their sentence. Rodrigo Lanza was released on 2 February 2008. Two other defendants, Alfredo Pestana Mota and Patricia Heras Méndez, were also convicted of assault and sentenced to three years and three months' imprisonment and three years' imprisonment respectively, as well as a fine of €180 each. All five submitted appeals to the Supreme Court.

A number of organizations attended the trial to observe proceedings, including the Human

Rights and Penal System Observatory of the University of Barcelona (OSPDH), the Committee for the Defence of Human Rights of the Barcelona Bar Association (CDDP), the NGO Justice and Peace, the president of the Human Rights Commission of the Senate of Chile and the diplomatic representatives of Argentina and Chile in Spain. Both OSPDH and the CDDP issued reports on their findings at the end of the trial, raising serious concerns about numerous violations of the right to a fair trial.¹²

At least one of the officers testifying against Rodrigo Lanza, Alex Cisterna and Juan Pintos had been personally under investigation for torture as a result of the three men's criminal complaint, as were several other officers involved in the incident, raising serious concerns regarding their potential lack of impartiality. The court rejected the defence argument that the police testimony was biased because the officers testifying had been accused of torture stating simply that it found the officers' testimony convincing. It justified its refusal to admit the defendants' medical records showing evidence of their injuries, allegedly the result of ill-treatment in custody, on the grounds that "the physical examinations of the accused are totally irrelevant." Although the prosecution case rested entirely on testimony from colleagues of the injured officer, testimony from defence witnesses was ruled lacking in credibility on the basis that the witnesses were friends of the accused and therefore biased.

In relation to the injured police officer, who remains in a persistent vegetative state, Amnesty International notes from the court's judgement that there were serious discrepancies in evidence presented during the trial concerning the cause of his injury. The prosecution argued that he sustained a major head injury when he fell to the ground after being hit in the forehead by a stone thrown at him by Rodrigo Lanza. It was not disputed in court that objects had been thrown from the house balcony, and the paramedic who attended the injured officer at the scene noted that on the ground around him there were pieces of broken flowerpot. She also stated that a number of small stones were on the ground, but no stone of the size alleged by the prosecution to have been thrown by Rodrigo Lanza was ever presented in evidence.

According to the court's judgement, four expert medical witnesses called to testify at the trial rejected the hypothesis that the officer's injuries had been caused by a stone being thrown at him and causing him to fall backwards, stating that his injuries were incompatible with such a scenario. In their opinion, the most probable cause of the injuries was cited as something falling on the officer's head from above. One expert witness stated that "in his many years of experience he had never seen such serious injuries in a person falling backwards as a result of an impact from the front". All four witnesses stated that for the officer to have fallen backwards hard enough to have caused the injuries he suffered, he would have had to have been hit by a stone with such tremendous force as to leave very severe and obvious injuries to the front of his head. He did not have any such injuries.

Two expert medical witnesses called by the prosecution testified that they believed the officer's injuries were most likely caused by him falling to the ground after being hit by a stone, but it was also possible that his injuries were caused by being hit on the head by a flowerpot falling from the balcony above him. None of the expert medical witnesses, neither those presented by the prosecution or defence were allowed to examine the injured officer. The defendants appealed against this decision to the investigating court and the trial court, but their appeals were rejected.

Despite the testimony of the paramedic about the presence of pieces of a broken flowerpot on the ground around the injured officer, the testimony of four expert witnesses that the local police officer's injuries must have been caused by an object falling on his head from an upstairs balcony (and the recognition by the two other medical experts that such a hypothesis was possible), the court stated in its judgement that there was "no evidence" to indicate that the officer's injury was caused by a falling flowerpot. In accepting the hypothesis favoured by the two expert witnesses called by the prosecution, the court stated that it did so "not only because it was the hypothesis that best corresponds to the police testimony but because the hypothesis of an impact from a flowerpot falling or being thrown from a higher floor raises certain doubts".

On the morning following the incident, 5 February 2006, the then-mayor of Barcelona, Joan Clos, stated publicly that the officer's injury had been caused by a falling flowerpot. On the second day of the trial, the former mayor repeated this statement in a television interview, noting that his statement was based on the information provided to him in a police report at the time of the event. The requests by the defence to have Joan Clos called as a witness and for the production of the police report to which he referred, were both rejected by the court.

Amnesty International is concerned that the investigating and trial courts' refusal to admit important pieces of evidence requested by the defence undermined the right to a fair trial of the accused, guaranteed under Article 14 of the ICCPR and Article 6 of the ECHR. This evidence included: evidence purporting to corroborate the alibis of Alfred and Patricia; the medical reports purporting to corroborate the allegations that some of the accused had been ill-treated proffered in relation to the credibility of some of the officers who testified; the statements of Joan Clos; and the refusal to allow the medical experts access to the injured officer. In particular, the court's rulings appear inconsistent with the rights of the accused to a defence and "to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him", guaranteed under Articles 14(3) (d) and (e) of the ICCPR and Articles 6(3)(c) and (d) of the ECHR.

Rodrigo Lanza, Alex Cisterna, Juan Pintos, Alfredo Pestana and Patricia Heras were convicted on the basis of police testimony, supported by the ambiguous testimony of the two prosecution medical witnesses, which the court considered sufficient to establish their guilt beyond a reasonable doubt. Both the OSPDH and CDDP reports highlighted the fact that, during their observation of the trial, the police officers appearing as witnesses were not prevented from communicating with each other. Instead, they were seated together in a special room in which those who had testified conversed freely with those still to testify, and could discuss the questions they had been, or would be, asked. The OSPDH report notes that the police witness statements were identical right down to the turn of phrase.

Amnesty International is concerned that when viewed as a whole, the role of the trial court in earlier proceedings related to the case, its rulings including on the refusal to admit evidence proffered by the defence, and the conviction of five people despite serious doubts cast by, amongst other things, the testimony of four expert medical witnesses, may have resulted in a violation of the right to a fair trial as guaranteed by the ICCPR and the ECHR.

On 3 June 2009 the Supreme Court heard the appeals submitted by the five main defendants and several others. The Supreme Court upheld their convictions and increased

the terms of imprisonment of Rodrigo Lanza, Alex Cisterna and Juan Pintos. All five defendants have now petitioned the Constitutional Court and its consideration of the case remains pending. However, this procedure does not give suspensive effect to their prison terms and may take years to complete.

CONSTITUTIONAL COURT RULING - ALBERTO VIEDMA MORILLAS

On 14 April 2008 the Spanish Constitutional Court ordered the judicial investigation into allegations of torture made by Alberto Viedma Morillas to be re-opened, on the grounds that the initial investigation was not effective.

In its decision, the Constitutional Court noted that the gravity of the crime of torture, and the particular difficulty in gathering evidence in such cases, creates a special duty of diligence for judicial investigations. The Constitutional Court, noting legal precedents from the European Court of Human Rights and recommendations of the UN Committee against Torture and the Council of Europe Committee for the Prevention of Torture, stated that in this case the investigating court had failed to ensure the right to effective legal recourse by closing its investigation when doubts remained concerning the veracity of the allegations, and further investigatory measures – which could have verified or discredited the allegations – were still possible.

Alberto Viedma Morillas was arrested by Civil Guards on 28 February 2002 and taken into custody in Pamplona before being transferred to Madrid that same day. On 22 April 2002 he made a criminal complaint of torture and other ill-treatment inflicted while in custody. A judicial investigation into the allegations was opened by the Investigating Court 14 of Madrid, but on 12 April 2004 the investigation was closed on the grounds that there was insufficient evidence that a crime had been committed. The investigating judge had not questioned the plaintiff, questioned or even identified the police officers involved in the detention, nor obtained all relevant medical reports. Several appeals against the closure were made, but were unsuccessful. Alberto Viedma Morillas was himself convicted in November 2004 for his involvement in the activities of the armed group Euskadi Ta Askatasuna (ETA), including the killing of an army officer.

THE CASE OF JAVIER S¹³

Javier S was arrested along with a small group of friends by two national police officers in Barcelona on 3 June 2005 after they had just participated in a gay pride demonstration. He says the officers grabbed him, beat him, stamped on his head, neck and back, and then handcuffed him before throwing him into a police car. Upon arrival at the police station in Via Augusta Javier S says he was subjected to insults, including homophobic comments, and was beaten, punched and kicked.

On 7 June 2005, Javier S made a formal complaint of ill-treatment at Investigating Court 22, but his complaint was rejected by the judge on 2 September. On appeal, the Provincial Court of Barcelona overruled the lower court's decision and ordered it to investigate the allegations. However, on 8 March 2006 the investigating judge closed the case again, after minimal investigation.

With the support of a local NGO, the Gay Liberation Front of Catalonia, Javier S sought justice through other channels, including through the state government representative in Catalonia and the Catalan human rights ombudsperson, both of whom assured him that an

investigation would take place.

UPDATE:

The Gay Liberation Front of Catalonia told Amnesty International that In June 2009 the Barcelona Provincial Court acquitted Javier S on all charges against him, stating that his detention had been unmotivated. The Gay Liberation Front of Catalonia told Amnesty International that they had never received a response to their repeated requests for information to the state government representative and the Catalan human rights ombudsperson.

THE CASE OF DANIEL DÍAZ GALLEGO, MANUEL MATILLA PARRILLA, ISRAEL SÁNCHEZ JIMÉNEZ, AND MARCOS V

On 1 December 2001, Daniel Díaz Gallego, Manuel Matilla Parrilla, Israel Sánchez Jiménez, and Marcos V, were arrested by national police officers following a demonstration in Madrid on suspicion of public order offences and taken to the Leganitos police station. They claim that while in police custody they were subjected to serious ill-treatment by police, including being pulled by the neck, pushed, kicked, beaten, slapped, punched, dragged by the hair, threatened with a knife, given small electric shocks and threatened with death. As a result of a blow to the head, Daniel Díaz lost hearing in one ear for a month.

After being released from custody, Daniel Díaz presented a complaint of illegal detention, torture and ill-treatment, threats, degrading treatment and assault on physical integrity to Investigating Court 2 of Madrid on 14 January 2002. On 24 June 2003 the court acquitted both accused police officers, despite confirming the evidence of Daniel Díaz's physical injuries, on the grounds that it could not be proven which police officer was responsible for the ill-treatment. Marcos V, Manuel Matilla and Israel Sánchez also presented criminal complaints alleging ill-treatment very similar to that described by Daniel Díaz but they were all rejected on the grounds of lack of evidence.

On 3 October 2005 Manuel Matilla and Daniel Díaz were sentenced to three years and six months' imprisonment for assault on a public agent, causing injury, and public disorder. Israel Sánchez was sentenced to 18 months' imprisonment for public disorder and assault on a public agent. Marcos V was sentenced to six months' imprisonment for assault on a public agent. The four men appealed but the Provincial Criminal Court of Madrid upheld the sentences on 25 April 2007.

UPDATE:

After discussing the situation with their lawyer who warned them that further appeals would take years Manuel Matilla and Daniel Díaz decided not to appeal the sentence but rather to request a "pardon" from the government which would revoke or decrease their sentence. At the end of 2008 both men were granted a pardon for 18 months of their respective sentences, leaving a two year suspended sentence in force.

Daniel Díaz was advised by his lawyer not to appeal against the acquittal of the officers who

allegedly ill-treated him because “the probability of success was infinitesimal.” The other men did not appeal against the closure of their complaints of ill-treatment for similar reasons.

THE CASE OF JUAN MARTÍNEZ GALDEANO

On 24 July 2005, Juan Martínez Galdeano died at the Civil Guard police station in Roquetas de Mar, Almería, following an altercation with a number of officers. As he became increasingly agitated he was handcuffed and beaten with truncheons (including a non-regulation extendible truncheon) by officers present. A non-regulation electro-shock (“Taser”) weapon was also used against him. A subsequent autopsy revealed that his body was marked by a large number of bruises believed by the pathologist to have been caused by blows received and physical restraint techniques.

Disciplinary and criminal investigations were opened and eight police officers were charged with inhuman treatment and assault. On 27 April 2007 the Provincial Criminal Court of Almería issued its verdict. Five of the accused officers were acquitted. Two were convicted of causing injury and abuse of authority, and were fined. The commanding officer, José Manuel Rivas, was found guilty of minor assault and causing injury. He was sentenced to 15 months’ imprisonment, fined, and banned from office for three years. The sentence was appealed by both the prosecution and the defence.

UPDATE:

In December 2008 the Supreme Court reduced José Manuel Rivas’ sentence on appeal from 15 months to one year’s imprisonment. The sentence absolved him of the charge of assault on moral integrity and instead convicted him of negligent homicide (a charge of which he had been acquitted in the original trial) while maintaining his conviction of minor assault. The sum he was ordered to pay to Juan Martínez Galdeano’s family in compensation was greatly increased from €6,000 to a total of €85,000. Two other officers had their convictions of minor assault upheld. José Manuel Rivas’ prison sentence was suspended¹⁴ and he continues to work as a police officer.

One of the appeal judges, Enrique Bacigalupo, voiced a dissenting opinion stating that in addition to José Manuel Rivas six of the other officers were jointly guilty of negligent homicide. He proposed a sentence of 18 months’ imprisonment for each officer with an additional six months’ imprisonment for José Manuel Rivas on charges of assault and recommended the officers jointly pay compensation totalling €300,000 to Juan Martínez Galdeano’s family. Juan Martínez Galdeano’s family have appealed to the Constitutional Court.

THE CASE OF ROQUE ZAMBRANO VELASCO

Since the publication of *Adding insult to injury* in November 2007, Amnesty International has continued to receive and research allegations of torture and other ill-treatment by law enforcement officials in Spain. These cases have demonstrated that such incidents are still occurring and victims continue to face obstacles when seeking justice.

Roque Zambrano described to Amnesty International how he was assaulted by national police officers in Madrid the day after the publication of Amnesty International's report on 14 November 2007. Two years on, he is still waiting for justice. The investigating judge has repeatedly closed his complaint against the police officers, despite repeated higher court rulings ordering him to continue with the investigation, and a judicial sentence stating explicitly that the officers who Roque Zambrano alleged attacked him had lied in their testimony during the hearing against him.

ROQUE ZAMBRANO VELASCO

Roque Zambrano Velasco is a Spanish national, originally from Ecuador, currently living in Madrid. On 15 November 2007 he was stopped in Hermanos Machado street, Madrid, by two national police officers as he was on his way home. They asked for his identity papers but he refused to show them as they would not give him their police identification numbers. Consequently, they detained him – without violence, according to Roque Zambrano's testimony - and took him to the Ciudad Lineal police station.

Once at the police station, he says one of the same police officers again asked for his identity papers. Roque Zambrano got out his wallet to find his ID card but continued to protest that the officer would not give his identity number. At this point he says the police officer hit him and grabbed him by the collar of his jacket, shook him, slapped him, partially throttled him and kicked him, causing him with minor injuries. Roque Zambrano says four other police officers were present throughout this incident but none of them intervened. As they took him to one of the cells, he told the officer who had assaulted him that he was going to report him. Two officers took Roque Zambrano to Madrid Health Centre to receive treatment for the injuries inflicted.

After receiving medical treatment Roque Zambrano was returned to the police station and spent the night there. The following day that he was told that he had been charged with assaulting a police officer – the same officer, identified by his badge number, that Roque Zambrano says in fact assaulted him. Roque Zambrano spent another night in the police station and was finally released after two days in detention and ordered to appear in court on 26 November for an accelerated hearing against him. On 22 November, Roque Zambrano presented a complaint to an investigating court regarding the ill-treatment and false accusations against him.

The court hearing on 26 November took place at Criminal Court 17 in Madrid. The Court concluded that Roque Zambrano had attacked the police officer in the street, pushing him in the chest so he fell to the ground and injured his wrist, after the officer told him he would have to go to the police station if he did not present his identity papers. The court's decision was made on the basis of the testimony of the two officers present at the scene of the detention and discrediting Roque Zambrano's own testimony. The Court rejected requests from Roque Zambrano's lawyer to have video recordings from the police station presented as evidence, and also rejected the request to call shop workers who had seen Roque Zambrano being detained to testify. Roque Zambrano was convicted of assault and injury and sentenced to a year in prison, a fine, and ordered to pay compensation to the police officer. The court noted that, regarding Roque Zambrano's own allegations, "these would follow their own course and be examined in another procedure".

Roque Zambrano appealed against the conviction on 13 December, and on 24 March 2008 he was acquitted of all the charges against him by the Provincial Court of Madrid, which, contrary to the first instance court, accepted Roque Zambrano's testimony as more credible than that of the two police officers. The appeal court also heard as a witness one of the shop workers, as previously requested by the defence. This witness testified that there had been no violence or aggression between Roque Zambrano and the police officers when he was detained, and that he got into the police car of his own volition, without being handcuffed.

The appeal court listened to recordings of the testimony given by Roque Zambrano and the two police officers in the original trial, and concluded that "the National Police officers who testified in the trial hearing were not truthful." The Court noted that their testimony in the original trial lacked detail, substantially contradicted their earlier declarations, and they sounded uncertain in the answers they gave. This contrasted with the testimony and written statement of Roque Zambrano, which the court found "extraordinarily detailed and precise" on concrete details. The Court also found that the police officers' version of events was incoherent, illogical and therefore unconvincing.

In its judgement, the Court stated:

"First of all, it must be noted, although it may appear obvious, that the testimonies of the National Police officers do not benefit from any presumption of truth. There is repeated jurisprudence of the Supreme Court which has insisted that there is no presumption of innocence on the part of police officers, and furthermore when they are themselves, as in the present case, both accused and accusers, it is evident that as human beings, independent of the merit of their profession, they have personal interests which judges and magistratres must evaluate with total impartiality and rigor. To this consideration one must also add the objective sociological reality which signifies the inequality which exists between state law enforcement agents and citizens."

The Court criticized the unprofessional behaviour of the police officers throughout the incident, and concluded that their actions should be examined alongside the complaint of ill-treatment presented previously by Roque Zambrano. In this regard, the Court ordered its sentence to be passed on to the court examining Roque Zambrano's complaint.

On 24 April 2008 Roque Zambrano was called to testify against the police officers by Investigating Court No 28, which was examining his complaint. The investigating judge told him that the Provincial Court appeal sentence which acquitted him of the charges against him would be added in evidence to his complaint against the police.

On 14 May 2008 the investigating judge finalised the investigation into Roque Zambrano's complaints against the police and sent the case for trial. However, the investigating judge only charged the police officers with assault, and not any of the charges Roque Zambrano had made against them including false imprisonment, false testimony and defamation, stating that there was no evidence that such crimes had been committed. The trial was due to take place on 11 September 2008 but was suspended following an appeal by Roque Zambrano's lawyer to the Provincial Court of Madrid calling for the investigating court to continue its investigation into the other allegations before sending the case for trial. The Provincial Court of Madrid upheld this appeal on 19 January 2009 and ordered the investigating court to continue gathering evidence into all of the allegations made against the police officers.

On 23 April 2009 the investigating court once again closed the investigation into the charges of false

testimony, false imprisonment and defamation, without conducting any further investigatory acts. In its written decision it stated that there was no evidence to support the allegations, and specifically that “there is no evidence to suggest that the officers concerned were not entirely truthful in their initial testimony or in the trial hearing”. This clearly contradicts the sentence of the Provincial Court of Madrid when it acquitted Roque Zambrano on 24 March 2008, included in evidence in the current proceedings, which stated explicitly that the officers had lied during the trial and that their actions in relation to Roque Zambrano’s detention “should be criminally investigated.”

On 5 May 2009 Roque Zambrano’s lawyer appealed again against the closure of the investigations, arguing that it was a violation of his right to judicial redress and calling for the investigation to be re-opened and transferred to a different investigating court. At the time this report is published this appeal had been transferred to the Provincial Court of Madrid and a decision was pending.

CONCLUSIONS AND RECOMMENDATIONS:

Since the publication of Amnesty International's report *Adding insult to injury* in 2007, only two of the cases examined have resulted in convictions of the accused officers. Only one of the other cases examined has reached trial. The court recognised that torture had taken place but nevertheless acquitted all of the accused officers. Victims of torture and other ill-treatment by law enforcement officials in Spain still have a long way to go to reach justice.

Despite the repeated recommendations of Amnesty International and the Council of Europe Committee for the Prevention of Torture, the Spanish authorities have still not taken appropriate steps towards reforming the current system of investigating allegations of serious human rights violations by law enforcement officials to bring it into line with international standards of independence, impartiality and thoroughness. As a result, allegations of ill-treatment are still investigated by internal police bodies and/or criminal courts relying heavily on investigations conducted by the same police forces they work with on a daily basis. Although the police ethics committee established by the autonomous Catalan government is a welcome additional level of independent oversight of the Mossos d'Esquadra, it does not have the mandate to conduct its own investigations and cannot submit evidence to the public prosecutor or investigating judge. It therefore does not comply with the recommendations made by Amnesty International and the Council of Europe for a truly independent investigative body.

Whilst thorough, impartial and effective investigations into all allegations of torture or other ill-treatment are essential, prevention is always better than cure. In this respect, Amnesty International is pleased to note that progress has clearly been made in some police forces to implement measures designed to prevent acts of torture and other ill-treatment from taking place. The increasing use of CCTV cameras in police stations and clear personal identification of police officers on their uniforms are important developments in this regard. Amnesty International regrets to note that significant improvements in autonomous community police forces (the Ertzaintza and Mossos d'Esquadra) have not been matched at national level. As a result, the National Police and Civil Guard are falling ever further behind the autonomous community police forces in their action to protect human rights. Furthermore, the Spanish government's commitment to create a national torture prevention mechanism (in line with the requirements of the Optional Protocol to the United Nations Convention against Torture, ratified by Spain more than three years ago, and specifically included in the 2008 national Human Rights Plan) has still not been realised.

Two years after the publication of *Adding insult to injury*, Amnesty International reiterates the following key recommendations:

To the national Minister of Interior:

- Create an independent investigatory body to examine complaints against law enforcement officials including the National Police, Civil Guard, and local police forces. Such a body should comply with the following criteria:

- Be mandated to investigate all allegations of serious human rights violations by law enforcement officials, including deaths in custody, killings (including fatal shootings), torture, racism and other cruel, inhuman or degrading treatment.
 - Have the capacity to receive, register and investigate complaints filed directly by any individual, and to investigate incidents on its own initiative, absent any specific complaint.
 - Have all necessary powers, authority and resources to conduct investigations into alleged human rights violations by law enforcement officials, including:
 - the power and resources to immediately examine the scene of the incident;
 - the power to summon witnesses and to order the production of evidence and documents;
 - the power to monitor police investigations in the course of any criminal investigation into a case referred for prosecution by the independent body;
 - the power to supervise or direct the investigations of the law enforcement agencies' internal inspectorates/disciplinary units when considered necessary, and the power to replace the investigative functions of these bodies in cases of serious human rights violations.
 - Be adequately staffed and headed by professionals of acknowledged competency, impartiality, expertise, independence and probity, who are not members of the law enforcement agencies or the public prosecution. It should have at its disposal its own corps of independent expert investigators to investigate complaints.
 - Have the power to refer a case directly to the prosecuting authorities for criminal prosecution where appropriate and the power to appeal any decision made by the prosecution authorities to a court (including decisions to suspend or close investigations, and decisions on sentencing).
 - Have the power to order disciplinary proceedings to be instigated and the power to require the disciplinary body to report back to the complaints body on the result of disciplinary proceedings.
 - Have the power to make binding decisions that apologies should be granted or criticisms made, and the power to recommend adequate compensation be paid to victims.
 - Be made widely known, including through publicity in police stations.
- Take urgent steps to introduce CCTV video- and audio-recording of all custody areas and any other places where detainees may be present of all police stations, including but not exclusively detainees held incommunicado, except where this would violate the detainee's right to consult with a lawyer or doctor in private. These recordings must be kept in a secure

facility for a reasonable period of time in order to ensure they are available for viewing by investigators if so required.

- Suspend from active duty any law enforcement official under disciplinary or criminal investigation for ill-treatment for the duration of the proceedings.
- Publish in full annual reports of the National Police and Civil Guard internal inspectorates (making anonymous personal details if necessary) so members of the public can be fully informed of all complaints made against law enforcement officers and the steps taken in response to such complaints.

To the Councillor of Interior of the autonomous Basque Country government:

- Take steps to introduce a fully resourced independent body, as detailed above, to investigate all allegations of serious human rights violations by Ertzaintza and local police officials including unlawful killings, torture, and other ill-treatment.
- Extend the system of CCTV currently in use in Ertzaintza police stations to include audio recording and recording in individual cells and any other places where detainees may be present except where this would violate their right to consult with a lawyer or doctor in private. These recordings must be kept in a secure facility for a reasonable period of time in order to ensure they are available for viewing by investigators if so required.
- Ensure that Ertzaintza officers wear clearly visible name tags or numbers on their uniforms at all times so that they can be easily identified by members of the public without having to make a specific request for this information. They should not wear hoods, balaclavas or other devices to conceal their personal identity unless they are authorised to do so in exceptional instances where this is determined to be necessary for their own protection. In such cases the need for each official to be identifiable by such means as a unique traceable identification number is particularly important.
- Suspend from active duty any Ertzaintza officer under disciplinary or criminal investigation for ill-treatment for the duration of the proceedings.
- Publish in full annual reports of the Ertzaintza internal inspectorate (making anonymous personal details if necessary) so members of the public can be fully informed of all complaints made against Ertzaintza officers and the steps taken in response to such complaints.

To the Councillor of Interior of the autonomous Catalan government:

- Take steps to introduce a fully resourced independent body, as detailed above, to investigate all allegations of serious human rights violations by Mossos d'Esquadra and local police officials including unlawful killings, torture, and other ill-treatment. This mechanism could be an enhanced version of the Police Ethics Committee, or a new body.
- Suspend from active duty any Mossos d'Esquadra officer under disciplinary or criminal investigation for ill-treatment for the duration of the proceedings.
- Publish in full annual reports of the Mossos d'Esquadra internal inspectorate (making anonymous personal details if necessary) so members of the public can be fully informed of all complaints made against Mossos d'Esquadra officers and the steps taken in response to such complaints.

1 http://www.elperiodico.cat/default.asp?idpublicacio_PK=46&idioma=CAT&idtipusrecurs_PK=7&idnoticia_PK=613161 (accessed 4 August 2009).

2 “Las denuncias por maltrato contra los Mossos cayeron el 40% en 2008”, El País, 14 March 2009.

3 In the government’s national Human Rights Plan, the Minister of Interior also committed to instigating a measure to allow the compilation of up-to-date statistics on incidents which could constitute a violation of the rights of a detainee in police custody. Further information on the implementation of this measure is not yet available.

4 At the time this report was finalised, the 2009 report was not yet available.

5 AI Index number EUR 41/006/2007.

6 “Dos ‘mossos’ fueron ascendidos cuando estaban ya imputados por torturas”, El País, 27 November 2008, http://www.elpais.com/articulo/espana/mossos/fueron/ascendidos/estaban/imputados/torturas/elpepunac/20081127elpepinac_16/Tes

7 Concluding observations of the Human Rights Committee, SPAIN, UN Doc: CCPR/C/ESP/CO/5, 5 January 2009, para 13.

8 Due to the nature of the charges against Jordi Vilaseca, it was necessary for an official from the national police force to be involved in the operation, as it was outside the competency of the autonomous regional police force.

9 Full name withheld to protect privacy

10 Expert exam conducted by Prof. Pau Pérez-Sales, Doctor in Medicine, psychiatrist, Hospital La Paz Madrid, 12 February and 19 March 2008.

11 See the 2002 Amnesty International report Spain - Crisis of Identity: Race-related torture and ill-treatment by state agents (AI Index: EUR 41/001/2002).

12 See Human Rights and Penal System Observatory of the University of Barcelona, “Informe sobre juicio que tuvo lugar por ante la Sala 8a de la Audiencia Provincial de Barcelona (rollo 17/06)”, 21 January 2008; Committee for the Defense of Human Rights of the Barcelona Bar Association, “Informe de la Comisión de Defensa”, 28 January 2008.

13 Full name withheld to protect privacy.

14 In Spain an individual who has no prior criminal record and who is sentenced to two years or less imprisonment automatically have their sentence suspended.



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SPAIN: ADDING INSULT TO INJURY POLICE IMPUNITY TWO YEARS ON

Incidents of torture and other ill-treatment by law enforcement officials across Spain continue to be reported. A few preventative measures have been introduced in some law enforcement agencies (such as the use of identification numbers on officials' uniforms and the installation of CCTV cameras in police stations), but there is still no independent mechanism for investigating complaints of serious human rights violations by law enforcement officials. This is a major aggravating factor in the ongoing climate of impunity.

In 2007, Amnesty International published *Spain: adding insult to injury: The effective impunity of police officers in cases of torture and other ill-treatment* (EUR 41/006/2007). This report documented cases of individuals who had suffered torture and other ill-treatment at the hands of law enforcement officials in Spain. Two years on, Amnesty International returned to these cases to find out what justice, if any, the victims have received. The results reveal that much remains to be done to put an end to impunity in Spain, and to eradicate torture and other ill-treatment.

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