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Spain: Macroproceso 18/98 trial highlights flaws in Spanish counter-terrorism legislation

Amnesty International welcomes the decision by the Spanish Supreme Court, made public in the sentence issued on 26 May, to acquit Sabino Ormazabal and various other defendants previously convicted of “collaboration” with terrorist activity in the “Macroproceso 18/98” trial.

Sabino Ormazabal and other members of the Fundación Joxemi Zumalabe, a Basque civil society organization providing practical support and information to other non-governmental organizations in a capacity-building role, were convicted on 19 December 2007 by the National Criminal Court. Sabino Ormazabal and others were found guilty under Article 576 of the Criminal Code for “collaboration” with a terrorist organization as a result of their activities promoting civil disobedience, which the Court considered to be linked to the activities of the armed group Euskadi Ta Askatasuna (ETA). This ruling came after a prolonged judicial process beginning in May 1998, which included a trial stage lasting 16 months. Fifty-nine individuals involved in different organizations were charged with membership of, or collaborating with, a terrorist organization and other related charges. Forty-seven were convicted, nine of whom have now been acquitted.

Amnesty International considers that the interpretation of Article 576 of the Criminal Code by the National Criminal Court was excessively broad and the evidence which led to Sabino Ormazabal’s conviction was inconclusive, failing to clearly establish a connection of the kind alleged between the Fundación Joxemi Zumalabe and ETA. It also failed to establish any direct personal link between Sabino Ormazabal and ETA. Sabino Ormazabal is well-known in the Basque country for his long history of involvement in ecological and pacifist social movements, and over the years has publicly condemned ETA’s actions and the use of violence for political means.

Amnesty International has repeatedly expressed concern that the concept of “collaboration” with terrorist activity according to Article 576 of the Spanish Criminal Code is excessively wide-ranging and could be interpreted in a manner resulting in the prosecution of individuals for the legitimate, non-violent exercise of rights enshrined in international law, or that criminal conduct that does not constitute “terrorism” may be criminalized as such. In particular, Article 576 of the Spanish Criminal Code criminalizes “committing, soliciting or facilitating any act of collaboration with the activities or aims of an armed group or terrorist group or organization” (emphasis added) and could therefore result in criminalizing the conduct of individuals who, by non-violent means, advocate greater autonomy of the Basque Country.

Amnesty International condemns the serious human rights violations committed by ETA in Spain and recognizes the right and obligation of the Spanish government to take appropriate measures to ensure public safety and counter terrorism. However, Amnesty International continues to echo the UN Security Council, the heads of state and government gathered at the UN World Summit in 2005, the UN General Assembly, the European Court of Human Rights and the Committee of Ministers of the Council of Europe, in underscoring that the measures states take to protect the lives and security of those within its territory, including from the threat of terrorism, must comply fully with international human rights standards.

In his report following his visit to Spain in May 2008, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism stated that in his view Article 576 (amongst others) was insufficiently precise and therefore did not respect the requirement of legality. It consequently risked broadening the notion of terrorism to include crimes that do not comprise or have sufficient relation to the intentional element of causing deadly or serious bodily injury to, or terrorizing of, a population. In the report of the UN High Commissioner for Human Rights “On the protection of human rights and fundamental freedoms while countering terrorism” (A/HRC/8/13) published in June 2008, the Commissioner noted the obligation on states, under Article 15 of the International Covenant on Civil and Political Rights, to ensure sufficient clarity and certainty of law when drafting anti-terrorism laws and/or amending existing legislation. Whilst not making any specific reference to Spain, the Commissioner criticized legislation with vague, unclear or overbroad definitions of terrorism which could lead to inappropriate restrictions on the legitimate exercise of fundamental liberties, such as association, expression and peaceful political and social opposition. The Commissioner also noted that the inclusion of non-violent activities in definitions of terrorism has increased the risk and the practice of individuals being prosecuted for legitimate, non-violent exercise of rights enshrined in international law. In its concluding observations of 27 October 2008, the UN Human Rights Committee also expressed concern at the broad definitions of terrorism in Articles 572 – 580 of the Criminal Code, and called for a revision of these articles.

Amnesty International is concerned that the definition of “collaboration” with terrorist activity under Article 576 of the Criminal Code may violate the principle of legality and legal certainty by being too wide and vague and therefore may fail to meet the precision and clarity requirements for criminal law. As a consequence conduct that may be criminalized pursuant to the definition of “collaboration” provided in Article 576 may not amount to a “recognizably criminal offence” under international human rights law and standards. Amnesty International therefore reiterates its calls on the Spanish government to review certain articles of its counter-terrorism legislation to avoid the risk that it may punish the peaceful expression of views. All such legislation should be clear, unambiguous, and not excessively broad.

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