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Spain: Constitutional Court reiterates need for effective investigation of all allegations of torture

Amnesty International welcomes the decision of the Spanish Constitutional Court on 14 April to order the judicial investigation into allegations of torture made by Alberto Videma 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.

According to international human rights standards to which Spain is a party, the duty to conduct prompt, independent, impartial and thorough investigations whenever there are reasonable grounds to believe torture or other ill-treatment may have occurred is a key component of a state's obligation to prevent torture and other ill-treatment. The European Court of Human Rights reiterated this obligation in its ruling in the case of *Martínez Sala and Others vs. Spain* (2 November 2004), when it found that the failure to hold an effective official investigation into allegations of ill-treatment in custody violated the applicants' rights under Article 3 of the ECHR to be free from torture and other inhuman or degrading treatment or punishment. The European Court considered it "unfortunate" that the court had not taken statements from the arresting officers, the custodial officers, or the alleged victims. By denying all requests of the applicants for specific evidence to be obtained, the court had denied any reasonable opportunity to establish the veracity of their claim.

Alberto Viedma Morillas was arrested by Civil Guards on 28 February 2002 and taken into custody. 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 court 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 convicted in November 2004 for killing an army officer and membership of an armed group (Euskadi Ta Askatasuna, ETA).

Background

In Amnesty International's report "*Spain: Adding insult to injury: The effective impunity of police officers in cases of torture and other ill-treatment*", published in November 2007, the organisation

documented a pattern throughout Spain of complaints of torture or other ill-treatment frequently being closed by investigating judges immediately or after minimal investigation. Amnesty International does not believe that torture is carried out systematically in Spain but it is concerned at the frequency of torture complaints which cannot in all cases be attributed to a strategy on the part of detainees to undermine the credibility of the authorities. Investigations carried out by Amnesty International show that cases of ill-treatment and torture in Spain are not isolated incidents but examples of structural failings that affect all aspects of the prevention, investigation and punishment of torture and other forms of ill-treatment. Amnesty International has therefore recommended, among other things, the creation of an independent and impartial mechanism to investigate such allegations and the introduction of closed-circuit video and audio recording in all areas of police stations where detainees may be present.

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