



04.03.2022 **DRAFT MISSION REPORT**

following the fact-finding visit to Spain from 3 to 5 November 2021, in relation to 379 still unsolved murders committed by the terrorist group ETA

Committee on Petitions

Members of the mission:

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Ex officio members

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Introduction

The fact-finding visit to Spain from 3 to 5 November 2021 was organised by the Committee on Petitions as provided for in Rule 228 of the Rules of Procedure of the European Parliament and was authorised by the Bureau of the Parliament on 4 October 2021. The objective of this fact-finding visit was to obtain information from the competent Spanish authorities, the petitioners and the victims of terrorism about the situation regarding the unsolved murders committed by the terrorist group ETA.

Petitions and petitioners

In his petition (n° 1525/2016), the petitioner claims that in Spain there are still 379 unsolved murders perpetrated by the terrorist group ETA. This would mean that almost half (more precisely 44%) of the murders perpetrated by ETA have not had justice. The petitioner denounces Spain's failure to fulfil its duty to carry out an 'official, effective and independent investigation', which means it is not able to prosecute the perpetrators and to compensate victims' families. The petitioner calls upon the European Parliament and the PETI committee to look into this matter and to undertake an investigation, while also suggesting a possible 'country visit to Spain'. The petitioner proposes to the Parliament to ask the Spanish Government for a satisfactory explanation as to why there are so many unsolved murders perpetrated by ETA. The petitioner further asks the Parliament to formulate recommendations to the Spanish Government encouraging the authorities to take all the steps that might be necessary, in order to effectively investigate, prosecute, impose appropriate sanctions and provide truth and repair, in accordance with international standards. Finally, the petitioner asks the Parliament to report to the Spanish association for the defence of the human rights of victims 'Dignidad y Justicia' on any progress on the investigation.

Summary account of meetings

Wednesday 3 November 2021 (15.30-18.00)

Visit to the Victims of Terrorism Memorial Centre (Vitoria - Basque Country)

The visit to the Victims of Terrorism Memorial Centre began with a guided tour of all the rooms within the Museum's permanent exhibition, for which the members of the delegation were divided into two groups and briefed on the content of the exhibition by Mr Florencio Domínguez, Director of the Memorial Centre, Mr Raúl López, Manager of the Museum's exhibitions, and Mr Gorka Angulo, the Memorial Centre's Communications Director.

The Foundation of the Victims of Terrorism Memorial Centre (FCMVT) is a public sector foundation created with the objective of preserving and disseminating the democratic and ethical values embodied by the victims of terrorism and building a collective memory of the victims and raising awareness among the population as a whole in defence of freedom and human rights and against terrorism.

The role of the museum of the Victims of Terrorism Memorial Centre, inaugurated in June 2021 by the Spanish government in the framework of the Law 29/2011 of 22nd of September 2011 (article 57), is to disseminate the democratic and ethical values embodied by the victims

of terrorism, build the collective memory of the victims and raise public awareness for the defence of freedom and human rights and against terrorism. The Memorial Centre provides visitors with a documentation centre, assembly rooms, a classroom and a museum with permanent and temporary exhibitions.

At the end of the guided tour, the members of the delegation met with Mr Florencio Domínguez, Director of the Memorial Centre, who delivered the report entitled ‘La Justicia Pendiente. Asesinatos de ETA no esclarecidos’, which served as a guiding theme for his dissertation. Mr Domínguez outlined its content, which he divided into the different chapters of the report: in 2010, denunciation of impunity; some reasons for impunity; the different cases that are pending; a society living in terror; international experiences; five special cases: the disappeared; what to do now, and a series of conclusions.

He first outlined that there were a large number of these cases that are criminally time-barred and cannot be prosecuted. What we can do, according to Mr Domínguez, is allow criminal proceedings to make room for the action of truth and remembrance. He suggested that the public prosecutor’s office attached to the Spanish High Court, which is responsible for investigating all unresolved cases, set up an updated investigation procedure with all available information on those cases so that it can be provided to the families. This will at least give them the partial satisfaction of having all the information available.

Mr Domínguez pointed out that, in the case of the five people who have disappeared, he considered that the European Parliament has the moral authority to appeal to those who have information about the fate of these individuals to provide it, on a confidential basis, so that the competent authorities and the families concerned have access to the information, which will enable them to recover the remains of their loved ones.

During the question and answer session, the following members of the delegation spoke:

Ms Pagazaurtundúa pointed out that the accumulated impunity had gone unnoticed, and it was only with the publication of the book ‘Vidas Rotas’, co-authored by Mr Domínguez, that it was uncovered by a journalist working for the Victims of Terrorism Foundation, of which Ms Pagazaurtundúa was Chairwoman at the time. The first time she went to inform the President of the High Court of this situation, he did not believe it was possible. Each of the affected families knew this situation, in silence, but there was no connection among them. Associations and foundations have been working tirelessly, and the State has tried to do something, as far as this was possible. Missing indictments, failures to call victims for any of their cases, the non-existence of an office to provide assistance for victims of terrorism within the High Court – these factors generated an inadvertent situation, according to Ms Pagazaurtundúa. The Zaragoza prosecutor corroborated these data.

Mr Buxadé asked why the data on unsolved cases did not match and Mr Domínguez responded that the report was drafted based on the information held by the public prosecutor’s office at the High Court. For its part, the Victims of Terrorism Foundation pointed out that there are more than 300 unsolved cases. Mr Buxadé mentioned the fact that the Amnesty Law was passed in 1977, resulting in the release of 1 232 ETA terrorists, of whom 676 became involved once again in terrorist activity, with 81 soon being sent back to prison. Questions were also asked about expunged, lost and time-barred files. He referred to the calls for “peace for prisoners” in 16 murders by ETA’s political-military wing, ETA p-m, the

possibility of non-conviction due to statute of limitations as well as to the law on reparation for victims when perpetrators are in third countries. Mr Domínguez pointed out that there had been no cooperation in Venezuela and Cuba and that some extradition problems have been encountered in Belgium.

Ms Evren, Head of the Delegation, thanked Mr Domínguez for his welcome and presentation. She introduced the members of the delegation and stated that, symbolically, starting the fact-finding visit at this Memorial Centre was a much needed immersion in the quest for remembrance, peace, justice and truth. The aim of the visit was to ensure the focus was on the victims. Ms Evren asked how messages of peace and harmony could be passed on to new generations. Mr Domínguez indicated that the aim was also to play a role in the field of education, that there were projects under way such as comics with testimonials from victims, a video game on the de-legitimisation of terrorism, a web page, a 'glossary', etc, but also the development of teaching materials and testimonials from victims in the classroom.

Mr Złotowski referred to the case of Poland, on the one hand, recalling its suffering in the face of State terrorism caused by communism. On the other hand, the Institute of National Remembrance (Instytut Pamięci Narodowej) was established as a historical institute, but it also has a prosecutorial remit. For many different reasons, and according to him, the situation in Spain is similar, it is not possible to identify all the perpetrators and take legal action against them because of social agreements, amnesty, lack of documents and the number of years that have passed. That said, Mr Złotowski emphasized that there was a need to remember that all these people who were involved in terrorist actions, or who were terrorists, should be convicted; if not legally, then by making them public, by naming them so that the facts and actions of the past do not go unnoticed.

Mr Agius Saliba welcomed the opportunity provided by the experience and that we were leaning from extremism in order to not repeat the past. He thanked the governments for creating this Foundation dedicated to victims, which is a powerful message for generations to come. He pointed out different reasons relating to solved cases.

Mr Gheorghe thanked all those present and expressed gratitude for everything that could possibly be done to heal the wounds. He asked if there was an efficient system where confidential information could be provided and if there were cases in front of the European Court of Human Rights.

Mr Domínguez talked about the digital 'alertcop' system used against jihadist terrorism, but not in relation to ETA, which is subject to more conventional mechanisms. Mr Domínguez referred to an extradition case in Belgium that was brought to the European Court of Human Rights. Regarding the current investigation, no victims' association have brought cases in front of the European justice system.

Thursday 4 November 2021 (8.45-10.00)

Meeting with the petitioner and his representative at the Office of the European Parliament in Spain (Madrid)

Ms Evren, Head of the Delegation, welcomed the morning's first two participants and explained the reason for the fact-finding visit. She pointed out that, the 10th anniversary of the end of violence announced by the terrorist group had just passed, and it was important to remember more than 800 deaths and thousands of attacks, as well as the cases that were still unresolved. The obligation for remembrance, justice and peace for the victims must also be fulfilled. Ms Evren suggested that, throughout the day, the right questions should be asked, so that an answer could be provided as to why so many cases were still unsolved.

Mr Daniel Portero de la Torre, the petitioner's representative and Chairman of the association 'Dignidad y Justicia', spoke first. After thanking the European Parliament for the concern it has shown in considering the petition regarding ETA's unsolved crimes, he pointed out the lack of momentum on the part of the Spanish institutions in recent years in this regard. He made a request to the delegation of the European Parliament to find new ways to enable these cases to be explored fully. In the five-year period since the petition was filed in 2016, only one (Mr Cortiza's case) of the 379 cases reported in the petition has been resolved. Any mention of resolved cases refers to cases subject to final judgement delivered by the Spanish Supreme Court. The petitioner considers that impunity is continuing and that the investigations carried out are not sufficient. It is time to look for alternatives, according to him. He stated that terrorism in Spain over the last 50 years is certainly different from what had happened in the rest of the European Union, as it was supported by a significant portion of Basque society as opposed to another part of that society that wanted nothing more than to live. No one could imagine that the terrorists attacking the Bataclan in Paris or those responsible for other attacks that have taken place in the rest of Europe, such as in London, would be honoured when they are released from prison. This is what happens with ETA terrorists, for whom an 'Ongi Etorri' (welcome) is organised. That part of society considers them heroes. This is a form of terrorism that hides behind the acronym of a political party called EH Bildu, the successor of a political organisation called Batasuna, which is capable of influencing the political decisions of a government. The central question here is what happens to the victims. One of the political leaders of EH Bildu, Arnaldo Otegi, in the context of the 10th anniversary of the cessation of violence by ETA, went so far as to "lament" the pain suffered by the victims. However, they have never cooperated with the justice system in order to solve the cases, which are still pending. It is a lament that, for the victims, has absolutely no value. Some of the unsolved cases are peculiar in that they have been expunged: this means the physical destruction of documentation relating to a judicial proceeding on the understanding that nothing else can be done. Among the victims attending the afternoon session, was the victim in one of these expunged cases (the case of Luis María Uriarte Alzaa). In Spain, every effort has been made to find other ways of resolving these cases. In the case of Mr Portero's father, attempts have been made to establish the possibility of a conviction for 'indirect perpetration (perpetration-by-means) through control of the organisation' under Article 28 of the Spanish Criminal Code, through an attempt to charge the leaders of the terrorist group as the masterminds of the attack, just as the Nazi leaders were tried in Germany after World War II (Claus Roxin). In an indictment, ETA has been found in Spain to have committed crimes against humanity as well as terrorism.

Mr Portero then read a statement in which he pointed out that the fact that so much time has passed without the crimes being solved was considered by the European Court of Human Rights (ECtHR) as a form of torture or inhuman suffering for the victims (Article 3 of the European Convention on Human Rights). Most of the unresolved cases of more than 400 families exceed the five years established by the ECtHR. The right to know the truth about what happened is an internationally recognised right. ETA continues to torture all these families today, a torture exacerbated by the acts of tribute to the terrorists who are released from prison. This is a violation of human rights that is continuing over time. Mr Portero considers that the Government grants prison privileges, without demanding the right to justice and real cooperation in resolving the murders. More than 400 families have not even been given a trial. Neither ETA, nor any of the members of the organisation, who have been convicted, has ever cooperated in shedding light on these unsolved attacks. More than 100 tributes to murderers take place every year in the streets of the Basque Country and Navarre. 11 out of 35 leaders of the terrorist organisation are still at liberty. Since 1 October 2021, the authority, which manages prisons in the Basque Country, has been transferred to the Autonomous Community, which has offered prison privileges to 15 individuals convicted of terrorism. Spain is the EU country with the highest number of displaced persons who had to leave the Basque Country and Navarre because of ETA. According to the ECtHR, mass expulsions can be considered as a crime against humanity.

International criminal law has not applied to ETA for the last six years. 65 cases that could have been tried in Spain, as they are not time-barred by the statute of limitations, and yet those involved in these crimes continue to enjoy impunity. None of the families should be forgotten. The petitioner asked the European Parliament for help to investigate at least 65 of the 379 cases mentioned.

During the question and answer session, various members of the delegation spoke:

Mr Buxadé, Ms Maestre and Ms Pagazaurtundúa spoke about impunity, possible State failures and the rule of law. What can be done to address this situation? They underlined that people convicted of terrorism offences returning to work as public servants, despite their convictions, may increase victimisation. They called for people not to be re-victimised so that collective and personal wounds can be healed.

Mr Portero considers that political will is linked to judicial will. The composition of the public prosecutor's office in Spain is very hierarchical. Action at the United Nations is a possibility, according to him. As a European citizen, he said that a support of the European Parliament was necessary. For the transfer of prisoners, which is discretionary, there should be a favourable opinion from the Parole Board, and in half of the cases, this is negative. He also mentioned tributes to terrorists who have not been convicted.

Mr Miguel Ángel Rodríguez Arias, petitioner for petition 1525/2016, then spoke, reflecting what in his view were the key points for dealing with this issue from an international criminal law perspective. In short, the aim is to prevent impunity for crimes against humanity. He mentioned, as an example, the case of Mr Uriarte and the failures in the police and judicial investigation of the case. Mr Rodríguez dropped the case as a private prosecutor at the request of his client, due to pressure from his entourage and had to continue as a public prosecutor. Mr Miguel Ángel Rodríguez Arias considers that the law should be applied.

The 379 cases still unresolved must be considered as crimes against humanity, no matter where and no matter when, the perpetrators should be arrested, tried and convicted (the work is based on four UN Resolutions). The fact of forcing a part of the population to leave their homes speaks of the existence of an international criminal offence, either a crime against humanity or a kind of genocide, according to the petitioner. In other cases, the ECtHR has considered that if there was only expulsion of a population, it would be a crime against humanity, but if there were expulsion and also killings to force expulsion, it would be considered genocide (*Georgi v. Germany* 2016).

The ETA attacks, 379 unsolved murders and the expulsion of some 200 000 people in a territory of 2.5 million people cannot be disassociated, underlined Mr Miguel Ángel Rodríguez Arias. He reminded that these were the crimes prosecutable under international criminal law. Spanish anomaly that the offence of crimes against humanity is only recognised from 2003 onwards. He mentioned the Article 7, paragraph 2 of the European Convention on Human Rights and stated that ETA's crimes must be considered as crimes against humanity and, therefore, must not be subject to statute of limitations and cannot be amnestied (example of Milosevic and his negotiations was given). He also drew attention to 65 cases, where the public prosecutor's office could file actions today. He mentioned article 28 of the Criminal Code and the case law of the Supreme Court, which refers to indirect perpetration through control of the organisation. . He stated that no ETA leader have ever been brought before the Supreme Court. Ordinary assassination proceedings against the ETA leadership in October 2000 (573) have not been admitted as a crime against humanity since 2003. He mentioned a list of 35 living identified ETA leaders (members of the Zuba, the governing committee). The petitioner requests to assist to Spain in the implementation of its own legislation and case law.

Ms Evren, Head of the Delegation, undertook to include recommendations in the mission report for the European institutions (European Commission and Council of the EU) that seek to put an end to this impunity that both the petitioner and his representative have described. As the European Parliament is an institution that embodies democratic values, it is unacceptable that these 379 cases remain unresolved to this day. This fact-finding visit is taking place following the request of the petitioner.

Thursday 4 November 2021 (10.00-11.30)

Meeting with representatives of law enforcement agencies and security forces and of the Ministry of Interior at the Office of the European Parliament in Spain (Madrid)

Ms Evren, Head of the Delegation, welcomed those present and explained the reason for the fact-finding visit. Although the 10th anniversary of the effective cessation of violence announced by the terrorist group had just passed, we must continue to remember the cases still unresolved.

The meeting was also attended by Brigadier General Valentín Díaz Blanco, Commander of the Information Headquarters of the Guardia Civil (the Spanish military police). Brigadier General Díaz focused his remarks on the actions carried out by the Guardia Civil in the fight against terrorism and the actions they continue to carry out today. With regard to the figures, while no exact figures are available for the security forces, the diversity of the data may be

due to the inclusion of some 74 attacks that took place prior to the enacting of the 1977 Amnesty Law, which are very difficult, if not impossible, to investigate. He outlined the obstacles encountered during all those years of fighting terrorism. He pointed out that most of the unsolved attacks took place during the ‘years of lead’ from 1978 to 1987, when there was a very large amount of ETA activity, with daily attacks and deaths. Investigation procedures were not as advanced and modern as they are today. In a professional career spanning 42 years, Brigadier General Díaz had to work with manual files, without computerisation or digitisation.

Another difficulty they face is the passage of time and the risk that offences might become time-barred. In Spain, the statute of limitations for attacks resulting in death is 20 years. He mentioned the legislative change that recognises crimes against humanity, which could encompass terrorist attacks.

Brigadier General Díaz also mentioned the absence of international cooperation, especially during the first years of the transition to democracy in Spain, during which many alleged terrorists fled to third countries to avoid justice, in some cases in secret but in others with the knowledge of the authorities of the countries to which they were fleeing. He underlined the geographical concentration, in that 80% of the attacks took place in the Basque Country and Navarre, societies that lived in fear of ETA terrorism. This made it very difficult for citizens to cooperate with the security forces.

At present, the Guardia Civil has four open lines of investigation.

- 1) Operation Damocles: in cooperation with the National Police, all cases continue to be investigated and if a thread is identified for further investigation, that investigation will be pursued to its ultimate conclusion, with those responsible being brought to justice. ‘Expert intelligence reports’ are drawn up, adding new forensic techniques, use of DNA evidence, fingerprints, etc.
- 2) Operation to identify ETA members residing in third countries and to clarify their participation in attacks in order to request their extradition (France, Germany, United Kingdom, Mexico, Cuba, Venezuela).
- 3) Operation to bring action for civil liability against ETA members who have already served their criminal sentences, along with the National Police. Action against 62 terrorists, debts of 11 million euros, 18 real estate properties, work salaries, bank accounts and vehicles.
- 4) The fourth line, as of February 2018, involves analysis of all the information transferred by the French authorities in relation to the terrorist group ETA. This led to six cases reopened and two individuals indicted. More than 160 police reports were submitted by the Guardia Civil regarding attacks that have not yet been resolved, with special emphasis on the most urgent cases that are reaching their statute of limitations. There are 40 open legal cases of which 20 are either pending or have been resolved.

Brigadier General Díaz stated that more could be done. The only way to fully investigate all the attacks is for the terrorists to cooperate; work is also being done along these lines and some cases have been solved. Victims must know the truth, according to him. The Guardia Civil informs the associations and families and will continue to work to this end. The bulk of the victims belongs to the State security forces and he dedicated his thoughts and remembrance to all the victims.

The next person to speak was Mr Eugenio Pereiro Blanco, General Commissioner for Information of the National Police. He provided an assurance that they were still working to resolve the unsolved attacks. They have encountered difficulties, but no external obstacles. It would be desirable that ETA members cooperate with the justice system, but the opposite is generally the rule. Since 2011, work has continued, but difficulties are being encountered due to the passage of time and the absence of witnesses, especially due to fear, which hampers the police investigation.. Limited resources for protecting civil society and the police and preventing attacks were provided, especially during the years of lead. Lines of work coinciding with those of the Guardia Civil, unsolved attacks continue to be investigated. One person was arrested in July 2020 for involvement in a 2001 attack in Zaragoza. Searches continue for weapons not handed over by ETA. The National Police has data on 26 individuals residing abroad. Different cooperation with EU countries, Cuba and Venezuela. A joint team was established to work on the documents handed over by the French authorities, the 'ETA papers'.

During the question and answer session, the following members of the delegation spoke:

Mr Agius Saliba does believe that there are many circumstances that make it difficult to resolve these cases. He showed his solidarity with the State law enforcement and security forces. He asked whether the difficulties in prosecuting the instigators – the ETA leaders – as opposed to the physical perpetrators were due to legal limitations or other issues.

Mr Gheorghe stated that he supports and appreciates the fight against terrorism by the State security forces. He asked whether these unresolved cases were considered closed/cold cases or open and pending cases, whether the public prosecutor's office was needed to open these cases and whether they needed more technical resources, assistance or international cooperation. He also asked if there was any information on whether terrorists had a later life as common criminals.

Brigadier General Díaz responded that ETA leaders responsible for leading the three apparatuses (logistical/military/political) had been prosecuted and charged. They are certain that important decisions were taken jointly by the three leaders. Regarding the status of the cases, he indicated that as soon as they find a lead, they get to work and draft the corresponding police report, regardless of whether they know that 20 years have passed and that if they take it to the High Court, they will be told that the statute of limitations has expired. Regarding the need for resources, it should be noted that there are still a lot of personnel involved in these issues, especially analysts. Europol's full cooperation is available, although he reiterated the absence of cooperation from certain States already mentioned, such as Cuba and Venezuela.

Ms Montserrat then spoke, thanking the State law enforcement and security forces for all their work in the fight against terrorism, and stated that this visit was not intended to prosecute anyone, but to try to avoid impunity. She raised five issues: the applicability in Spain of international criminal law in relation to crimes against humanity before 2004, the concept of indirect perpetration through control of the organisation, international cooperation, the suffering of the victims, in seeing people who have been convicted and disqualified from holding public office returning to their jobs and the glorification of terrorists on their release from prison through public events. She asked whether all of ETA's leadership have been

identified by the police. And if, in Spain, ETA leaders have been convicted of command responsibility, whether Article 28 of the Criminal Code could be applied to them. As a European citizen, she was struck by the fact that it has taken 20 years to extradite a terrorist from Belgium to Spain. Tributes and glorification of terrorists should be avoided because of the added suffering they cause to the victims. She stated also that international cooperation needed. There should be no granting of prison privileges if there is no cooperation with the law.

In his responses, Brigadier General Díaz made a distinction between police determination and judicial determination of the various ETA leaders. Police determination is more extensive as the judiciary requires certain procedural safeguards. Reports have been produced for the High Court in which crimes against humanity have been mentioned and others in which all ETA leaders have been identified, but these reports have not been accepted by the High Court for legal reasons. As for terrorists who have fled to third countries, they are living in secret in European countries. He praised the cooperation provided by the French Government in recent years in the fight against terrorism, and considered that other EU countries should follow that example. There is a focus on individual cooperation of terrorists when they consider there is a possibility that such cooperation might be forthcoming. In terms of glorification, there is a High Court proceeding under way with 10 defendants. Every time there is an 'ongi etorri', a report is made by the Police or the Guardia Civil, but it is becoming increasingly difficult as it must be related to the possibility of a new attack being committed, and this has not happened in the case of ETA since it stopped carrying out attacks in 2011.

Mr Buxadé thanked the State security forces for their work promoting the freedom of all Spanish citizens. He mentioned the Victims of Terrorism Association (AVT) report stating that in 2008, 175 cases were dismissed, and asked if they had been informed of the reasons for these dismissals. He asked whether attempts were being made to resolve or investigate pre-1977 cases under the Amnesty Law, despite the passage of time. With regard to expunged or lost files, he asked whether they are asked by the courts to reconstruct them. He also asked whether the State security forces are consulted and asked for a prior report when prison privileges are granted to terrorists, to establish whether they are cooperating in the resolution of other attacks, especially with regard to the ETA leadership.

Brigadier General Díaz responded that once the police report is forwarded to the court, it may ask for additional information, but the police are no longer part of the judicial proceedings and are not informed of the decisions taken at procedural level. For the security forces, there are no dates, if they find any clues; they follow them to the end. Spanish legislation does not provide for the police to prepare a report prior to release from prison or in the case of a change of prison category.

To close this part of the meeting, we heard from Ms Montserrat Torija Noguerales, Director of the Ministry of Interior's Support for Victims of Terrorism Department. She outlined the work of her department in providing support, including the victims of ETA terrorism. This is based on the need to document what was happening with unsolved cases and associated impunity. She considers that the Spanish legislation for the protection of victims of terrorism based on memory, dignity, truth and justice has improved their situation. Although certain cases cannot be brought to trial, both victims' associations and public institutions, try to clarify the facts of these cases so that the families can find out what happened. The Spanish legislation has progressively focused on providing support for victims of terrorism. At the

time, this was through financial reparation, based on compensation and extraordinary pensions. The 1999 law on solidarity with the victims of terrorism was the first law to establish a holistic view of what victims have had to suffer and endure. This covered not only economic reparations but also moral reparations. After the terrible terrorist attack in Madrid in 2004, a team of social workers and an entire working group was formed to support the victims of terrorism. The High Commission for the Support of Victims of Terrorism was founded, establishing a permanent team of professionals working with and supporting victims of terrorism in the areas of economics, medicine and psychology. Subsequently, Law No 29/2011 on the Recognition and Comprehensive Protection of the Victims of Terrorism includes financial compensation accompanying extraordinary pensions.

Law 29/2011, which establishes two avenues for the recognition of compensation to victims of terrorism who have suffered personal injury such as death, physical or psychological harm.

The first of those avenues is provided in article 3, which recognises a series of compensation to victims of terrorism by simply proving the damage suffered and the causality of the attack. In other words, there is no need for a guilty verdict to obtain the compensation provided for by law.

These compensations are significantly different from those to which victims of other crimes are entitled, since the legislator considers terrorism to be a crime with political intent aimed at the whole of Spanish society. Compensation differs both in the absence of a guilty verdict requirement, which is required for victims of other crimes, and in the amount.

The second avenue is set out in article 20 of the Law, by which the State assumes, within certain limits and on an exceptional basis, the payment of the corresponding compensation, imposed by a final judgment, by way of civil liability for the perpetration of any of the crimes falling within the scope of Law 29/2011, the amount of which is deducted from the amounts which the persons concerned may have received by way of aid for personal injury.

Thursday 4 November 2021 (12.00-14.00)

Meeting with representatives of the Judiciary and Public Prosecutor's Office at the Office of the European Parliament in Spain (Madrid)

The initial remarks at this meeting were provided by Mr Antonio del Moral García, Judge of the Supreme Court. He represented Mr Manuel Marchena, President of the Criminal Chamber of the Supreme Court, who was not able to attend. His words focused on the work of the Supreme Court as the final court of appeal in terrorism cases referred to it.

The meeting then heard from Mr Juan Pablo González-Herrero González, President of the Madrid Provincial Court. Previously, in his work as an investigating magistrate in Central Court No 3 and a magistrate in the Criminal Division of the High Court, he had an essential role in determining whether the attacks committed by the terrorist organisation ETA, from 1st October 2004, could be considered as crimes against humanity. In the order of 9 July 2015 and the indictment of 27 October 2015, in which five members of the leadership of ETA were indicted, the Magistrate concluded that it was possible to sustain a finding of the existence of a crime against humanity under the Spanish Criminal Code, which contemplates the commission of the crimes of murder, forcible transfer and deportation, among others, when

these crimes are committed as part of a generalised attack against all or part of the civilian population, this being the element that makes them crimes against humanity. This is due to the fact that, in the case of ETA's crimes, these elements or circumstances are prima facie present, since the criminal acts are committed as part of a systematic attack against a portion of the civilian population, made up of groups that are persecuted for political and ideological reasons, whose elimination or expulsion from the territory by means of coercion or terror are considered by the organisation as strategically necessary for the achievement of its political objectives. This does not seem possible, to date, for attacks committed before 1st October 2004, due to the principle whereby the criminal law is not retroactive, given that the offence of crime against humanity has only been recognised in Spain since 1st October 2004. The judge also addressed the question of indirect perpetration through control of the organisation and he specified that in the Spanish case law this have not yet been applied to the top leaders of ETA, the individuals behind more than 300 murders that still remain unpunished. He concluded by saying that in this case, the requisite conditions are met to consider that we are dealing with a case of indirect perpetration through control of the organisation: the existence of an effective hierarchy/subordination relationship in which the indirect perpetrator exercises command power, the fungibility of the immediate perpetrator at the disposal of the organisation, and the availability of a large number of fungible perpetrators to implement the organisation's policies of which the indirect perpetrator is aware and uses it knowing that all his orders in line with the strategy set by the organisation will be executed without possibility of discussion by the material perpetrators, who merely carry out the orders received.

Ms Ana María Rubio Encinas, Magistrate of the High Court, concluded the session. Ms Rubio focused her remarks on the diligence with which the High Court had resolved the terrorism cases referred to it. The High Court acts as a sentencing court and has no investigative function. She emphasised that the cases referred to had not reached the trial stage in the High Court and she had not therefore had an opportunity to familiarise herself with the details of those cases. She indicated that, in the last year, several members of ETA who were arrested in France and extradited to Spain have been tried. She stressed that they have never stopped trying cases that have come before the High Court.

During the question and answer session, the following members of the delegation spoke:

Mr Złotowski underlined the problem highlighted by the victims of terrorism – on the one hand, the crimes that have not yet been solved and have not yet reached the High Court for trial and, on the other hand, the treatment given to the individuals convicted once they are released and are honoured in their homeland. He also pointed out that terrorist crimes not only target the victims and their families, but also society as a whole and the State. He stated that terrorists must be prosecuted in a specific way. According to what he had heard from the State security forces, they seem to have done their job of police investigation but the public prosecutor's office seems to be inactive on these unsolved terrorism cases which, he stressed, are not only directed against individuals but against the country's system of government.

Mr Gheorghe asked if there are many cases brought by victims' associations or victims requesting trials in relation to these unresolved cases. He asked whether, as magistrates, they considered that the Spanish legislation could be improved to make the judicial system work better and more efficiently.

The floor was then taken by Ms Pagazaurtundúa, who, after thanking the judges for attending and for their remarks, explained that it was in 2010 that the existence of all these unresolved cases was discovered by the Victims of Terrorism Foundation as a result of the book 'Vidas rotas'. After an initial moment of disbelief on the part of the then President of the High Court, the Prosecutor Javier Zaragoza corroborated the data. She pointed out that the victims had often not been informed about their case files. She stated that, in the case of her own brother, there was a case of necessary collaborators of which the family was not aware. She added that one of the necessary collaborators was a civil servant. The conviction disqualified him from performing that role, but as this was done incorrectly due to a formal defect, this person returned to his position, surrounded by enormous hype and causing humiliation for the victims. Only those who have not repented for their actions are honoured. She mentioned the resolution of the European Parliament's Special Committee on Terrorism (TERR) on the need to avoid the glorification of terrorists and secondary victimisation. She considers that in the Basque Country, there is an anti-pedagogy stance and that with tributes of this kind for terrorists, children will end up considering them normal and they will sow the seeds for possible future violent radicalisation. This kind of public behaviour is also a source of distress for the victims.

The floor was then taken by Ms Montserrat, who thanked the judiciary for their work in the fight against terrorism, especially when members of the judiciary have also been victims of ETA – 14 magistrates and judges or their bodyguards or drivers. She highlighted the point that the fact-finding visit was not meant to judge anyone, but to learn and help to improve. Seeking to ensure that there is no further impunity, not only in Spain but also in any of the Member States. She stated that the petitioner had pointed out to them that Spain had recognised the offence of crimes against humanity in its legislation since 2004, and asked what could be done to enable the prosecution, in accordance with international criminal law, of crimes committed prior to 2004, which would resolve some of the existing impunity in terrorism cases. Secondly, she referred to the concept of indirect perpetration through control, which is included in the Spanish Criminal Code, and asked whether it has been applied by the courts. Third, how can the European institutions improve legislation in this area and in relation to international cooperation? Fourth, she echoed Ms Pagazaurtundúa's comment on the need to prevent people who have been convicted and disqualified from holding public office from being able to do so again. Fifth, she spoke about the glorification of terrorism and the fact that the European courts have not considered this concept to include certain actions that we should possibly seek to have categorised as humiliation of victims, as a legal category to be included as an offence and not rejected by the courts. Another issue is that of prison privileges granted to those convicted of terrorism who have not cooperated with the justice system. She also asked for an explanation of the indictment of ETA's top leadership in 2015.

Mr del Moral replied and pointed out that, as a citizen, he agrees with many of the concerns expressed by the members of the delegation, but as a magistrate what he is trying to do is to improve the response given to the victims. He agreed with Mr Złotowski's statement that the victims are the individuals concerned but also society as a whole. He mentioned cases of fellow judges who were victims of ETA. He stressed the fundamental role of the public prosecutor's office in the process of investigating unsolved crimes in conjunction with the State security forces. He believes that the public prosecutor's office at the High Court has made efforts in recent years to resolve some cases, with concrete results. He considers that the Spanish legislation is aware of the difference between a terrorist murder and another type of murder, in qualitative terms as representing a challenge to the State and in the treatment given

by the judges who try such cases. In the Supreme Court, the backlog of cases with suspects in custody is only a few months. He stressed the peculiar nature of class actions in Spanish criminal legislation. Any citizen can take on the role of prosecutor in a terrorism case, alongside or even in opposition to the public prosecutor's office. This has a psychological effect by allowing victims' associations or the victims themselves to be involved in the proceedings. He also focused his response on the legal difference between the glorification of terrorism and the humiliation of victims, which he supported using Supreme Court rulings. Above all, the standards used to compare glorification of terrorism and freedom of expression, which are interpreted very broadly and with greater tolerance by the European Court of Human Rights, are totally different from the standards used to compare humiliation of victims and freedom of expression. The legislation could be improved by separating humiliation from glorification. He is familiar with the issue of crimes against humanity, its treatment by international courts and even a Supreme Court ruling on the Argentine dictatorship, with many individual votes, but believes that it is difficult to break the statute of limitations established by criminal law, as established by the Spanish Constitutional Court. In relation to disqualification, it should be noted that civil liability, once imposed by sentence, is not subject to a statute of limitations. On the issue of vicarious liability, the problem is the complexity of hierarchical organisations and proving this linkage or proving that the perpetrator is only the instrument. In the Supreme Court, there are two rulings, one in the case of Latin American gangs and the other in the case of a gang of violent robbers, which reflect the same doctrine. In the sphere of terrorism, there has not been a case in the Supreme Court where this issue has been argued before that Court. Only in the case of the kidnapping and murder of Publio Cerdón, there is a mention of commission by omission. In the ETA cases that have been tried, this ground has not been used.

Mr González-Herrero continued the response and agreed with Mr Złotowski that terrorist attacks are attacks on people's lives, but also on society. ETA's violence lasted for almost half a century and affected all sectors of society. In his opinion, and as it appears in the above-mentioned 2015 court order, ETA's crimes can be considered crimes against humanity because they are widespread, systematic attacks against a sector of the population. In this case, the crimes are not committed in a context of institutional oppression, but the fact that the victims are chosen for specific political and ideological reasons does apply. The problem in Spain is that this crime was not recognised by the Criminal Code until October 2004. For this reason, the ETA leadership can only be tried for crimes against humanity in relation to crimes committed after 2004. The effects on Basque society have continued to exist after the cessation of violence, as 200 000 people had to leave the Basque Country, and many have not returned. Certain political parties were unable to form electoral lists in small Basque localities because of fear and intimidation. That fear is still present. Mr González-Herrero replied that in the Spanish judicial system, the role of the investigating judge is of great importance in the investigation. He also pointed out that in the Spanish judicial system, if accomplices or indirect perpetrators are proven to be involved, they will be prosecuted. He described the case of Mikel Antza, who was arrested in 2004 and imprisoned in French jails until 2019, but who could not be charged in Spain for any of the crimes committed during the period from 1992 to 2004, during which he was the head of ETA's leadership. Mr González-Herrero stated that for non-time-barred offences, indirect perpetration through control of the organisation should be explored. Regarding international cooperation, this has improved in recent years and efforts continue to be made to improve the speed of action. The functioning of the European Arrest Warrant (EAW) could also be improved. As for the glorification of terrorism, this is included

in the Criminal Code but there is a more restrictive case-law interpretation, but it should be separated from humiliation of the victims.

Ms Rubio Encinas stated that the number of appeals pending in the High Court is minimal and that international cooperation has been excellent in recent years, especially with the French authorities.

This was followed by some remarks from Mr Jesús Alonso Cristóbal, Prosecutor, Head of the Public Prosecutor's Office at the High Court. He noted that one of the tasks of the public prosecutor's office at the High Court is to investigate crimes committed by armed gangs. In 2017, a need was identified to give a new impetus to these investigations, which, he pointed out, have never stopped. In 2018, a special section was set up to try to solve unsolved crimes, with the police or the Guardia Civil, and those still in this situation have been carefully examined. The transfer of documentation on ETA by the French authorities in 2016 has enabled the search for evidence to continue in an attempt to solve some of these cases.

This block of remarks was closed by Mr Marcelo de Azcárraga Urteaga, Prosecutor at the High Court responsible for the coordination group for unsolved crimes. An exhaustive study of new documentation submitted by the French authorities in 2016 is under way. The aim of the group he leads is to seek the truth about all these unresolved cases, irrespective of whether they are time-barred from prosecution. The right to know the truth is not time-barred. There are two special units in the police and the Guardia Civil investigating these cases and the public prosecutor's office has recently received information about a murder that took place in 1978, which is most likely time-barred but on which they will not stop investigating. Evidence is being sought that may be connected to multiple unsolved cases. It is frustrating not to be able to bring some of these cases to justice, but more research is needed. He spoke of the opening of 22 High Court proceedings in relation to ETA crimes, which have the objective of reopening pre-1978 cases tried in military courts. The aim is to find the truth and look for more evidence that leads to the victims. Quite a number of proceedings are being opened in recent times and 49 cases were reopened in total.

During the question and answer session, the following members of the delegation spoke:

Mr Gheorghe asked whether the public prosecutor's office had received any indications from the political authorities on how to proceed in these terrorism cases.

Mr Agius Saliba expressed his appreciation for the work of the public prosecutor's office and its ongoing search for the truth and the resolution of unresolved cases. He considers that the institution is carrying out work that is essential in shedding light on these events.

Ms Montserrat expressed her gratitude for the work of the public prosecutor's office and framed her question using the example of the last ETA attack in 2009 in Calvià. Although we do not know who were the material perpetrators, it is known who were the ETA leaders at that time, who ordered the attack, and she wondered why the Criminal Code is not being applied in relation to indirect perpetration through control. She also asked about the issue of prison privileges for terrorists who do not cooperate with the justice system, as they are intended to do so. She pointed out the possibility of distinguishing between glorification of terrorists and humiliation of victims and how to improve the treatment of these situations.

Ms Maestre thanked the public prosecutor's office for its participation in this meeting and indicated that the petitioner had pointed out that the public prosecutor's office could have been an obstacle in the investigation of these cases and also questioned the actions of the different governments in this respect. She asked about the work undertaken and the results achieved by the specialised groups within the public prosecutor's office in this area.

Mr Buxadé mentioned that the representative of the Guardia Civil had spoken in his remarks about 160 reports submitted to the judicial authorities, which have led to 40 of these cases being opened and only 20 trials. He wondered what has happened to them and whether it is the statute of limitations that has prevented them from being prosecuted. He also asked whether crimes committed before the Amnesty Law are still being investigated to ascertain the truth and commented on the issue of crimes against humanity and their treatment by the Spanish judicial authorities, questioning whether this type of crime cannot be charged retroactively in Spain before 2004. He also asked about the political agreements that were reached in the 1980s and led to what was called 'peace for prisoners', and whether the public prosecutor's office also investigates cases that might be included under these political agreements.

Mr Alonso, the prosecutor from the High Court, replied, stressing that the public prosecutor's office had never received any instructions as to how to proceed in the exercise of its functions. It acts in accordance with the principle of legality and in full independence, when evidence exists. There have never been any external influences in this regard. In relation to the opinion of some victims' associations about his work, he considers these to be very subjective. The public prosecutor's office investigates, reopens and continues investigations on these cases. Sometimes, what is sufficient for police investigations is not sufficient for judicial investigations. Court proceedings are initiated when it is considered that there may be legal grounds on which to proceed. In terms of the statute of limitations, if new evidence comes to light, the statute of limitations can be interrupted, and if it comes to nothing, the investigation can always continue. Regarding crimes against humanity, the judge who spoke earlier pointed out that a trial has been suspended because some of the defendants are being held in French prisons and are awaiting extradition. He provided an assurance that there is constant communication between the High Court and the victims, both from the section for which Mr de Azcárraga is responsible and from the High Court's Office for Support for Victims of Terrorism. Information is provided to them about upcoming trials and on the outcome of those trials. In relation to the question of indirect perpetration through control, this is a complicated issue because the case law must be applied. With regard to the requirement for prisoners to cooperate in order to obtain prison privileges, the intervention of the public prosecutor's office is limited to appeals in the event that they do not cooperate or do not meet the requirements to obtain an improvement in their situations. There is a High Court doctrine, whereby what is laid down in the legislation is respected. He mentioned that the issue of glorification of terrorists and humiliation of victims has been examined by a panel within the public prosecutor's office, in an attempt to reach a conclusion that would allow them to act, although it is also a sensitive issue due to existing case-law.

Mr de Azcárraga began by stating his opinion on indirect perpetration through control, in that it is necessary to take into account the party or parties with whom the indirect perpetrator has control of the action. He gave the example of the First of October Anti-Fascist Resistance Groups (GRAPO). Because of how they operated and their structure, it was clear that the leader was the one who gave the order, in some cases through documents. ETA's structure is

far more complex. Where there has been the merest trace of evidence, the armed leadership has been charged by the public prosecutor's office, but what the police needs is not always what the prosecutors and judges need. Due process and the principle of legality must always be upheld. There must be proof that a leader gave the order to carry out the attack in question. Of course, it is frustrating. There are police statements that help the police to solve their cases, but judicial ratification is needed to be able to prosecute and convict these people. The prism through which the cases are examined is different. He emphasised the constant contact he has with victims' associations and their lawyers and also understands their frustration. In many cases, more has been achieved than some thought possible. He stated that he has never received external instructions in the performance of his duties and that he would not tolerate anyone giving him such instructions.

These remarks concluded the meeting with members of the judiciary and the public prosecutor's office.

Thursday 4 November 2021 (16.30-18.30)

Meeting with representatives of victims of terrorism and with victims of terrorism at the Palacio de Zurbano (Madrid)

The meeting began with an introduction by Ms Evren of the members of the delegation and the purpose of the fact-finding visit. First of all, there was a desire to honour the memory of the victims, and to recall that we have an imperative duty of remembrance, justice and peace towards them. Investigation and work must be done to find the truth that can solve these cases. Ms Evren expressed her solidarity with the victims and mentioned the creation in France in 2027 of a new Victims' Memorial Museum in Suresnes, modelled on the Memorial Centre in Vitoria visited on the previous day. The purpose of the mission is to help victims discover the truth. Impunity must not be permitted. The victims are at the centre of this mission and the spirit in which it is carried out is very constructive in order to restore the truth of the facts.

Mr Tomás Caballero Martínez, President of the Victims of Terrorism Foundation gave a copy of the book 'Vidas Rotas' to each of the members of the delegation and then began his remarks by pointing out that in March 2010 the President of the High Court was given an initial report on the situation of the cases of terrorist attacks resulting in death where no sentence had been handed down, the result of an investigation carried out during 2011 for the public prosecutor's office at the High Court. The aim was to reopen cases, avoid impunity and provide information to victims of terrorism. This report was the starting point for what is now known as 'unsolved cases'. The right to know is one of the main demands of the victims of ETA – we know all of their names, but not those of their attackers. The lack of information about criminal proceedings in the High Court has been one of the main problems for victims of terrorism. Following the publication of the book 'Vidas Rotas', many victims contacted the Foundation to ask for information about cases involving their relatives. History must remember the victims and the perpetrators must be confronted with the reality of their actions and their convictions. He pointed out that the 68 attacks that were perpetrated prior to the enacting of the 1977 Amnesty Law are not included. The Foundation's final list refers to a total of 349 fatalities and 270 criminal proceedings. Following analysis and review by the public prosecutor's office at the High Court, it was noted that there were 314 victims where no material perpetrator had been convicted; 53 victims had no information available about

whether a judgment had been delivered; 133 cases were time-barred; 8 cases had persons materially responsible who had died without being tried; in 48 cases the material perpetrators were not known; in 56 cases, although there was no judgment against the material perpetrator, there was some form of judgment; 42 convictions of participants and collaborators; 11 acquittals. Very few judgment in the last 10 years, so that the number of unresolved cases is still more than 300. Only a dozen of them have been solved, 16 according to the AVT. None of them with the help of members of ETA. What can be observed is a tendency for convicted offenders to reach plea bargains with the public prosecutor's office. Ten years later, everything is still the same; the families still do not know the truth and have not been able to find closure. There is no doubt about the professionalism and commitment of judges, prosecutors and law enforcement agencies and security forces. It is difficult to determine responsibilities. The end of the terrorist group was achieved through the existence of the rule of law and the tireless work of the above-mentioned groups. This highlights the value of the Spanish legal system, a leading light in the fight against terrorism worldwide. He mentioned the judgment that gave rise to the 'Parot Doctrine'. European countries, such as Belgium, have been allowed to avoid compliance with extradition procedures for fugitive terrorists, which has prevented court proceedings from being concluded in Spain. The lack of international cooperation is one of the major problems. ETA members who have fled to third countries have been – sometimes in hiding, sometimes publicly – safe from justice. France did not start extraditing ETA members until the second half of the 1980s and it took time to standardise cooperation. Latin America has traditionally been a refuge for those who fled Spain until their crimes were time-barred. This is the case with Venezuela, Cuba and Mexico. There has been 40 court decisions dismissing cases on the grounds of statute of limitations relating to 44 victims. He stated that the only possibility for resolving cases is the cooperation of the members of the terrorist group. This participation must be sought in order to obtain forgiveness from the victims. There must be access to justice and truth. Legislation should be promoted to encourage such cooperation as the basis for access to prison privileges or to prevent the enjoyment of those privileges. He called on the European Parliament to ask terrorists and their political supporters, including the European Parliament itself, to shed light on the unsolved cases about which they have information. The victims will be grateful.

The floor was then taken by Ms Consuelo Ordóñez Fenollar, President of the Victims of Terrorism Collective COVITE, who introduced her collective, which was founded on 28 November 1998 in the Basque Country. It brings together more than 500 families of victims of terrorism of all kinds, from the extreme left to the extreme right, including vigilante terrorism. They defend the principles of justice and remembrance to preserve the dignity of victims. The collective is also dedicated to the political, social and educational delegitimisation of terrorism and the elimination of radicalisation. It has consultative status with the United Nations. It has three main areas of activity: activism, dialogue and investigation. One of the main tasks carried out by COVITE was to find out why there was such a high percentage of impunity for ETA attacks resulting in death, a fact unknown until then by the victims and by the State itself. An investigative journalist was commissioned to write the book 'Agujeros del sistema: Más de 300 asesinatos de ETA sin resolver' (Holes in the system: More than 300 unsolved ETA murders). This is the top of the iceberg, an x-ray of what may have happened. She spoke of errors, sloppiness and negotiations that she describes as indecent, which led to the shelving of certain cases. Investigations continued in 2018, documenting the nearly 700 judgments for ETA terrorist crimes, to see whether justice had been done. It was a huge disappointment to discover a frightening degree of impunity in these cases as well. Even if there is a judgement, it does not mean that the case is fully resolved.

Only 24 cases were fully resolved with convictions for perpetrators, instigators and collaborators. And we must add to this the impunity that has prevailed over the last 10 years, since the end of ETA. Ms Ordoñez considers that the idea that ETA has been defeated by the rule of law and that democracy has won out over terrorism is false. Of course, the fact that ETA has stopped killing is the best thing that has happened in the recent history of Spain, but we are now living the consequences of a politically negotiated end: it is the victims who pay the price for these negotiations, through impunity. ETA has not achieved its main demand, which was independence, but concessions have been made with regard to the right to justice. Since 2011, there have only been 11 arrests related to ETA crimes. She wonders where the murderers of ETA's final victims are. They are still at large. There has been no police operation to disband ETA. Furthermore, the Basque radical nationalist left has it all written in its covenants. The aim is to achieve justice for the victims, to whom we owe an infinite debt. If more than half of the victims are left without justice, the State has failed in its duty to provide effective justice, as enshrined in case-law of the ECtHR. She stated that, if the aim is to help document all the judicial truth that remains to be documented, a commission of legal experts should be set up to request the cases that are before the High Court and still without judgements, and that a report should be drawn up for each case, to see what has happened in each investigation and whether effective justice has been provided.

Ms María Teresa Araluce Letamendía, President of the Victims of Terrorism Association (AVT), then spoke to explain the work that has been carried out in the area of justice with the victims of terrorism. The AVT is turning 40 in 2021, working to make life easier for victims and to make it possible to achieve truth, dignity and justice for all victims. The objectives of the AVT are: giving visibility to the victims of terrorism, regardless of ideology or the terrorist group responsible; offering comprehensive, professional assistance to victims of terrorism; raising awareness and challenging society about the problem of terrorism in Spain and the world; being the voice of the victims and defending the truth, dignity and justice of the group before public and private, national and international institutions, courts of law and the media; raising the alarm and being the safety net against political decisions that have been detrimental to the victims of terrorism. The association has more than 4 720 members. It is thus the oldest and largest victims' association in the world. The association comprises a psychosocial department and a legal department. The latter focuses on providing legal assistance to victims of terrorism, both in administrative procedures and criminal legal advice in the High Court. It also defends the interests of the victims of terrorism, through appearances, in public prosecutions, in the majority of legal proceedings in the High Court for terrorism offences. The AVT is involved in 205 criminal proceedings, 169 related to ETA terrorism, 33 to jihadist terrorism, 2 to GRAPO and 1 concerning other matters. Since 2011, following the discovery that there are more than 300 unresolved ETA attacks; it became a priority of the association to review each and every one of these cases. This review has been extended to terrorist attacks committed by other terrorist groups. Its objective was three-fold: establishing the number of truly unsolved cases, without the conviction of at least one of the material perpetrators; reviewing the unsolved cases and, if there are lines of investigation to follow, requesting that they be opened before the High Court. 150 court proceedings have been reopened in recent years, half of the unsolved cases: 20 cases have reached trial and in 15 of them the perpetrators have been convicted, 7 with open investigations and 8 with reviewed cases. Of 604 court proceedings in the High Court, corresponding to 853 murders, the AVT has reviewed 508, corresponding to 741 cases, leaving 96 proceedings relating to 112 murders committed by ETA to be reviewed; third, the reasons why the murders are still unsolved are analysed. Sometimes this is not due to systemic failures or a failure of the State

in its investigation. Victims have the right to have the crimes against them effectively investigated, but do not have the right to a conviction. In considering whether the investigation has been effective, the investigative resources and the protocols in place at the time of the attacks must be taken into account. Most of the unsolved cases are related to attacks committed in 1979 and 1980. In those years, attacks by ETA occurred every three or four days, mainly against the military, police and Guardia Civil, who had to both investigate and protect themselves against new attacks. The specialisation of police forces is not the same today as it was then. In 7 of the cases the perpetrators died. In 66 cases, which benefited from the 1977 Amnesty Law, the treatment is legally different: in 6 of them, those responsible were convicted. In 32 cases, perpetrators were identified but could not be prosecuted. In 2 cases, the perpetrators were dead. In 26 cases, there is no information available and the files are located in military archives or in the local judicial archive in Madrid. Other unsolved cases relate to attacks committed by the political and military faction of the ETA, which disbanded on 30 September 1982, and which benefited from pardon measures or covert pardons, with cases being closed or prison conditions improved for those who were serving sentences. Of the 12 murders committed by ETA p-m (ETA politico-military), none resulted in a conviction of the material perpetrator, and in the one where a judgment was delivered, it was an acquittal. Beyond the data, we cannot ignore the fact that behind a victim there is a family broken by pain and behind each unsolved case, there is a family that has not been able to find closure because of an absence of justice. Along with the right to justice, victims have the right to know the truth. Ms Araluce stressed the AVT's investigation work, alongside the Basque Government, supporting the right to truth for victims of terrorism who have not had access to justice. She provided 50 remembrance booklets for 50 victims. The most painful thing you can pass on to victims is the idea that you did not do what you could to investigate the murder of their loved ones. However, according to Ms Araluce, there should be recognition of the members of State law enforcement agencies and security forces and of judges and prosecutors and their work should not be called into question.

Ms Evren clarified that the European Parliament's Committee on Petitions, being a link between citizens and European institutions, will draft a report that would seek to make recommendations to the European Commission, the Council of the EU and the European Parliament to avoid impunity and to resolve the cases still pending. She reaffirmed that the report would show the commitment to the victims, indicating that everything that had been said would be included in order to enhance the dialogue. The aim was to gather as much information as possible in order to establish the truth and assist in providing moral reparation for the victims.

During the question and answer session, the following spoke:

Mr Buxadé thanked the associations and victims of terrorism for their participation in the meeting and expressed his respect for their work. He commented that the delegation had abundant and somewhat contradictory information after all the meetings that had been held. This gives the impression that, according to their remarks, they are defeated, giving up on the issue of non-time-barring of the crimes committed by ETA, or to apply international criminal law, and the concepts of crime against humanity or even the crime of genocide. He drew attention to the concessions made in the agreements, such as the case of ETA p-m (ETA politico-military), with 16 unsolved attacks. These facts need to be established. He asked whether there have been any plans to initiate claims for compensation for these issues. He

also mentioned what he calls the ‘amnestied’ - the 673 terrorists who went back to killing after the Amnesty Law and who should not be considered as amnestied in any way.

Ms Pagazaurtundúa expressed her appreciation for the efforts of the people who attended this meeting to confront this situation of impunity and stated that the mission had a serious objective. From the discovery of this hitherto unknown impunity, combined with the contribution of all those involved during the fact-finding visit, she hoped that the report would provide a valuable input for Spanish society. Discussion should take place to see how we can be of help, without generating false expectations, secondary victimisation or added pain. This is a meeting of great historical significance and all credit must be paid to the victims and the associations that have worked so hard all these years.

Ms Ordóñez replied to Mr Buxadé, stating that she did not consider them to be defeated. In 2015, an application was submitted to the International Criminal Court (ICC) in The Hague, because they believed and still believe that the attacks committed by ETA should be considered crimes against humanity. The petitioner association filed an application in the High Court on the same issue. The case was open at the ICC for a couple of years, but when it was established that the High Court was already investigating this issue in Spain, the case was closed. In her view, the High Court will never consider ETA’s crimes as crimes against humanity. She considers that, on that point, the battle is lost. However, she recalled that this committee could request an investigation into the files of unresolved cases in order to determine whether there has been an effective investigation. From that point on, consideration could be given to filing an application before the European Court of Human Rights on the basis of this breach of the principle of effective investigation, in order to reverse these dismissals and statutes of limitations. These are proceedings that are, moreover, tremendously expensive.

Mr Diego Salvá, a victim of terrorism, then spoke, explaining that the issue of ETA is very complex. It is being closed in the wrong way and has become deeply entrenched, if the wound is not completely cleansed, it will never completely heal. The unsolved cases must be known and the truth must be sought. He spoke about the change in France’s cooperation, a shift from welcoming to prosecuting ETA criminals, for which he is grateful. He considers Spain to be a paradise for terrorists and criminals because of its very permissive laws. There is a need to know what is happening in the Basque nationalist world, where terrorism, extortion and kidnapping have been the way of doing politics, and have also been rewarded by all the Governments that have negotiated with them. He pointed out that when a person is a victim in Spain, he or she is a victim of an infinite number of institutions. Being a victim means enduring the negotiations of the various Spanish Governments with the ETA leadership. Being a victim means being threatened in the Basque Country. Terrorists have been punished by the police and the courts, but not politically, and they have instead gained a presence in political institutions. He asked whether the members of the delegation could imagine the criminals behind the Charlie Hebdo massacre standing for election in France and being elected and sitting in the French National Assembly as members of parliament. He pointed out that this is what is happening in Spain. He believes that the victims are being silenced, as they are a thorn in the politicians’ sides. The national courts are also victims because they do not apply the Nuremberg doctrine to go after the leaders of the organisation, who are still on the streets. He is sceptical as to whether these more than 370 cases will be solved. The heirs members of ETA are in the institutions, and he considers himself betrayed by those institutions.

Mr Luis Heredero, a victim of terrorism, expressed his personal feelings about political impunity. In his case, the murder of his father entailed political, moral and social impunity in addition to criminal impunity. He considers that there is moral impunity, as the terrorist ideology continues to exist as a political project with undemocratic objectives. They have laid down their arms, but their cause is illegitimate. He mentioned the case of Mr Fernando Barrena, member of the European Parliament, who has been convicted on several occasions for being a member of ETA. There is also the question of political impunity when convicted terrorists are talked about as “men of peace” by political representatives. Josu Ternera, the murderer of numerous victims, including five children, is considered a hero for having contributed to the dismantling of ETA. He pointed out that the political party EH Bildu is linked to what was ETA. This is what political impunity means. And there is also social impunity. When EH Bildu’s leader Otegi makes any speech, the media comes to a standstill to find out what he is saying. Mr Heredero considers that, he should not have any credibility. In addition, terrorists released from prison receive benefits from institutions that should go to other people in need. He noted the ‘revolutionary tax’ that had to be paid at the University of the Basque Country, a situation that continued until 2003. In the past, the victims believed in justice and in their institutions. Now, when they look at the composition of Parliament, they do not know who is on their side and who is against them. There used to be red lines in negotiation. Today, those red lines have disappeared and negotiations are taking place with lobbyists for ETA prisoners, which is extremely painful for the victims. Judges are required to apply the law in the context of Spain’s social reality and, today, this social reality leads to the existence of a political, social and moral impunity that prevents justice for victims.

Ms Vicky Uriarte Garay, a victim of terrorism, described her personal case and stated that she considers this fact-finding visit as her last opportunity. Her father was killed by ETA 42 years ago. A long time has passed and no one wanted to listen to what she had to say. She wanted to talk about what it means to belong to a family that has failed to solve her father’s murder. What it means to be a victim living in the Basque Country, in a small town, having to live alongside the murderers every day, something that makes the simple fact of going out into the street very difficult. After the Franco years, her father was one of the founders of Alianza Popular, a conservative party that defended the values of Spain at a time when this stance was not widely appreciated. He started receiving threatening calls from ETA, saying that they were watching him. He was provided with a 24-hour police escort. In 1978, the Guardia Civil knocked on his door to warn him to leave because an attempt on his life was imminent. Her father had to leave his home and the Basque Country, sometimes returning covertly for short stays, always informing the Guardia Civil to find out whether it was advisable for him to return. Her mother went every weekend to the place where her father had his safe house and the whole family suffered because of these circumstances. On 29 September 1979, on one of these trips home from a short family holiday, his father went to work, wanting to catch up with his colleagues, and was shot. He survived until 5 October. For the first three days, he was fully conscious and told them that he had seen the faces of those who had shot him clearly and that he forgave them. He did not name them, because he believed that they might threaten his children or that his children might think of taking revenge against them. After her father’s death, everything changed, and life in the Basque Country became even more difficult. It was not easy then and it is not easy now. Her mother suffered severe financial hardship until she was awarded a widow’s pension as a victim of terrorism retroactively in 1993. In 2000, work was done to achieve reparations for victims of terrorism. In the High Court there was no document establishing that there was a terrorist attack on her father. She

went in person to the court in Durango (Biscay) to request the documents relating to the attack. The person who attended to her made no checks and did not look at any documents, and informed her that there was no documentation in relation to the case. She called the victims of terrorism hotline where she got the case file number. The next day, she returned to the court and the same person who had served her the day before gave her the document she had requested, which she has brought with her. She was surprised that the file referred to less serious crimes and that it was opened in September 1979 and closed three months later. She had access to the Guardia Civil's report, which clearly offered several lines of investigation to follow. A report that remained buried in the local court and was never transferred to a higher judicial authority, as it should have been, given that it was a terrorist attack. There were those who ensured that it remained that way until the year 2000 when she was able to access it. A few years ago, she received a call from the High Court, informing her that they had been reviewing unsolved cases involving ETA crimes. No documents had been found in connection to the attack on her father. After investigating what had happened, she discovered that this file had been expunged in 2004. It had been destroyed at the court in Durango. She indicated to the High Court representative that she had this report and that she could have brought it to the High Court. She wanted to share her feeling of emptiness, of desolation in the face of the circumstances she has had to endure. It is a feeling of being left by the wayside, without any support. This is a question of social terrorism that has tried to silence the victims. This situation is still being experienced by people in the Basque Country. She is calling for victims not to be left on their own, that they need the support of the European Parliament. She offered the report in her possession to the Head of the Delegation.

Ms Ana Isabel Ortigosa Fernández, a victim of terrorism, came from Pamplona to present the case of her husband, who was murdered in 2003 along with one of his colleagues, both national police officers. The case remains unsolved and is time-barred. She is still waiting for some information about it. Neither she nor her children will be able to rest until they really know what happened and who killed them. She wanted to give her testimony because, after 18 years, there is no information about the case. She knows that the police and the Guardia Civil are working to try to find some clues, but there is nothing. They have to live side by side with those who have caused them so much harm. For personal satisfaction, she needs to know what happened and who was responsible, to get justice and also to be able to put it to rest.

Messrs Álvaro and Pablo Ryan Murua, victims of terrorism, wanted to share their personal story, what happened to their father José María Ryan, kidnapped and murdered by ETA in 1981. Their father was the only child of a humble family, who never owned a car or a house of their own. He worked very hard to become an engineer and started working for the company Iberduero. Until then, the Basque Country was totally dependent on France for energy. Their father worked to bring prosperity and economic development to the Basque Country through the construction of the Lemóniz nuclear power plant. Initially, ETA was in favour of nuclear energy, seeing it as another possible avenue for achieving independence from Spain. Unfortunately, from one day to another, ETA changed its strategy and decided to start harassing Iberduero and its workers. A terrorist group that did not respect the most basic fundamental rights identified itself as environmentalist. It began a series of attacks on Iberduero's offices and facilities. Three workers were killed in bomb attack. Certain media outlets portrayed their father and his employees as US imperialists working for the Spanish oligarchy. They considered their father guilty for the construction of this power plant. In January 1981, ETA kidnapped their father on his way home from work. ETA demanded that the nuclear plant be demolished within a week or they would execute Álvaro and Pablo's

father. As expected, neither the government nor the company gave in to blackmail against society and democracy. Their father was kept in hiding for days, and thousands demonstrated for his release and called for clemency. However, the terrorists carried out their threat and their father was murdered on 6 February 1981 in a forest. Work on the power plant continued for another year, but after what had happened to their father his colleagues had to be accompanied to work by bodyguards. After the assassination of the new director of the plant in May 1982, the work, which was on the verge of completion, was stopped and the project came to an end. The brothers pointed out that, unfortunately, the terrorist group had achieved its goal. The result was five families destroyed. Their grandparents lost their only child. They were orphaned and their mother widowed at the age of 30 with five children. This means a life sentence for all those who endure it. Today, none of those five children live in the Basque Country. They have all had to go into exile because of terrorist savagery. ETA stated that their father had been tried and convicted by a “military court”. Neither their father’s kidnappers nor murderers have never been brought to justice, nor the instigators who gave the orders. They are hoping that the European Parliament will do its utmost to ensure that this and other crimes do not go unpunished. As a democratic society, we cannot allow these crimes to go unprosecuted and the families cannot be allowed to fall by the wayside.

Ms Evren provided an assurance that all the highly emotive testimonies of the victims would be taken into account and pointed out that victims’ rights were enshrined in a European directive. She reiterated her commitment to try to find solutions to all these unresolved cases. The debt we all owe to the victims must be reflected in a quest for justice and truth.

During the question and answer session, the following members of the delegation spoke:

Mr Złotowski reiterated the idea that a terrorist attack is not an ordinary crime but an attack on society as a whole and on the State. The judges and prosecutors acknowledged this issue in their remarks. Due to the time limitations, however, most of the 379 murders could not be prosecuted, because the information gathered from the police investigations is not sufficient to bring them to court. This gives the impression that the State does not wish to defend itself. It seems that, in a way, the associations and victims feel that the State is failing them. He pointed out that most of those killed were members of the State law enforcement agencies and security forces and other public officials, who were defending a State that seems to be abandoning them and not defending them as victims, a situation that concerns both current and past Governments. He mentioned that ETA was not only seeking an independent state, but a Marxist-Leninist state. He questioned the possible tolerance of left-wing political parties towards these groups. What the European Parliament can do is make this situation more visible, but it will be up to Spanish politicians to respond.

The floor was then taken by Ms Montserrat, who reminded that the purpose of this mission was not to judge, but to demand that justice be done and the truth be known. This visit was not intended to raise false hopes. She was confident that a serious and well-founded report would be produced. She wanted to know if light could be shed on the darkness. She mentioned that, as of 2004, terrorist crimes could be considered as crimes against humanity following the amendment to the Criminal Code. She agreed that Spain, as a society, was also a victim of these attacks. We want to avoid this impunity, not only in Spain, but throughout Europe and not only with regard to ETA, but with regard to all terrorists. She wondered how European institutions could improve the application of international criminal law, how they could improve cooperation between the Member States. It has been mentioned throughout the

meetings that the cooperation between France and Spain in recent years has been crucial. But in other cases, such as Belgium, it took 20 years to extradite an ETA terrorist. This mission can shed light on how this impunity can be avoided. And as Europe is being developed every day, its legislation can be improved to limit impunity in the Member States. The issue of glorification of terrorists has also been mentioned. Ms Montserrat considers that a distinction should be made between this crime and the crime of humiliation of victims, so that its treatment in the ECtHR and in the courts of the Member States truly takes into account the suffering of the victims, and the double victimization of the victims, changing the legislation so that the case law also changes. She asked for the associations' point of view on the matter and ended by mentioning the need for terrorists to cooperate with the justice system in order to obtain prison privileges. She hoped that what happened in Spain would never happen again in Europe.

Ms Maestre then spoke, saying how moved and shocked she was by everything she had heard in this meeting and in the other meetings held during this fact-finding visit. The entire delegation takes its work extremely seriously and wants to be useful and make up for lost time. She had been able to learn first-hand about the difficulties experienced by the police, Guardia Civil, judges and prosecutors in carrying out their work, especially due to the lack of resources during the early years of the fight against the terrorist group. State security forces were forced to focus on preventing further attacks, but could not devote time and resources to investigating those already committed. The common feeling is that the whole society was a victim of these attacks, directed against the State. The lack of repentance of convicted terrorists leaving prison means added pain and distress for victims. She asked what they thought could be done by the Spanish Parliament, but also by European institutions, to try to resolve these situations of manifest injustice that have occurred in Spain over the last 50 years. She sent a message of unity to her fellow delegates, leaving aside possible political reproaches and looking for solutions that are helpful for the victims and for the country as a whole.

Mr Caballero responded to Mr Buxadé that if they felt defeated, they would not be participating in this meeting. Being there was a huge effort for all the victims, who have been broken and mistreated. They believe in the work that this committee is carrying out and are convinced that it will do a serious and thorough job. Everyone is working together to find solutions to these situations. His focus is on the victims and the victims are asking for help. He does not need to know the legal reasons why terrorism should not be glorified. They want it to stop because it causes pain to society as a whole, not just to the victims. They are hoping for improvements and a fruitful visit. They are at the committee's disposal, if additional information is required.

The floor was then taken by Ms Carmen Ladrón de Guevara, a lawyer for the Victims of Terrorism Association (AVT). She outlined the technical aspects of this issue. Justice for victims has been sought in examining all cases referred to in the report. Very complex issues result in impunity in many cases. The point is that legislative reforms cannot resolve all of these issues. In the review of cases, legislative reforms are not an option. The problem with the application of Article 28 of the Criminal Code – indirect perpetration through control – lies in the need for clear evidence linking the instigators to the attack. There have been cases where this has been achieved by the appearance of notes or other incriminating documents. In other cases, this has been due to the significance of the attack, which could only be expected to be perpetrated by the leaders of the terrorist group. Nevertheless, it is not always easy to

obtain such evidence, because of the existence of different commands acting with strategic autonomy. In relation to the glorification of terrorists, all victims have indicated how painful this is for them. She mentioned the revision of the European anti-terrorism directive and the need to separate the offences of glorification of terrorism, which currently overlaps with freedom of expression, and the offence of humiliation of victims. This proposal has been taken up at national level, but no response has been received. The victims want Article 570 of the Criminal Code to distinguish between these two types of crime. The case law surrounding these two ideas is very different. When the association informs a victim that the person responsible for the murder of a relative is going to be released from prison, that individual accepts this because that is what the law stipulates. However, the psychological impact on the victims of these tributes and glorifications of terrorists is enormous, and here she considers that the legislation can be influenced and thus modified and improved. She made herself available to committee, offering the full cooperation of the association.

Ms Ordoñez felt that the focus of the visit should remain on the unsolved cases. She called for the victims, who are independent and activists, to be listened to. All governments have been responsible for this impunity. If we really want to help, without giving false expectations to the victims, the first thing to investigate and examine is the cases of ETA's final victims. She wondered why these attacks of the last decade are still unsolved. She does not consider that this was due to a lack of police resources. Because ETA laid down its arms in 2011, she believes that the terrorists who committed these last attacks will neither be arrested nor prosecuted. She called for help to review each of the court files and see where the judicial system has been effective and where it has not been effective, so that cases can be referred to the ECtHR if necessary. The important thing is to document the memory and the truth of what has happened in this country.

Ms Evren praised Ms Ordoñez's pragmatism in her remarks. She stressed that the delegation was made up of members from across the European political spectrum. Here, this is not about partisan politics, but about looking after the general interest and easing the suffering of the families who still do not know who murdered their loved ones. The aim is to shed light on the truth. The key issue is to try to clear up these unresolved cases and to ensure that there is no impunity once the truth is known. Victims and their families are at the very heart of the visit. She showed her commitment to doing her job seriously. She could not promise to resolve all the outstanding issues, but she did pledge to play her part in finding the truth. It is about keeping the memory alive, educating new generations about what happened. This will help prevent radicalisation and extremism, which affects not just Spain but also France and other Member States. She provided an assurance that the testimonies of the victims will remain forever in her memory and that they will not be left behind. She also undertook to bring this issue to the attention of the French Presidency of the Council starting in January 2022. She concluded by thanking those present, on behalf of the Committee on Petitions, for sharing their experiences and those of their families. The members of the delegation shared their pain and suffering and showed their full support.

Friday 5 November 2021 (8.00-10.00)

Meeting with the representative of the Ombudsman and with Mr Martín Alonso Zarza (terrorism expert) at the Office of the European Parliament in Spain (Madrid)

On behalf of the delegation from the Committee on Petitions, Mr Agius Saliba welcomed the two speakers to this third day of the fact-finding visit. He provided a brief summary of the objective of the petition, serving as the basis for the mission, and the feelings aroused by the meeting with the victims, their feeling of emptiness and the problem of secondary victimisation, but also those aroused by listening to the progress made by the police, the Guardia Civil, and the judges and prosecutors. At the end of the visit, a report would be drafted aiming at finding concrete remedies for this situation.

The first remarks were to be from Mr Andrés Jiménez Rodríguez, Director of the Security and Justice Unit of the Ombudsman's Office. Mr Andrés Jiménez spoke on behalf of the (acting) Ombudsman, Mr Francisco Fernández Marugán. He delivered two documents: a study on 'The rights of the victims of ETA. The current situation', published by the Ombudsman on 23 December 2016, and a transcript of the parliamentary debate held on that report in the Joint Congress-Senate Committee on Relations with the Ombudsman on 21 February 2017.

He considered that this visit reflects the duty to defend victims in Spain, in the European Union as a whole and in all international spheres. He indicated that he spoke to the United Nations Human Rights Council in 2019, pointing out that the rights to truth and justice for the victims of ETA are not completely satisfied, as there are more than 300 unsolved murders by that terrorist organisation, now defunct. The aim was to offer ideas so that other countries in the world could make recommendations to Spain. He pointed out the advisability of establishing an action plan at international level to enable a better understanding of the damage caused by terrorism and to reinforce the human and material resources dedicated to the resolution of unsolved crimes through a specific plan. On other issues, there have been results, but not on unsolved crimes. It is therefore important that the European Parliament, through the Committee on Petitions, make a commitment to supporting the need to provide satisfaction for the families of all these victims.

Mr Andrés Jiménez Rodríguez also spoke of the experience of Mr Joseba Arregui, who was commissioned to write a short contribution, published under his name in the study given to the members (pages 77 et seq.): 'The context of the discourse on the victims of terrorism: its political significance'. Mr Jiménez further drew attention to the contribution from Professors María Paz García Vera and Jesús Sanz (pages 85 et seq.) entitled 'Psychological damage over time'. ETA terrorism had specific characteristics, different from those of other forms of terrorism, which aggravated the psychological damage caused to the victims. According to above-mentioned professors, '69% of the victims or threatened victims of terrorism in the Basque Country suffered social isolation, 68% experienced control and surveillance by people in the community close to the terrorist environment, 74% received threats, 79% suffered contempt, humiliation and rejection, and 90% felt stigmatised'. The professors also noted that '76% of the murders carried out by the terrorist group ETA during the years of transition (1978-81) and 82% during the years of democratic consolidation (1982-95) did not generate any social mobilisation in support of the victims'.

Mr Jiménez outlined the work of the Ombudsman, as High Commissioner of the Spanish Parliament responsible for defending fundamental rights (Article 54 of the Spanish Constitution). To this end, the office of the Ombudsman supervises the Government administrations. It is independent (acts at its own discretion) and, by having free access to individuals, documents and facilities, can acquire a full understanding of the situation pertaining to rights. It can provide alerts to problems, and can suggest courses of action. It

succeeds if we are able to induce changes that others are required to make. The ETA Victims Study reaches 13 conclusions and makes 17 recommendations. The message that the Ombudsman wished to get across clearly was that we must not be satisfied with the reality of so many unsolved murders. This is a problem that calls for solutions from two perspectives: Justice (prosecuting) and Truth (knowing). On the first point, the Study refers to the inadequacies of the law in dealing with unsolved crimes. Criminal law is the framework within which justice can be done. Criminal law with its various interpretative possibilities. While respecting the various doctrinal theories, Mr Jiménez considers that those that facilitate prosecutions should be advocated, such as the theory that holds that the perpetrator of a crime is also the indirect perpetrator of the crime by virtue of the control of the organisation in which that individual exercises leadership. Regarding the second perspective (Truth), this should be judicial truth, namely that revealed in the ‘proven facts’ of a judgment, but if this is materially impossible, where the options provided by criminal law have been exhausted, the public authorities should offer the families all available information and continue working to resolve all unsolved crimes. This is difficult due to the lack of cooperation of individuals convicted of terrorism offences, even if their disclosures can no longer lead to concrete charges or convictions, because of statute of limitations or other reasons related to the limitations of criminal and procedural law. He provided an assurance that the Ombudsman has been, is and will be with the victims of ETA. He will continue to work at national, EU and international level.

Before moving on to the next person, Mr Agius Saliba stressed the continuing devastating effects on the victims of terrorist attacks, as expressed by the first speaker.

Mr Martín Alonso Zarza then took the floor, saying he hoped that his remarks would be of some value for the purpose of the visit, which dealt with the darkest aspect of the history of Spanish democracy. He noted that in recent days the members of the delegation had had the opportunity to gather precise information from different angles, both from the point of view of the various experts and from the concerns of the people affected, either through the victims’ associations or through valuable first-person testimonies from some of the victims themselves. The purpose was to provide a comprehensive framework. He had grouped this information under five headings: the first is entitled ‘A distant mirror, but not so distant: what we can learn from post-Nazism’.

He was struck by the fact that the largest group in this committee is the group of interpreters. He felt overwhelmed by the particular megaphone effect provided by multilingual translation and wanted to thank them for their work. At the same time, this detail also served as a pretext for evoking the distant mirror that gives the title to this section. Simultaneous translation has its origins in the Nuremberg trials, which ended 75 years ago. Kimberly Guise, Assistant Director for Curatorial Services at World War II Museum in the United States, has written that ‘the interpreters and translators were the unspoken heroes of the Nuremberg trials’.. There are other parts that are dark, and it is those he intends to reflect in order to approach the subject. The first is that the Nuremberg trials concerned only a small part of the Nazi elite. The other – larger – part used their networks of influence to make a career in the Germany being reconstructed. In October 2021, Egoitz Urrutikoetxea testified before the Paris Criminal Court in relation to the crime of ‘terrorist conspiracy’. Egoitz is the son of Josu Ternera, one of the leaders of ETA, who has never condemned his past actions, and when he has acknowledged any harm, he has done so purely for tactical purposes. The issue is not only that the son does not distance himself from his father and that the political group linked to

ETA's history has not shown more repentance about its past, it is that he enjoys the support of activists willing to turn him into a Mandela. While the unsolved murders are a mockery for the victims' families, according to Mr Martín Alonso Zarza, attitudes of the murderers such as these constitute undeniable additional victimisation. He pointed out that the political sector representing Josu Ternera has not made a break from this line: in October 2021, EH Bildu refused to support once again a motion calling the tributes to prisoners reprehensible. This same group refused to support a motion condemning the attack on Charlie Hebdo in the Basque Parliament at a time when – it is worth noting – ‘ETA prisoners and ex-prisoners were denouncing the unacceptable parallel between their case and that of the jihadists’.

The second section refers to two overlapping totalitarian regimes. While Nazism was defeated in Europe and Nuremberg meant a break with the past, there was no such break in Spain, which suffered almost four decades of dictatorship with the assent of the European democracies from as far back as February 1939. From that point, the history of Spain became dissociated from the mainstream of European history, which saw the defeat of Nazi fascism in 1945. Moreover, this dissociation means that we all know about the Munich Pact and the German-Soviet Non-Aggression Pact, but we have forgotten the recognition of Franco, who had won the war thanks to the cooperation of Hitler and Mussolini. This has fallen out of frame, just as the Spanish people who passed through the French camps before arriving in the German camps after collaborating with the resistance in the Vichy regime have fallen out of frame. For this reason, Jorge Semprún does not have a place similar to that of Primo Levi in the collective European consciousness. Resistance to the dictatorship was led by the left-wing parties, but in the last years they were joined by some nationalist forces, mainly in Catalonia and the Basque Country. Although they were in the minority, they achieved international prominence due to two events linked to ETA – the Burgos trials (December 1970) and the assassination of Prime Minister Luis Carrero Blanco (December 1973). This brings us to the second peculiarity of the Hispanic context, that of ETA terrorism. The 1960s saw the emergence of terrorist groups in several European countries, such as Belgium, France, and – particularly because of the mark they have left – Germany (Red Army Faction) and Italy (Red Brigades and extreme right-wing terrorism). All of these soon disappeared, except in the case of Ireland, which was responding to other national ideological imperatives, and ETA, which has lasted the longest for two overlapping reasons: its ethno-nationalist nature and the erroneous perception of its trajectory as a response to the Franco dictatorship. The latter factor, in particular, has influenced a portion of the Spanish left and international public opinion, according to Mr Martín Alonso Zarza. The end of the dictatorship saw a rapprochement between the left and the peripheral nationalists. This could explain the indifference of broad sectors of the left to the murders of policemen and Guardia Civil members, who were associated with the repressive regime imposed by the dictatorship. They did not matter because they were Francoist forces, their deaths were not only necessary but an appropriate price to pay. This was compounded by nationalist complicities. The number of unsolved cases also has to do with ETA's own action against those considered to be “informers” to frighten the majority and silence them. Although it is difficult to specify, there must have been around a hundred such individuals. A section of international public opinion, including the mainstream media, accepted a watered-down view of ETA, refusing to call it a terrorist organisation. While Franco's legacy deprived the State security forces and law enforcement agencies of legitimacy, a factor that was exacerbated by the creation of the Antiterrorist Liberation Groups (GAL) (death squads) in the 1980s, their poor conditions and lack of preparation to combat terrorism made them easy targets. They were, therefore, forced to devote scarce resources to protect themselves when these resources should have been

focused on investigation, a factor that is directly related to the high number of unsolved murders. Most of those murders were carried out during the hard years of lead, the crucial years for the Spanish Transition and the most deadly period (68 murders in 1978, 80 in 1979, 98 in 1980, which served as an alibi for the attempted coup of 23-F led by Lieutenant Colonel Antonio Tejero), which in itself refutes the theory that ETA's actions and radical Basque nationalism were driven by the idea of democratisation. The GAL attacks took place mostly in France, and this has to do with another important aspect of the absence of follow-up of ETA's crimes, the 'French sanctuary'. This description reflects the fact that in the early years of Spanish democracy, France served as a safe rear position where ETA collected its extortion money and kept the perpetrators of attacks in Spain safe from the Spanish authorities and the justice system. The extraditions that followed the end of the sanctuary constituted another element of impunity because those affected spent their years in South American countries while their cases became time-barred. Some of them have returned without having been brought to justice. The Nuremberg trial was part of an effort to avoid a repetition of impunity.

Mr Alonso Zarza's third section is referred to as the Basque view of the conflict as a victimising anti-Francoist cultural appropriation ('patrimonialisation'). Some Spanish people suffered two dictatorships, many only one, and there were very few who suffered neither because they walked in both cases whichever way the wind was blowing. The instrument used to effect this reversal is well known and forms part of the basic repertoire of identity-based ideologies: victimhood. According to this view, ETA's crimes were a response to repression. According to its promoters, the Basque Country was the victim of Spain's repressive policies, it was the quintessential victim and, as we know well, one of the effects of this perception is innocence: victims cannot be guilty. All statements made by this sector of the conflict therefore pointed to the responsibility of States, making the victims the necessary price or collateral damage. In any case, they are not deserving of recognition of damage or of reparation. In one of his last speeches, Josu Ternera specifically accused France of not accepting this vision, of not accepting the story of the conflict. And that it is the equaliser. This is important, because as Hannah Arendt wrote, where everyone is guilty no one is guilty.

The fourth section of Mr Alonso Zarza's discourse addresses the blurring between victims and perpetrators as a form of soft denial. It has been said that in the early years of Spanish democracy, ETA murders were validated by the fact that the security forces were associated with Francoism. This factor justified the disinterest shown by members of the civilised community. They say that it is time to forget because we have to live together. They say that victims get in the way and it is not a good thing that they are very present because it does not help or creates annoyance. They believe that the past should be left alone. For this reason, the cases that have not been cleared up in some way fall into a context in which the victims are pushed aside, undermined and neglected. It is striking that those who praise Josu Ternera and disavow his victims call themselves artisans of peace. In addition, Mr Alonso Zarza believes that it is precisely a European framework that is the appropriate mechanism to respond in solidarity to these secondary victimisations and to prevent a kind of symbolic sanctuary from being erected where a legal and police sanctuary once existed.

His fifth section is devoted to the mind-set of radical Basque nationalism and its sphere of influence in relation to its criminal past. He stressed the fact that the new dawn and the cessation of violence will gradually bring the prisoners out onto the streets, but will not return the dead to their homes, whatever the fate of their cases: whether successful or not. The only possible means of reparation is acknowledgement of the harm caused and repentance by the

perpetrators. But not only have the apologists for these so-called agents of peace failed to reach out to the victims or the repentant terrorists – these ‘solid citizens’ who can be used as a tool to allow the group to look ahead because their dark deeds have been owned and their debt thus paid – but they have not even cross-checked the statements of withdrawal made by the people they are defending. The expressions of commitment about the harm caused by these people – so precisely phrased and always careful not to use words like terrorism, conviction or injustice – seem empty when viewed within the discourse as a whole and dissonant when compared to the non-verbal language. What has been considered as a decisive step in this area by radical nationalism is the so-called Declaration of 18 October 2021, read out by the two supreme leaders, Arkaitz Rodríguez and Arnaldo Otegi, the latter being the undisputed leader of EH Bildu, the successor party to Batasuna and the legacy of the so-called Basque National Liberation Movement. However, despite the media attention to this Declaration, it contained nothing new, but rather substantially repeated what Josu Ternera had stated in an interview just a year earlier. One element that summarises the position of radical Basque nationalists with respect to their past is the ‘ongi etorris’, the public tributes to unrepentant prisoners, which EH Bildu has refused to disavow, in some cases even explicitly supporting and encouraging these events. These celebrations of the violent past constitute a form of added humiliation for the victims. Specifically using an approach based on restorative justice, a mechanism of reintegrative shame has been proposed as a means of allowing criminals to re-enter law-abiding society and thus embark on the path of reparation. There can be no therapeutic use of violence if it is based on a narrative of conflict, which blurs the line between victims and perpetrators. Let us return to the mirror from the beginning of these remarks. In a recent essay entitled “Collective Innocence”, the German political scientist Samuel Salzborn argues that there is no full recognition of guilt in the collective consciousness of Germans and that this limited recognition has to do with the process of ‘self-victimisation’ of Germans that already existed in the immediate post-war period. On this point, Primo Levi wrote that ‘where you do offence to man, you also do offence to language’, and it should be added that the reverse is also true: when you do offence to language, you end up doing offence to human beings. Surely, one of the most serious forms of offence to language is confusing the victims with their murderers. The truth is precisely what those affected by the unsolved cases yearn for, but that truth, which we have seen here reflected in the mirror of Nazi anti-pedagogy as a normative horizon, is based on a fundamental premise that all ideologies justifying bloodshed violate, that of the sanctity of human life. Antonio Machado saw this and wrote about it: ‘A man must not take the life of a man’, said Juan de Mairena. The strategy of forgetting, the strategy advocated by those who speak of a new dawn, of turning the page, entails the obliteration of that core maxim of collective life, that of the sacredness of lives. The unsolved cases, the unburied indictments are a small piece in the landscape of concentric circles of impunity.

During the question and answer session, the following members of the delegation spoke:

Mr Gheorghe asked Mr Jiménez Rodríguez, in relation to the study dating back to 2016, how many of its recommendations have been taken into consideration up to 2021. And for those that have not been considered, what did he think was necessary for them to be implemented, and whether they need support at European, national or even local level.

Mr Złotowski noted that he believed it was very typical for left-wing forces to turn the tables. They believe this is the most effective way to achieve national peace. He indicated similarities with what has happened in Poland, especially since the communist era. When they were not

only in power, but also taught about history, they talked about the future and about a wonderful vision of that future. The closer we got to that future, the more beautiful this vision became. However, the reality was repugnant. 'We are fighting for peace and the few victims do not count because in the end we all win'. They deny their victims, but the families of these victims live and exist and their lives have changed since the moment when the victims died. It is not only about the victim of the terrorist, but also about the nation and society as victims.. This is why the attitude of the second victim – society – is not effective because it does not lead to a positive result. So these more than 300 cases need to be solved and the people who are responsible for those actions need to be held accountable retroactively, if it is not possible to imprison them, by naming them so that everyone knows that each of them is responsible for killing someone.

Ms Pagazaurtundúa stated that she had just read a news item reporting that Josu Ternera had asked for charges against him to be dismissed for the attack on the barracks in Zaragoza, which killed a number of people including five children. In recent days, they have learned that it was too late when the crime against humanity was included in the Spanish Criminal Code. It has been shown that ETA terrorism is not conventional terrorism, but fits perfectly with the characteristics of crimes against humanity. The attacks are the tip of the iceberg in a strategy to control the Basque population, using thousands of people to make the whole of Basque society live in fear. This was general persecution against democracy and ideological pluralism. It tallies with everything Professor Martín Alonso has said about the search for denialism. The trial for crimes against humanity against Josu Ternera has been suspended because the accused is in France. In addition, there is an operation to whitewash terrorism and those responsible. ETA killed in Spain, above all, because it was in its strategic interest to do so. The concentric circles of terrorism include not only criminal impunity, but also political impunity and social impunity. In addition, there are acts of tribute and humiliation of the dignity of the victims. Ms Pagazaurtundúa pointed out that one of the richest corners of Europe has suffered through a situation that is very difficult for outsiders to understand. There has been talk of Nuremberg recently and she believes that ETA has not had its Nuremberg. An accurate picture must be painted of the context in which this is happening. There is still the idea of unburied indictments and concentric circles of impunity.

Mr Buxadé highlighted the concepts of moral disease mentioned by Professor Martín Alonso, the lack of distinction between good and evil and the sanctity of human life. He considers that this moral sickness affects Spanish society in general. He noted the 1977 Amnesty Law. Of all those granted amnesty, 676 ETA terrorists were reintegrated into the group. Including Josu Ternera. There has not been a single political or legal consequence of this situation. No one has mentioned the possibility that a person who is granted amnesty and re-joins a terrorist organisation to continue carrying out attacks should lose all the privileges granted by the amnesty. He has learned of the existence of 16 unsolved cases arising from the 1983 agreement between the Government and ETA p-m (ETA politico-military), resulting in unfair dismissals and releases under the 'peace for prisoners' scheme, but without any weapons being handed over and without cooperation by the terrorist organisation in police and judicial investigations. It is back to business as usual since the declaration of the definitive cessation of violence. He asked whether the UCD and the PSOE (political parties) did not morally confront the conflict during the transition. During the first ten years, 'the years of lead', there was a renunciation of intellectual combat on the part of the political and judicial class and the public prosecutor's office, which treated the attacks as simple murders, not daring to defend the theory of an indirect perpetrator through control, to stand against the leaders of the

terrorist group, in the retroactive application of the legal provisions on crimes against humanity. He spoke of moral laxity, not only on the terrorist side, but also on the part of the democrats, who seem to have needed to be asking for forgiveness.

The floor was then taken by Ms Montserrat who was concerned, above all, about the whitewashing that had been exposed by the speaker and how the European institutions can help in the telling of the truth. She wondered how remembrance and truth could be passed to coming generations, not only in Spain but also in the rest of Europe. It seems more difficult to explain the truth than to believe the lie.

Mr Jiménez noted that there were more than 300 unsolved ETA killings in 2016 which is still the case in 2021. The study has not lost its relevance. In relation to the recommendations concerning unsolved crimes, three were made to the public prosecutor's office:

- 1) Continue with the proceedings to try to establish criminal liability in the unsolved terrorist attacks;
- 2) Avoid the time barring of crimes and take the relevant steps to extradite members of the terrorist organisation who are not at the disposal of the Spanish justice system and have legal cases pending in Spain;
- 3) Assess the advisability of examining in greater depth the legal concept of crime against humanity as applicable to ETA terrorism.

There have obviously been prosecutions over the last five years. The Ombudsman requests regular information from the public prosecutor's office. These cannot be closed, either morally or procedurally. The Victims of Terrorism Association talks of 15 cases that have been resolved. What is lacking, in his view, is the exhaustion of the interpretative possibilities of criminal law. Criminal law has been building safeguards throughout history for the benefit of the accused, but it has evolved and legislators realise that the victim and his or her rights have been forgotten. He was quite struck by the discussion of 'restorative justice', but the theory of an indirect perpetrator is extremely difficult to apply, especially to a hierarchical terrorist organisation. He considers that crimes against humanity can be viewed from two perspectives: from a traditional criminal law standpoint, with few crimes from 2004 onwards, and where, in addition, the investigations have been paralysed for six years, which the victims do not understand and which causes tremendous frustration; from the perspective of international law. There has been a population displacement of 200 000 people who have had to leave the Basque Country and Navarre. He addressed the international community, outlining an action plan at international level to enable a better understanding of the damage caused by terrorism and to reinforce the human and material resources dedicated to the resolution of unsolved crimes through a specific plan. Criminal doctrine sometimes gets lost in nominalism, whereas what should matter are the things themselves. He mentioned the principle that proceedings are only opened when there is a likelihood of a conviction, and that perhaps this should not be an immutable rule. It may be necessary to create a criminal law in which, after the facts have been investigated and proven, it should be possible to say that a conviction cannot be handed down because 40 years have passed and the statute of limitations has expired.

Mr Alonso Zarza responded that an understanding of the ETA issue is an ongoing task for the European Union as a whole, because of what it represents for the courage of the victims. Victims have a universal dimension. Historian Tony Judt noted that he was afraid that witnesses to the horror were dying. The lesson of the 20th century is the horror of nationalism. The political polarisation, xenophobia and ethnic cleansing that he remembers,

this is what happened in the Basque Country. There has been talk over these days of the more than 300 unsolved murders, but we could also mention the more than 2 500 wounded or the tens of thousands of people who have lost their jobs because they have been threatened or targeted. Victims' first-person testimonies are essential. The lesson of 'never again' and of respect for the victims must be restored. He believes that the first thing to do is to do no harm, as the Romans established some time ago.

Mr Agius Saliba thanked the speakers on behalf of the Committee on Petitions for their remarks and, as this was the final session of the fact-finding visit, took the opportunity to thank all the interpreters who had helped them to understand and be understood over the past few days.

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Conclusions & Recommendations

Conclusions

- It was the victims, through Miguel Ángel Rodríguez Arias, lawyer of the association "Dignity and Justice", who warned us, through a petition, in 2016, about the fact that there were still so many unresolved cases.
- Based on the clear and understandable difficulties that, for the various reasons already mentioned in the report, the Spanish State has had to face in dealing with the extraordinary level of violence deployed by ETA, particularly in the eighties, the following facts should be highlighted.
- It is appreciated that the figure supported by the Spanish Ombudsman of 379 unpunished murders at present, is adjusted to the magnitude of the situation.
- It has been found that a significant percentage, approximately 44% of the ETA murders, there is no judicial sentence for all the physical perpetrators of the crimes which causes a lack of justice with the families of the victims.
- However, it has been stated that most of the unsolved murders (70%) were committed in the decade between 1978 and 1987, known as the 'years of lead', the period when ETA was most active and carried out the most attacks. 85.8% of these crimes took place in the Basque Country and Navarre.
- The Spanish authorities took and keep taking all the possible actions to try to resolve the pending cases.
- Spain is the State that has solved the largest number of terrorist attacks, and thanks to the efforts of all the institutions, Spanish society, the collaboration of other States and the strength of the democracy and the rule of law, ETA ended the murders in 2011.
- A large number of those responsible for the attacks have been brought to justice and serve their sentence in Spanish prisons.

- Specialised resources continue to be allocated to bring to justice the perpetrators of attacks of a very old nature, to review cases without judicial conviction, to bring to the attention of judges and courts the information available for prosecution and even to open new lines of investigation.
- The situation of terror created by ETA in the Basque Country and Navarre in the first years of Spanish democracy is the main cause of the significant number of unsolved crimes during that period and in those Autonomous Communities.
- Violent activity sought to isolate law enforcement from citizens. Through systematic attacks, ETA also sought to force law enforcement agents to devote most of their efforts and resources to protect themselves from further attacks.
- ETA developed specific campaigns of attacks directed against State security forces, on the one hand, and against sectors of society accused of cooperating with police forces, on the other, in a random manner, in order to introduce terror, silence and self-censorship in the majority of the population and to hinder and impede investigative work. As a result, a significant percentage of murder cases could not be solved.
- A comparison of the situation in the Basque Country and Navarre with other territories where there has been intense violence – whether driven by terrorists or organised crime – reveals substantial similarities: in all of these territories, there is a significant percentage of murders that have not been solved by bodies involved in security or justice. Violence, especially when it is very intense and concentrated in a small geographical area, conditions and limits the ability of security bodies to act and, consequently, leads to a high level of impunity.
- In addition to the main cause, there are other factors that have had a negative influence on the resolution of ETA murders and have led to impunity: in the past, there was a misalignment in the functioning of judicial bodies (local and national). There were also a period of adaptation of the State security forces to the fight against terrorism in the early years. Some ETA p-m (ETA politico-military) crimes were not investigated after the organisation's dissolution in 1982. There was a lack of international cooperation with the Spanish authorities in relation to harbouring fugitive terrorists, who were indicted by Spanish courts. Some terrorists accused of murders who had not been brought to trial passed away before being brought to the justice. And there was the added difficulty of converting intelligence or police evidence into court evidence.
- Most of the intervening actors noted that no former member of ETA has collaborated to date in the resolution of unsolved cases.
- The existence of legal instruments and jurisprudence internal to the Spanish State itself that could lead to the clarification of many of these murders, through the direct responsibility of the leaders who held the real control of the organization and the crimes, has been confirmed.
- It has been noted that the extraordinary level of violence and scale deployed by ETA is incomparable with other terrorist groups in Spain. All this level of extreme violence has seriously hindered, by itself, the efforts of the Spanish State in dealing with the investigation of all this, and has to place the legal response also in the crimes of international criminal law,

not only the national one.

- Tributes and welcomes have been taking place regularly in public streets to many of the former ETA convicts responsible for murders, upon their return to their places of origin. Such tributes and welcomes have continued to take place.

- It has been noted that the relatives of these almost four hundred unresolved victims of ETA have been submerged in a "consolidated situation of impunity" for many years and which continues to be prolonged day by day, and which implies an additional and parallel affectation of their own rights, in the terms of the European Convention for the Protection of Human Rights which prohibits all forms of undue suffering (articles 2 and 3 of the Convention). This aspect is of special concern for the European Parliament, since the human rights of the victims of terrorism must be the first thing to be guaranteed and this situation must be stopped.

- Victims continue to struggle to seek the truth, have their needs supported and their rights upheld.

- Victims must be at the centre of all actions by national, European and international institutions.

- We have a collective obligation to seek the truth behind each of these unsolved attacks. Not only to seek justice, but also to honour the memories of the victims, so that they and their families can find peace.

Recommendations

Actions at national level

The European Parliament, in general, and this Committee on Petitions, in particular, has the utmost respect for the delimitation of the competences of the Union, which, under the principle of conferral, means that the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein.

On the basis of this fact-finding visit, the following recommendations are made to the Spanish authorities:

1. Recall the provisions stated in the European Parliament resolution of 12 December 2018 on findings and recommendations of the Special Committee on Terrorism (2018/2044(INI)), to ensure it is fully valid, with regard to calling on all Member States, and in particular Spain, to set up legal mechanisms to criminalise the glorification of a specific act of terrorism as it humiliates the victims and causes secondary victimisation by damaging the victims' dignity and recovery.
2. In turn, reiterate the need to provide effective safeguards to prevent any subsequent victimisation derived from humiliation and attacks on the image of the victims.

3. Promote, through all competent institutions, the avoidance of public glorification of convicted terrorists when they leave prison, due to the pain and secondary victimisation that this entails for the victims of terrorism. Prevent the humiliation of victims through such acts by strengthening the legal instruments, in order to be effective and to effectively prevent impunity and re-victimisation.
4. Call to continue with an updated, detailed and exhaustive investigation procedure for unsolved cases, within the public prosecutor's office, with the participation of State law enforcement agencies and security forces, without any prior assessment of the possible legal time-barring of the case, in order to respond to the families who are still waiting for justice. This determination should be made at the end of the investigation, and victims should be informed of the outcome upon request.
5. Set up a commission of jurists to draw up a detailed report on each of the case files of the victims of ETA whose cases are still unsolved. All the case files should be requested from the National High Court after an updated list has been drawn up with the names of all the victims murdered by ETA who have not received justice. The Audiencia Nacional, through its Victims of Terrorism office, should communicate the procedural situation to all victims of terrorism or their relatives with unresolved cases. In this way, it will be possible to get closer to the judicial truth about how the judicial and police management of the unsolved ETA murders has been carried out and to contribute to the clarification of why there is so much impunity regarding ETA's crimes.
6. Make an appeal, from the competent institutions, to those who have any kind of information that could lead to the resolution of any of the pending cases, for cooperation on a completely confidential, protected and anonymous basis with the State security forces and the justice department, so that victims of terrorism can be offered access to information and justice.
7. In particular, in the case of the five people abducted, murdered and made to disappear by terrorist organisations, whose remains have never been found, make an appeal to those who could have had information about the fate of these individuals to provide this information on a confidential basis, so that the competent authorities and the families concerned have the necessary information to help them to recover the remains of their loved ones.
8. Suggest to the competent institutions to exhaust the interpretative possibilities of criminal law, including the possible recognition of ETA's terrorist crimes as crimes against humanity, even prior to 2004, and therefore considered not to be not subject to time-barring or amnesty. Recall that several initiatives have already been presented to amend the Criminal Code so that the principle of legality is interpreted in accordance with international law.
9. Suggest to the competent institutions to exhaust the interpretative possibilities of criminal law, also in the relation to the theory of indirect perpetration through control laid down in Article 28 of the Spanish Criminal Code, so that the members of the ETA leadership at the time when the various unsolved attacks were committed can be prosecuted as the instigators and prescient of the order.

10. Urge the competent institutions to ensure that the prison privileges and treatment that may be granted to those convicted of terrorism according to the current Spanish legislation are tied to their cooperation in the resolution of all attacks of which they have knowledge, as an additional sign of their true repentance.
11. Encourage all competent authorities in the Member States and third countries to continue and boost the police and judicial cooperation with the Spanish State, which is one of the fundamental means of solving unsolved cases in which it is presumed that those responsible may be fleeing from Spanish justice.
12. In cases where no procedural solution can be found, criminal proceedings must make room for action of truth, remembrance and peace.
13. It is necessary to guarantee that each and every one of the families of the nearly four hundred unpunished ETA murders be notified personally and as soon as possible of any change in the status of their legal case and of the personal and prison situation of the perpetrators.

Actions in the context of the European Directives:

The following recommendations are also made to the European institutions:

14. Suggest the revision of the Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combatting terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.
15. Within the framework of the EU Strategy on Victims' Rights (2020-2025), ensure that all victims of all crime, no matter where in the EU or in what circumstances the crime took place, can fully rely on their rights. This first-ever EU strategy on victims' rights and the comprehensive series of measures it envisages for the next five years must be the framework for action to prevent legal, social and moral impunity, increasing the security of all EU citizens.
16. Call on the Member States to fully transpose the Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combatting terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA; Recalls the recent evaluation of the European Commission which states that the Directive 2017/541 had a lower impact on the protection and assistance provided to victims of terrorism than expected; Asks therefore the European Commission to update, where appropriate, the Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combatting terrorism, as well as other existing EU rules on victims' rights, such as the Directive 2012/29/EU, in order to effectively enhance the assistance and protection provided to victims of terrorism and to prevent further victimisation arising from humiliation of the image of the victims by social sectors related to the perpetrator.
17. Emphasise the need to avoid secondary victimisation of victims both during criminal proceedings and when claiming compensation.

18. Emphasise the significance of bringing the perpetrator to justice when a crime is committed, although this is only one-step towards reparation.
19. Promote a real and effective investigation in all unresolved cases, as enshrined by the European Court of Human Rights, not as a mere declaration of intent but as a genuine guarantee that imposes a duty on States to act in the face of the most serious attacks on human rights, with the ultimate aim of achieving real and effective protection of such rights. To make the requirements laid down in the Convention effective, an investigation must be independent and impartial, public, conducted within a reasonable time and accessible to victims or their families. Likewise, the right to have such an investigation carried out, and the counterpart obligation on the part of the State, must be closely linked to the right of access to justice, since both pursue the same purpose. That purpose aims to ensure that, in the event of attacks on legal property protected by the Convention, procedural mechanisms are provided to ensure that the guilty parties are identified, liability is determined and damages are compensated.
20. Emphasise, in the case of terrorist attacks, that they are directed not only against individuals, but also against the State and against a democratic, free and open society, which makes them doubly reprehensible and makes it necessary to use all the means at the disposal of the competent national and European authorities to resolve these cases.
21. Make the strengthening of police and judicial cooperation at EU level a key element in preventing impunity for terrorist crimes. Strengthen the principle of mutual recognition, not only in the area of judgments and judicial decisions, but also in the prevention, detection and investigation of terrorist offences.
22. Within the framework of Europol, urge the European Counter Terrorism Centre to continue its efforts to investigate, within its sphere of competence, those elements of unsolved cases where it can provide assistance.
23. Address the specific needs of victims of terrorism, such as respect, protection from secondary victimisation, access to justice (safe participation in the criminal justice process), as well as compensation and reparation (financial compensation and assistance with the financial impact of the terrorist attack-, and reparation which includes general recovery and restorative justice processes).
24. Insist on the role of the EU Centre of Expertise for Victims of Terrorism (EUCVT), noting the need for this pilot project to be prolonged in order for the EUCVT to continue its work to promote integrated support for victims of terrorism in all EU Member States, inter alia by providing guidance and training on victims' rights and needs based on best practice in the Member States concerned.
25. Use the Commission's Victims' Rights Platform to ensure a more horizontal approach to victims' rights and bring together all relevant actors at EU level on victims' rights.
26. The Victims' Rights Platform, which includes key actors such as Eurojust, the European Network on victims' rights, the EU Counter-Terrorism Coordinator and the

Fundamental Rights Agency, should facilitate continuous dialogue, exchange of best practices between European strategies.

27. Insist on the role of the Commission's Victims' Rights Coordinator as a genuine guarantor of the consistency and effectiveness of different actions in relation to the victims' rights policy.

Actions at international level

The Committee on Petitions makes the following recommendations at international level:

28. Promote and strengthen international cooperation by the European Union with third countries in the fight against terrorism in order to prevent those crimes from going unpunished.
29. Reiterate the need for an action plan at international level to combat terrorism and to continue reinforcing the human and material resources dedicated to the resolution of unsolved crimes.
30. Point out the need to ensure that no victim of terrorism who has not received justice may be forgotten or turned down. Truth, remembrance and peace must accompany justice in order to protect the dignity of victims.

In relation to the petition:

Recommendation:

31. The petition n° 1525/2016 should be kept open.