

## **Switzerland should not turn a blind eye to torture evidence on Basque case**

**Geneva, 24 March 2017** – Switzerland’s decision to send back home a Spanish citizen sentenced to jail in spite of evident signs her confession was obtained under torture falls short of basic due process and fair trial standards of Swiss extradition rules.

Ms. Nekane Txapartegi alleges she had been tortured in 1999 in Spain while held incommunicado, following an arrest on suspicion of collaboration with Basque separatist armed group Euskadi Ta Askatasuna (ETA). Rising evidence of recurrent torture of Basque terror suspects between 1960 and 2013 has raised serious doubts about Spain’s compliance with Article 15 of the Convention Against Torture, which rules out of legal proceedings the use of evidence obtained under torture.

Ms. Txapartegi, who fled her home country in 2007 to escape her sentence to six years and 9 months in prison, has been held in Swiss prisons awaiting extradition since she was arrested on Swiss soil on 6 April 2016. Yesterday, the Swiss Federal Office of Justice (OFJ) cleared her extradition to Spain alleging Ms. Txapartegi had not provided credible evidence to substantiate her torture claims. This case raises serious concerns about how evidence is gathered and about the way torture allegations are treated in asylum and extradition proceedings in Switzerland.

“This is very worrying,” said OMCT Vice President Dick Marty. “This decision is legally flawed and appears to systematically ignore or downplay serious and converging indications suggesting that torture occurred in Spanish custody.”

Despite the existence of evidence provided by the defence – including a medico-legal report conducted by two forensic experts who examined Ms. Txapartegi – indicating that she was tortured to extract self-incriminating statements leading to her conviction, the Swiss authorities have failed to assess by their own means the credibility of Ms. Txapartegi’s claims. Switzerland based its decision exclusively on the information provided by the Spanish authorities, which are precisely the ones accused of torture by the alleged victim.

### **Effectively assessing torture claims**

In asylum, migration and extradition proceedings, Switzerland should conduct a physical and psychological examination of claimants who claim having been victims of torture or ill-treatment, in line with the so-called Istanbul Protocol, a set of United Nations guidelines for the effective investigation and documentation of torture.

“Regardless of the accusation weighing over Nekane, the question here is whether or not she was tortured,” said Gerald Staberock, OMCT’s Secretary General.

The OFJ decision also ignores several other forensic studies indicating that the Spanish authorities had resorted at the time of Ms. Txapartegi’s detention to torture, cruel,

inhuman or degrading treatment<sup>1</sup>, especially detainees held under incommunicado detention in connection with terrorist-related investigations. That should be enough in itself to call for further investigation into the case.

The OFJ justifies this lack of involvement into the assessment of the torture claims by pointing out that Ms. Txapartegi herself did not exhaust all remedies available to obtain justice for the torture suffered since she did not complain to the European Court of Human Rights. Swiss authorities ignored, however, that Ms. Txapartegi fought her case within the Spanish legal system for more than 10 years in a process slowed by countless obstacles and appeals.

## **Background information**

On 9 March 1999, Ms. Txapartegi had been apprehended by the Spanish *Guardia Civil* (Civil Guard) and held for five days in incommunicado detention. During the 120 hours in custody, she was subjected to brutal acts of torture including rape by multiple perpetrators, beatings, suffocation through plastic bags, threats of electric shocks, sleep deprivation, forced nudity and a mock execution.

Despite the existence of solid evidence including eyewitness testimony and medical reports identifying multiple injuries and psychological sequela consistent with torture, information extracted during the period of incommunicado detention was used as a key piece of evidence to convict her. In addition, the complaint of torture lodged by Ms. Txapartegi was shelved without previously questioning the vast majority of suspects.

Spain has been condemned on numerous occasions over the last years by international human rights bodies for the use of incommunicado detention and the lack of prompt, effective and independent investigations into acts of torture, in particular in the framework of the fight against ETA. The European Court on Human Rights has ruled against Spain on seven occasions for breaches of article 3 of the Convention (prohibition of torture and inhuman or degrading treatment), the last one being the case *Xabier Beortegui Martínez v. Spain* (judgment of 31 May 2016).

**See our previous press release on this case [here](#).**

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<sup>1</sup> According to the preliminary findings, made public in June 2016, of a report commissioned by the Basque regional Government to the University of the Basque Country-Basque Institute of Criminology, more than 4'000 people were tortured in the Basque Country between 1960 and 2013, particularly detainees held under incommunicado detention in connection with terrorist-related investigations. See also report « Incommunicado detention and torture » (2014), available in English on the website of the Mental Health & Psychosocial Network (MHPSS Network): <http://mhps.net/?get=195/Informe-Incomunicacion-tortura-Analisis-protocolo-Estambul-Eng.pdf>