



Prof. Dr. iur. Alberto Achermann
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Geneva, 15 June 2017

Re: Serious concern about the conditions of detention of Ms. Nekane Txapartegi, victim of torture, held in Zürich Prison awaiting extradition to Spain

Dear Prof. Dr. iur. Alberto Achermann,

The World Organisation Against Torture (OMCT), the largest network of NGOs fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment or punishment in the world, is writing to you to express serious concern about the imprisonment and inadequate conditions of detention of Ms. Nekane Txapartegi, currently held in Zürich Prison (*Gefängnis Zürich*).

Ms. Nekane Txapartegi was arrested in Zurich on 6 April 2016 following an extradition request issued by the Spanish authorities on 25 May 2015, after she fled the country in 2007. Ms. Txapartegi was sentenced to 6 years and 9 months in prison in 2007 for collaboration with a criminal organization (ETA), conviction reduced in February 2017 by the Spanish Supreme Court to 3,5 years, in application of article 579 bis 4 of the Penal Code, allowing for the reduction of prison sentences for offences of a less serious nature.

Strong evidence indicates that Ms. Txapartegi was tortured to extract self-incriminating statements leading to her conviction. Ms. Txapartegi was apprehended on 9 March 1999 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 and sexual assault, 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 sequelae 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.

Ms. Txapartegi has been deprived of liberty in Switzerland awaiting extradition to Spain for the last 14 months, since 6 April 2016. On 23 March 2017, the Swiss Federal Office of Justice (OFJ) cleared her extradition to Spain in a decision with multiple elements indicating evident disregard for her past torture claims. The decision was contested, among others, by the current Special Rapporteur on torture, Mr. Nils Melzer (see press statement released on 24 April 2017, available on OHCHR website). Appeals are now pending with the Federal Criminal Court and the Federal Administrative Court.

OMCT wishes to express concern over the failure of the Swiss competent authorities to conduct a prompt, thorough and independent examination, based on the standards and principles of the Istanbul Protocol, to assess the credibility of the torture claims alleged by Ms. Txapartegi prior to her imprisonment. The lack of a proper medical, gender-sensitive screening, vital to ensure that any health care condition and needs, including post-traumatic stress disorder¹, were addressed immediately, is contrary to international standards and has entailed very adverse consequences for the mental well-being of Ms. Txapartegi, who has re-experienced the very traumatic acts endured back in Spain. In addition to it, prison authorities failed to carry out a gender-sensitive and trauma-informed mental health care assessment and programme to meet the health-care needs of Ms. Txapartegi in prison, contravening Rule 6 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, hereinafter “Bangkok Rules”².

It is also worth mentioning that by ordering her immediate and unconditional imprisonment, the Swiss authorities failed to consider alternatives to detention on account of the caretaking responsibilities of Ms. Txapartegi, who is the primary carer of a 8-year old girl (Rule 2(2) of the Bangkok Rules).

Following a visit to Ms. Txapartegi in March 2017, OMCT aims to draw attention hereafter to several issues of concern, which relate to the conditions of detention of Ms. Txapartegi and the ensuing revictimisation she is subject to on a continuing basis, taking into account the negative effects of the following limitations and practices, individually and in an aggregated manner:

I) Conditions of detention (*individual dimension*)

Severity of conditions in maximum security facilities: Ms. Txapartegi is held in a maximum security cell (no. 417), which measures 2m (width) x 3m (length) approximately. A net in the window prevents light from coming in. Leaving aside work hours, she is allowed to leave her cell one hour to access the yard, which has a net roof. The situation of confinement and lack of suitable exercise in the open air has a negative impact on her physical condition, including stiffness in the muscles and eyesight problems.

Interference with intimacy: According to Ms. Txapartegi, guards never knock at the door before entering the cell, creating a situation of continuous stress and discomfort (to

¹ Ms. Txapartegi’s health status was assessed in January 2017 by Prof. Dr. Onder Ozkalipci and Prof. Dr. Thomas Wenzel, preeminent specialists on medico-legal evaluations conducted in compliance with the Istanbul Protocol (for additional details, read submission made by the International Rehabilitation Council for Torture Victims in the matter of Nekane Txapartegi (V. ref. 214’976-MAK): <http://irct.org/uploads/media/c466b7e59a2ee574f56e22d857d71472.pdf>)

² It should be noted that while the Bangkok Rules were adopted in the context of criminal justice, paragraphs 14 and 15 of the introduction state that the the majority of the rules are applicable to all categories of women deprived of their liberty. Nowadays, the Bangkok Rules provide a key reference point for gender-sensitive treatment of women in detention.

someone diagnosed with post traumatic stress disorder), particularly given that the toilet is only separated from the other part of the cell by a curtain.

Restrictions to communications and visits by family members: Ms. Txapartegi is allowed to see her daughter, who was recently diagnosed with a rare degenerative muscular illness, one hour per week. Communications and contact with the outside world are also severely restricted. She can call once a week for 10 minutes (on the telephone with her daughter she is only allowed to speak German – not her mother tongue, which is Basque – under the surveillance of a guard) and receive visitors once a week. OMCT recalls that the disruption of links with families and especially their children can cause immense worry and distress to women, all the more if they are the primary carers of their children. To counterbalance disadvantages faced by women detained, soft law international standards recommend women prisoners be given the maximum possible opportunity and facilities to meet with their children (Rules 26 and 52(3) of the Bangkok Rules), taking into account the best interests of children and the well-being of the mother. In the particular case of Ms. Txapartegi, the lack of contact with the outside world, with no effort being made by the prison authorities to facilitate the links with her child and family, has a direct impact on the mental wellbeing of Ms. Txapartegi and her daughter, and raises serious concern about the compliance of the prison authorities with international standards.

Access to medical services: There are no medical services available at night, not even in case of emergency. Psychological support is very limited and there is no expertise nor specialized treatment available to cater to the needs of Ms. Txapartegi as a trauma victim, contrary to Rule 7 of the Bangkok Rules. On 2 May 2017, after having reported pain in the breast and lower back to the doctor, Ms. Txapartegi was transferred to a hospital for a gynaecological checkup. The gynecologist (female), with her two assistants and two female police officers present, started asking questions to Ms. Txapartegi, who had shackled hands and feet. She told the doctor she was not feeling comfortable to speak with four persons in the room. She flagged to the doctor that she had been tortured and raped, and asked her to resume the visit without the presence of the two police officers, a request which was denied. Thereafter, the doctor performed a breast palpation exam, with the two assistants and the two police officers standing and overseeing everything. When the gynecologist wanted to proceed to the vaginal examination, she felt deeply humiliated and the situation led her to revive the memories of the rape, which prompted a nervous breakdown. The medical examination had to be interrupted at this point. Back in the prison, she burst into tears and vomited. Ms. Txapartegi was severely retraumatized with immense distress after that, requiring psychiatric treatment to recover. Once more, the situation described illustrates a total lack of sensitivity towards women who have been victims of gender-based violence. The facts as portrayed not only disclose a failure to safeguard the privacy, dignity and confidentiality of medical examinations, but illustrate a total lack of sensitivity towards women who have been victims of gender-based violence (cfr. 11(1)(2) Bangkok Rules).

II) Conditions of detention (*collective dimension*)

Women prisoners' unequal access to services and rights: Multiple elements indicate that the Zürich prison and its regime have been designed and developed with the needs of the majority male prison population in mind. Women deprived of liberty are placed in the same annexes as male prisoners with psychiatric problems and transgender prisoners. Moreover, women prisoners are offered less activities than men (e.g. they cannot take German lessons or play sports like men do, except ping-pong) and work assignments are, unlike men prisoners, limited to household chores (cleaning floors, doing laundry, cooking), reflecting gender stereotypes and discriminatory practices (see Rule 42 (1) of

the Bangkok Rules: “Women prisoners shall have access to a balanced and comprehensive programme of activities which take account of gender-appropriate needs”). OMCT believes affirmative action need to be taken by the prison administration to ensure that women prisoners have equal access to all services and rights that male prisoners enjoy, and are accorded additional rights and given access to other services and facilities, which respond to their gender-specific needs.

Obligation to work: Although the opportunity to work is presented as voluntary, women deprived of liberty with no external financial sources have no option but to work, against Rule 116 of the Mandela Rules, on an daily rate ranging between 5 and 7 CHF, in order to buy hygienic products and pay visits to the doctor. In addition, working constitutes the only possibility to exit the cell leaving aside the one hour allotted.

Hygienic needs: Women do not have free-of-charge access to sanitary products, which raises doubts as to whether gender specific needs (hygiene, healthcare needs) are being met. In this regard, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) considers that the failure to provide basic necessities, such as sanitary pads, especially in the case of women who are menstruating, who are going through menopause or who are pregnant, can amount to degrading treatment or can evolve into it (see also Rule 5 of the Bangkok Rules: “Women prisoners shall have facilities and materials required to meet women’s specific hygiene needs”).

Male staff: At night and on the weekends there are no female guards. Recognising the vulnerability of women to sexual abuse, Rule 81 of the Nelson Mandela Rules mandates that “no male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member”. The exclusive presence of male staff in the night shift and on the weekends contravenes international standards, exposing women to a heightened risk of abuse (and re-traumatisation for those with a background of sexual abuse such as Ms. Txapartegi). In this setting, it is particularly worrying that this prison recently advertised for jobs and expressly stated that it prefers male applicants. OMCT calls on the CNPT to make recommendations to bring such practices to an end.

In light of the aforementioned concerns, the International Secretariat of the OMCT kindly calls on the CNPT to verify the facts reported by promptly conducting a visit to the Zürich Prison, to interview Ms. Nekane Txapartegi and other inmates held in the same unit, and to make recommendations accordingly with a view to:

- 1) guaranteeing the physical and psychological integrity and dignity of Ms. Nekane Txapartegi, catering to her needs as a torture victim. OMCT considers that there is a high and serious risk of Ms. Txapartegi suffering irreparable harm if her detention continues, especially in the circumstances described above, which are causing her severe distress and anxiety. Various coercive non-custodial measures would be suitable to replace her detention, and any alternative should be developed taking into account gender-specific needs, the history of Ms. Nekane Txapartegi’s re-victimization and her caretaking responsibilities (see Rules 45 and 57 of the Bangkok Rules).

- 2) improving detention conditions and guaranteeing the personal integrity and dignity of all women deprived of liberty in Zürich Prison and in general all persons deprived of liberty in this and all other Swiss prisons, pursuant to Article 3 of the European Convention on Human Rights and Articles 7 and 10 of the International Covenant on Civil and Political Rights.

We hope that the concerns expressed in this letter will receive the attention they deserve, remaining at your disposal for any further information you may require, whether by e-mail, telephone or in person.

Your sincerely,

A handwritten signature in black ink, appearing to read "Gerald Staberock". The signature is written in a cursive style with some flourishes.

Gerald Staberock (gs@omct.org)
Secretary General
World Organisation Against Torture