

Switzerland: Risk of extradition of alleged victim of torture to Spain

Geneva - 12 August 2016. Swiss authorities should not authorize the extradition of Ms. Nekane Txapartegi, a Spanish woman suspected of collaborating in the 90s with *Euskadi Ta Askatasuna* (ETA), as her conviction appears to be based on information obtained under torture.

According to the information received, 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 her country in 2007. She has been living in Switzerland for the last seven years. Ms. Txapartegi was sentenced to 6 years and 9 months in prison in 2007 for collaboration with a criminal organization (ETA). Strong evidence indicates that Ms. Txapartegi was tortured to extract self-incriminating statements leading to her conviction.

According to the same information received, on 9 March 1999, Ms. Txapartegi was 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 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.

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).

Internally, the existence of torture has been acknowledged by former high ranking officials of the Guardia Civil and judges, such as **Mr. José Ricardo de Prada**, magistrate of the National High Court (*Audiencia Nacional*), who in a public event on 24 April 2016 deplored the lack of thorough investigations into grave allegations of torture. However, torture remains taboo in the country and the authorities continue to fail to implement the judgements and recommendations issued by international mechanisms, as already [denounced by the OMCT](#) on previous occasions.

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, which includes forensic, documentary and testimonial evidence, 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. Ms. Txapartegi appears on the database as one of the victims identified in the study and, according to the forensic experts in charge of the report, the allegations and symptoms in her case are highly consistent with those of torture victims.

Ms. Txapartegi is currently held in the Prison of Zurich awaiting extradition to Spain, the case is being reviewed by the Swiss Federal Office of Justice who will render a decision in the coming days.

The International Secretariat of the OMCT calls on the Swiss authorities to uphold the absolute prohibition of torture in accordance with international human rights law, in particular the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT Convention), by conducting an in-depth investigation to ascertain whether it is likely that Ms. Txapartegi was tortured to obtain a confession. If so, in accordance with Swiss extradition rules, the extradition request should be refused, as the criminal proceeding abroad would be compromised by the non-observance of the exclusionary rule of evidence obtained under torture (article 15 of the CAT Convention) and, subsequently, would not meet the basic due process and fair trial standards, in contravention with articles 6 of the European Convention on Human Rights and article 14 of the International Covenant on Civil and Political Rights. Subsidiarily, extradition should be made subject to the condition of a retrial where torture allegations are investigated thoroughly, the exclusionary rule is upheld and the fairness of the proceeding is ensured.

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