

# DISSOLUTION OF ETA AND CONTINUATION OF THE STRUGGLE OF SPANISH INSTITUTIONS IN THE AREA OF JUSTICE SYSTEM

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## ABSTRACT

**Purpose:** The purpose of this paper is to enable an overview of the new situation in Spain regarding the decision of ETA's leaders to stop with armed struggle and activities of institutions in Spain to continue with persecution and prosecuting members of ETA who committed crimes.

**Design/Methods/Approach:** Deductive-inductive and analytical methods are the main methods that will be used in the paper, which will enable understanding of the whole process from ETA's first actions to its decision to stop with violent activities, as well as decisions and actions of Spanish institutions to continue law-enforcement efforts related to committed acts of ETA's members in the past.

**Findings:** Our findings focus on better understanding the nature of ETA as an organization and committed terrorist acts, but more importantly politics and methods which institutions in Spain are using in order to satisfy justice regarding criminal acts committed by ETA members in the past.

**Originality/Value:** ETA was a terrorist organization that several decades conducted armed struggle through terrorist acts with the goal of giving Basque region independence. Still, ETA gave up armed struggle and disbanded in 2018, but Spanish institutions have still not given up on finding and prosecuting ETA members who were involved in terrorist acts. ETA and the work of Spanish institutions will be analyzed through ETA's organization and functioning, as well as through policy which Spanish institutions adopted after ETA was disbanded. The subject of the research is ideological terrorist organization that used certain methods in order to fulfil its goals and whose dissolution positively influenced the political and social stability in Spain. Also, an important part of the paper is presentation of the activities and measures of Spanish institutions in the area of law-enforcement whose goal is to bring perpetrators of criminal acts to justice. The goal of these institutions is satisfaction of justice and respect for the laws that existed at the time of committing terrorist and other violent acts.

**Keywords:** ETA, terrorism, Spain, law enforcement, justice system, institutions

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## INTRODUCTION

For several decades, Spain faced terrorist attacks. These attacks were carried out by a terrorist organization called *Euskadi Ta Askatasuna*, abbreviated as ETA. This organization changed over the years both internally and in terms of how it carried out terrorist activities. Initially, ETA was merely a nationalist organization that sought independence for the Basque Country. Later, ETA adopted certain leftist principles. Eventually, the leftist faction prevailed within ETA, and the organization took on a Marxist-Leninist character. In its operations, ETA also relied on some political parties that shared its goal—namely, the secession of the Basque Country from Spain. At the beginning of its activities, ETA had significant support from the population in the Basque region. However, after several terrorist acts, this public support declined. Another factor that contributed to the weakening of ETA as an organization was the arrest of its leadership in France. Over time, ETA weakened more than it grew stronger as a terrorist organization. Spain’s democratization also played a significant role in this decline. As a result of democratization, the autonomous region of the Basque Country was established, the use of the Basque language was permitted, and freedom of expression was granted. When it lost its most important support, ETA decided to cease armed actions, which marked the organization’s disbandment. Spain utilized several overlapping and mutually supporting strategies to effectively fight against ETA. It designated ETA as a terrorist organization and created special centralized institutions and legal frameworks to fight against it. In this fight it relied on cross-border cooperation with French



authorities. Furthermore, it enacted special legislation to suppress activities related only indirectly to ETA's actions intended to cut short its financial revenues, constitutional legitimacy and ideological appeal. The results were mixed at best, and will be analyzed in two separate subsections of this article.

## THE ORIGIN AND DEVELOPMENT OF ETA

When considering the political spectrum in the Basque Country, the Basque political left (Izquierda Abertzale) is the political space where the greatest number of acronyms has emerged. Among them were Herri Batasuna, Euskal Herritarrok, Batasuna and Acción Nacionalista Vasca (ANV). Since the founding of the organization Basque Country and Freedom (Euskadi ta Askatasuna – ETA) in 1959, there have been more than ten armed organizations and over twenty political acronyms that could be associated with this political space. Some existed only briefly, while others still exist today. Many terms are used to refer to the political sphere connected with the Basque political left, but three names are most commonly used: radical Basque nationalism, the Basque political left, and the Basque National Liberation Movement (Movimiento de Liberación Nacional Vasco – MLNV). Under the MLNV there were series of organizations grouped together. This made stronger civil infrastructure which ensured ETA's continuity (Martín-Peña, J., Rodríguez-Carballeira, Á., Escartín Solanelles, J., Porrúa García, C. and Willem Winkel, F., 2010: 113). Mentioned three terms may appear identical, but they do not mean the same thing. Radical Basque nationalism is the broadest term and refers to ultra-nationalism that seeks the independence of the Basque Country. Radical Basque nationalism does not necessarily have to be linked to ETA or to leftist movements. A clear example is the split from the Basque Nationalist Party (Partido Nacionalista Vasco – PNV), which led to the creation of Homeland (Aberrri) and Position (Jagi-Jagi), an event that occurred in the 1930s.

An organization called Basque Solidarity (Eusko Alkartasuna – EA) has, on several occasions, been associated with the sphere of the Basque political left. Also, some factions within the PNV cannot be considered radical nationalists. However, it can be argued that other radical nationalists share only the same goal—namely, the independence of the Basque Country—but not the use of violence, which was employed by ETA. Some segments of the radical left associated with the PNV do use violence as a means to achieve their aims.

A term such as the Basque political left is specific and refers to a national program that emerged in the 1950s. Initially, the only organization of the Basque political left was ETA. It should be emphasized that what all organizations of the Basque political left have in common is that they originated from ETA. Although they share the same political goals—namely independence and socialism—not all organizations of the Basque political left used the same methods, nor were they always cohesive. Two key differences existed among them. The first was the use of violence as a means. The second difference concerned the direction of their activity: one orientation was focused on a leftist system, while the other was directed toward patriotism.

Most restrictive term is MLNV, which refers to the socio-political network that emerged during the transition period when ETA's militarist wing was taking shape. The MLNV is a complex movement that encompasses one or more political forces, labor organizations, and groups dealing with various social issues. Their common denominator is the patriotic and social project of ETA, which represents the core of the movement. In addition to the goals it shares with the Basque political left, the MLNV supported ETA's use of violent methods. The MLNV organized itself into several circles. The core of the organization—or the movement—consisted of militant individuals within ETA, while the other circles were made up of sympathizers who were active only during major events. The sum of these circles, ranging from the least to the most militant individuals, formed a parallel society within the



Basque Country, one that had its own customs, means of communication, socialization patterns, and recreational networks (Leonisio, 2015: 83-85).

It should be noted that until 2014 under the MLNV there were around 10 armed organizations and around 20 political acronyms. Regarding political acronyms there were different political forces, labour unions and groups associated with various political issues like feminists, students, youth, pro-amnesty groups and similar (Leonisio, 2015: 85).

ETA, which was an armed organization from the Basque Country, was founded at the end of July 1959. ETA was set up by Basque students who worked on *EKIN* journal. Their motivation was the passivity of the leaders of traditional nationalism, represented by the Euzko Alderdi Jeltzalea/Partido Nacionalista Vasco (EAJ/PNV). In July 1959 members of *EKIN* abandoned EAJ/PNV youth organization and formed ETA (Pestana Barros, 2010: 402). After 60 years of fighting against the Spanish state, with the goal of establishing a socialist Basque state, ETA was disbanded in early May 2018. Although it was founded in 1959, it was only five years later, in 1964, that ETA began using explosive devices. These devices were used at the time to mark the Franco dictatorship. During its 60 years of active operations, ETA caused more than 800 deaths (Guibet Lafaye and Brochard, 2022: 1-2). ETA was the oldest terrorist organization in Europe and one of the oldest in the world. As already mentioned, ETA was formed in 1959, but it only began carrying out killings in 1968 (Sánchez-Cuenca, 2009: 610).

The Basque Autonomous Community enjoys a high level of autonomy within Spain. Over the past 45 years, this status has been overshadowed by the actions of the terrorist organization ETA and the violence it caused. Through this, ETA aimed to draw attention to the Basque issue in two ways: first, by highlighting the differences among the Basques themselves, and second, by emphasizing the distinction between the Basque Country and Madrid—specifically, the differences in the relationship between the Basque provinces and the central government of Spain. Political life in the Basque Country is marked by polarization and political pluralism. At first glance, political divisions within the region are primarily based on the divide between nationalists and non-nationalists. Still, there was Basque pro-independence left too which, as already mentioned, consisted of Herri Batasuna, Euskal Herritarrok, Batasuna and Acción Nacionalista Vasca (ANV). These divisions reflect significant differences in views on Basque identity, the Basque language, social class, rural vs. urban origins, and the diversity of Basque political parties. In recent decades, the non-nationalist population has supported political changes that led to regional autonomy, a result of Spain's democratic processes. Modern Basque nationalists, united around the EAJ/PNV, which has led the regional Basque government since 1980, except for the period between 2009 and 2013, have insisted on the right to self-determination. This self-determination was meant to include the option of voting for full independence from Spain. Radical nationalists, part of the left-wing movement aligned with ETA's ideology, demanded full independence for the Basque Country and for years supported, or at least failed to condemn, the violence ETA used in pursuit of that goal. ETA advocated for an independent socialist Basque state that would span territories in both Spain and France. Due to decentralization in both Spain and France, the Basque territory is divided into seven administrative regions—four in Spain and three in France. After the death of General Franco in 1975, members of the EAJ/PNV reluctantly accepted the creation of the Basque Autonomous Community within Spain (Whitfield, 2015: 2-3).

ETA emerged as a national security movement in response to Franco's dictatorship, which also extended to the territory of the Basque Country. With the end of the dictatorship, ETA initiated a war of attrition against the Spanish state. Its goal was the creation of an independent Basque Country. The violence carried out by ETA was supported by several organizations united under MLNV. Over time, this civilian wing of ETA grew stronger and provided the infrastructure that enabled ETA to exist and operate. This network consisted of individuals who were collaborators and sympathizers of ETA



(Martín-Peña, Rodríguez-Carballeira, Escartín Solanelles, Porrúa García and Willem Winkel, 2010: 113). There were two main factors that influenced the formation of ETA. The first was the perception of the Basque Country as an occupied state, and the second was Franco's rule. The founders of ETA believed that Franco's regime made the idea of occupation a concrete reality. From the very beginning, ETA consistently promoted two core ideas: the independence of the Basque Country and the use of violent actions. Although ETA did not officially declare itself a socialist organization, it advocated for certain social changes, including a deep transformation of property ownership and the socialization of industrial resources in key economic sectors. Before holding its first official assembly, during which these proposals were formally presented, ETA carried out its first act of violence. The organization attempted to attack a train full of Franco supporters, but the attack failed. The authorities responded forcefully, and many of ETA's key members fled Spain and took refuge in France (Leonisio, 2015: 86-87). The Spanish law-enforcement in its response could rely on cooperation with law enforcements of other states within the TREVI network (Jazić, 2025: 24). While in exile in France, members of ETA became more deeply acquainted with leftist ideologies. This exposure enabled them to reconcile and integrate nationalism with Marxist influences. Over time, nationalism, Marxism, and anti-colonialism became core components of ETA's ideology. However, the leftist faction within ETA was viewed with a degree of suspicion by other members. It was believed that they were overly committed to leftist ideas compared to the nationalists. ETA's second assembly, held in 1963, marked a significant ideological shift: the principles of revolutionary warfare were officially adopted, and a workers' front was established in response to growing concern over social issues. At this point, ETA formally became a leftist organization. The third assembly, held in 1964, pushed ETA even further in its anti-colonial stance, which may have contributed to the eventual split with the EAJ/PNV. ETA criticized the EAJ/PNV's nationalism as bourgeois, in contrast to its own working-class-based nationalism. The fourth assembly in 1965 saw two dominant ideological tendencies emerge: a pro-worker and an anti-colonial line. The fifth assembly, held in 1967, did not bring ideological changes; the organization's goals remained national and social liberation, to be achieved through armed struggle. However, the ethnolinguistic faction within ETA chose to leave the organization for two main reasons. First, ETA's plan to initiate large-scale armed actions. Second, the increasingly dominant influence of Marxist ideology in shaping future activities and operations. Those who left argued that ETA had ceased to be an organization accommodating diverse ideological tendencies and had instead become a group with a clear Marxist-Leninist orientation. That moment marked the division of ETA into two wings — the militarist wing and the politico-militarist wing. After separating from ETA, they established connections through the publication *Branka*. By doing so, they aimed to become a pressure group intended to influence the development of political activities associated with ETA. This group sought to steer ETA toward nationalism and away from leftist positions (Leonisio, 2015: 87-90).

There were two key ideological aspects that contributed to the emergence of ETA. The first was a nationalist doctrine that viewed the Basque Country as an occupied territory. The second was the dictatorship of General Franco, which reinforced this sense of occupation. The nationalist doctrine was rooted in a myth of a time when all Basques were equal and independent, until they were occupied by Spain and France. Franco's repressive measures, such as the suppression of political pluralism, the ban on the Basque language, and the restriction of freedom of expression, only intensified the sense of threat. These actions fueled nationalism in the Basque region and accelerated the formation of ETA. ETA's ideology was a blend of Marxism-Leninism and nationalism. The Spanish capitalist system was seen as hostile, as ETA members believed that the capitalist class in the Basque Country was allied with the central Spanish authorities. According to ETA, Basque capitalists contributed to the erosion of Basque cultural identity, while the Basque proletariat were seen as the true bearers of that identity. ETA justified its use of violence on three grounds. First, violence was seen as legitimate and inevitable



in the struggle for national liberation. Second, violence was perceived as a tool to reinforce Basque ethnic identity, strengthening a sense of belonging and resistance. Third, Violence fostered internal solidarity and group cohesion among ETA members and supporters (Scott and Dr. Hess, 2024: 17-18).

Some coordination inside ETA was necessary. This task was carried out by Patriotic Socialist Coordination (KAS) formed in 1976. KAS was inter-organizational coordinating body. The task of KAS was to help political wing of ETA to cope with repercussions of Spanish state (Duhart, 2016: 48).

## ARMED ACTIONS AND DISBANDMENT

Under a dictatorship, repression is very strong. Such conditions discourage potential insurgents, and the result is the absence of violent protests and actions. In consolidated democracies, repression is not strong, which means that the existing political conditions allow for peaceful political actions. When a regime is in transition, state authorities lose part of their repressive power, so the rights that enable peaceful political protests are not fully prioritized. When political protests arise during the transition process, they can easily become violent. Accordingly, ETA's major offensive began in 1977 and decreased in 1981. This very intense cycle of violence took place during the transition to democracy. The transition period occurred between Franco's death and the conclusion of the 1981 elections (Sánchez-Cuenca, 2009: 622).

There were four phases in ETA's armed actions. *The first phase* began at the end of 1973 with the assassination of Carrero Blanco and two of his bodyguards. This phase ended with the first democratic elections in mid-1977. During this period, the level of violence by ETA remained relatively low. Despite the revolutionary messages sent by ETA, the Basque population did not pay much attention to them at the time. *The second phase* started at the end of 1977, following the celebration of the first democratic elections. This phase can be seen as a war of attrition against the Spanish state. ETA no longer expected to mobilize large masses of people through its actions. Instead, ETA decided to use violence as a means to harm the Spanish state in retaliation for its refusal to meet ETA's demands. These demands included the right to self-determination, the withdrawal of Spanish military and police forces from the Basque territory, and full amnesty for ETA members. Large-scale ETA operations that began in 1977 lasted until the end of 1980. *The third phase* lasted from 1982 to 1992 and was characterized by relative stability in the number of fatalities caused by ETA's activities. However, there were individual periods with spikes in deaths, notably in mid-1987 and mid-1991, when ETA caused numerous fatalities by planting explosives in cars during separate attacks. This phase ended in late March 1992, when ETA leaders were arrested in southern France (Sánchez-Cuenca, 2009: 612-615). During this phase, the organs of the Spanish state established the Anti-Terrorist Liberation Groups (Grupos Antiterroristas de Liberación – GAL). This occurred under the government led by Felipe González. These were paramilitary formations intended to fight against ETA. GAL was composed of mercenaries from France and Portugal. The organization operated between 1983 and 1987. GAL was involved in executions, bomb attacks, and kidnappings in the Basque region and southwestern France. The result was 27 people killed, including key ETA leaders. However, there were also many victims who had no connection with ETA. The activities of GAL had no significant effect on the functioning of ETA. GAL was disbanded in 1986. Its existence and operations had a negative impact, particularly regarding the reputation of the Spanish authorities. More specifically, it created the image that Spain's democratic system was violent and repressive toward the population of the Basque Country (Scott and Dr. Hess, 2024: 23). *The fourth phase* began with these arrests, which disrupted ETA's plans for attacks on Spanish territory, especially as Spain was then hosting major international events like the Barcelona Olympic Games and the Seville Expo. ETA's goal during these events was to put maximum pressure



on the Spanish state. Still, Spanish police thwarted these plans with arrests in Bidart. After the arrests, ETA never regained the strength it had before (Sánchez-Cuenca, 2009: 615).

Recognizing that armed struggle alone could not secure independence from Spain, ETA began cooperating with nationalist political parties. During this phase, ETA also changed its choice of targets. Until 1992, violence was primarily aimed at putting pressure on the Spanish state by attacking police, the Civil Guard, and the military. After the arrests of key leaders, the focus shifted to state representatives and government officials. This change was motivated by two reasons. The first reason was that attacks on state officials were believed to have a greater impact on public opinion than attacks on security forces. The second reason was attacks on non-nationalist politicians were useful for the nationalist front's strategy because they deepened divisions within the Basque Country between nationalists and non-nationalists. ETA declared a ceasefire at the end of 1999, but this ceasefire was short-lived. Armed activities resumed mainly between late 2000 and mid-2001, but were quickly suppressed by Spanish security services. From 2003 onwards, ETA's armed activities were carried out with very low intensity (Sánchez-Cuenca, 2009: 615-616).

The violence carried out by ETA can be divided into physical and psychological violence, although it often happened that people experienced psychological violence before physical violence. ETA conducted physical violence throughout the entire territory of Spain, including the Basque Country, while psychological violence was primarily carried out within the Basque region. Physical violence included assassinations, bombings, and similar acts. Through its violence, ETA created a constant sense of threat in the Basque Country, aiming to establish an atmosphere of fear. This situation allowed ETA to persecute certain individuals, isolate them, and mark them negatively. Additionally, ETA extorted money from businesspeople and threatened small entrepreneurs and liberal professionals. The strategies of psychological violence had significant consequences on the health of those exposed to it and their surroundings. Individuals subjected to psychological violence developed various forms of psychological disorders and illnesses, which significantly altered their daily lives (Martín-Peña, Rodríguez-Carballeira, Escartín Solanelles, Porrúa García and Willem Winkel, 2010: 113). It should be emphasized that ETA used only conventional armed means in its activities. It is known that terrorist groups also use biological weapons (Stevanović, Kekić, and Miladinović, 2011: 306–318). However, ETA did not use this type of weapon.

Over time, changes occurred within the Basque patriotic left, leading to a division into two factions. The first faction was ETA, which advocated for political-armed struggle, while the second faction supported purely armed struggle. The militarist wing did not change its fundamental principles. On the other hand, the political-militarist wing gradually moved away from armed struggle and maximalist goals. This political-militarist wing showed interest in autonomy within Spain and shifted towards more modern leftist positions. However, in mid-1977, the political-militarist and militarist wings of ETA reunited. This merger strengthened militarism within ETA. The union of the two wings created a powerful organization capable of provoking significant political reforms. ETA thus had two main tasks: the political-militarist wing protected the political struggle, ensuring the achievement of popular goals, while the militarist wing engaged in direct conflict with state authorities. This conflict was meant to be a war of attrition aimed at forcing the Spanish state to accept ETA's demands (Leonisio, 2015: 94-95).

During its activities, ETA caused over 800 deaths, as well as many injuries, kidnappings, coercions, material damages, and similar incidents. ETA is uniquely characterized as an organization that generalizes the results related to the number of victims caused. The large number of victims, most of whom were not nationalists, caused over a long period has one important precondition: it concerns the social support that ETA had in villages and towns (Varona, Luis de la Cuesta, and Echeburúa, 2016: 66-68). By July 2011, members of the EAJ/PNV who were negotiating with ETA members had



achieved all they could without the participation of the central Spanish authorities. At that moment, ETA was weakened and ready to cease armed struggle but demanded guarantees from the Spanish central government. These guarantees included the legalization of the Basque Socialist political party (SORTU) and better conditions for about 700 arrested ETA members. Moving towards finding a solution required a peace process that would not directly include the Spanish authorities but would involve communication. This communication took place between the nationalist left, ETA, and the Spanish government through trusted intermediaries. The Spanish government released ill former ETA members, while the nationalist left in October 2011 dissolved Ekin. Members of Ekin were a hard-line group which played the role of political commissars of ETA within MLNV. Also, this new Ekin group, which was formed in 1999, was considered as the successor of KAS, because it replaced KAS as coordinating body of the movement (Duhart: 2016, 50). Afterwards, on October 17, 2011, an international conference was held in San Sebastián. A few days after the conference ended, ETA officially announced it was ending its armed activities (Whitfield, 2015: 9-10).

## LEGAL TOOLS EMPLOYED BY SPAIN TO FIGHT AGAINST ETA – DIRECT LEGAL TOOLS

### *Designation of the ETA as a Terrorist Organization*

The prosecution of the Basque separatist organization ETA was a long and complex process carried out primarily by the Spanish and French governments. It relied heavily on the use of counter-terrorism laws and judicial mechanisms to dismantle the group and its support networks. ETA was officially designated as a terrorist group by Spain, France, the European Union, the United States, and others. This classification was crucial as it provided the legal basis for applying specific counter-terrorism laws, which often entailed stricter penalties and special procedures. The terrorist designation was justified in ETA's bloody practice of brutal indiscriminate attacks on the civilian population and on public officials, especially through bombing attacks. The estimates of ETA's almost five decades long path of terror put the number of casualties to around 800 people killed, 2500 wounded and 80 kidnapped (Petrović, 2022).

### *Institutional Centralization and Specialization of the Fight against Terrorism*

In Spain, the legal fight against ETA was led by the *Audiencia Nacional* (National High Court). This special court was established in 1977 and has jurisdiction over crimes related to armed groups and terrorism. The court handled the investigation and trial of ETA members for a wide range of offenses, including murder, attempted murder, kidnapping, extortion, and belonging to a terrorist organization (Duhart, 2025: 725). Spain's legal system for prosecuting terrorism is highly centralized, with a single national court holding jurisdiction. The *Audiencia Nacional* is a special, centralized court with nationwide jurisdiction over major crimes, including terrorism, organized crime, and money laundering. It was created in 1977, in the final years of Spain's transition to democracy, to handle the most serious crimes affecting national security. The *Audiencia Nacional* has an investigative branch, the Central Instruction Courts, and a Criminal Chamber that tries cases. By assigning all terrorism cases to the *Audiencia Nacional*, Spain aimed to ensure consistency and expertise in the prosecution of these complex crimes. This centralization also allows for a unified response to a threat that often transcends regional borders (Varona, 2013: 218).



### *Comprehensive Legal Framework*

Spain has developed a comprehensive legal framework to combat terrorism, which has been shaped by its long history with groups like ETA. This framework is characterized by a strong judicial and police response and is based on a number of key laws and specialized institutions. The core of Spain's anti-terrorism legislation is found in the Organic Law 10/1995, which is the Spanish Criminal Code (Penal Code (Organic Law No. 10/1995 of November 23, 1995, as amended up to Organic Law No. 2/2019 of March 1, 2019)). It contains specific articles that define and criminalize various aspects of terrorism. The law defines terrorism not just by the act itself (e.g., bombing, murder) but also by the purpose of the act—to “subvert the constitutional order or seriously alter public peace.” According to the Human Rights Watch report, this broad definition allows for the prosecution of individuals who may not be directly involved in violent acts but are part of a larger terrorist group or organization (HRW, 2024). The legal principle behind this is that the existence of a terrorist group itself is a threat to public order and national security. Therefore, any activity that contributes to the group's operation and goals is considered a crime, even if it doesn't involve direct violence. This is a common feature of modern counter-terrorism legislation in many countries, reflecting the shift from a focus on individual acts of violence to a more holistic approach of disrupting and dismantling entire terrorist networks (Galli, Mitsilegas & Walker, 2016).

The Criminal Code establishes a catalog of offenses with severe penalties. These include:

- 1) Membership in a terrorist organization and collaboration with a terrorist group.
- 2) Specific terrorist crimes, such as murder, kidnapping, and arson, which carry much higher penalties when committed for a terrorist purpose.
- 3) Financing of terrorism.
- 4) Apology for or glorification of terrorism (*apología del terrorismo*). This provision has been used to prosecute individuals who praise terrorist acts or their perpetrators, and it has been a subject of controversy and legal debate (Vučić, 2021). We will revisit this issue further down in the text.
- 5) Enhanced Penalties: The law often establishes aggravated penalties for crimes when they are committed by members of, or in collaboration with, a terrorist group.

### *Special Criminal Procedural Measures*

To aid in the prosecution of terrorism cases, Spanish law allowed for certain special measures. For example, terrorism suspects could be held in police custody for up to five days (instead of the standard 72 hours) before being brought before a judge. This special measure is established in the *Ley de Enjuiciamiento Criminal (LEC)*, Spain's Code of Criminal Procedure, and is constitutionally permissible under Article 55(2) of the Spanish Constitution. While these measures were intended to be a necessary tool for fighting terrorism, they were also criticized by human rights organizations for potentially facilitating mistreatment or torture of detainees. European Committee for the Prevention of Torture (CPT), a body of the Council of Europe, has consistently recommended that Spain abolish its *incommunicado* detention regime. In its reports following periodic visits to Spain, the CPT has noted that while the number of cases of alleged ill-treatment has decreased, the “intrinsic potential for ill-treatment” of suspects under such a regime remains a significant concern (CPT, 2025). The CPT has also expressed concern over allegations of excessive use of force upon apprehension and during detention. European Court of Human Rights (ECtHR) has ruled against Spain in numerous cases for failing to conduct effective investigations into allegations of torture and ill-treatment, particularly in cases involving *incommunicado* detention (*Case of Otamendi Egiguren v. Spain*, 47303/08, Judgment (Mer-



its and Just Satisfaction), Court (Third Section), 16/10/2012; *Case of Arratibel Garcilandia v. Spain*, 58488/13, Judgment (Merits and Just Satisfaction), Court (Third Section), 05/05/2015; *Case of Portu Juanenea And Sarasola Yarzabal v. Spain*, 1653/13, Judgment (Merits and Just Satisfaction), Court (Third Section), 13/02/2018). The court has repeatedly found that the lack of legal safeguards—such as access to a lawyer of one's choosing and independent medical examination—makes it difficult for detainees to prove mistreatment. The court's judgments have underlined that *incommunicado* detention places a special burden on the state to protect detainees.

The regime of *incommunicado* detention represents a sharp conflict between the state's claimed need for exceptional security measures and the fundamental human rights of the detainee. The Spanish government consistently defended the regime as a necessary and exceptional operational measure in complex anti-terrorism investigations. The stated goal was to prevent the destruction of evidence, for example to stop the detainee from alerting co-conspirators who could destroy evidence or flee, or to obtain critical information, that is to secure intelligence needed to prevent imminent attacks and dismantle a terrorist network quickly (Ubasart-González, 2013). In essence, the Spanish government saw *incommunicado* detention as a pragmatic tool of national security—a necessary evil to fight a highly organized and existential threat—while human rights organizations and critics saw it as an unacceptable violation of due process that created a systemic risk of torture. The international and domestic debate over the regime persisted for decades until its use was largely curtailed by a 2015 reform of the Criminal Procedure Act, partly due to a reduction in the ETA threat and rulings from the European Court of Human Rights.

### *Cross-border Cooperation in Criminal and Intelligence Matters*

The French-Spanish cooperation was essential and ultimately decisive in the defeat of the terrorist group ETA. It transformed from a strained relationship into a model of cross-border counter-terrorism, culminating in the complete dismantlement of ETA's operational and logistical capacity.

Spanish and French security forces conducted numerous arrests of ETA members and leaders, often in coordinated operations. In later years, arrests in France became particularly significant, as the country had historically been a place of refuge for some ETA members (Stewart, 2009). Once arrested and convicted, the Spanish government pursued a policy of dispersal of Basque prisoners, scattering them in prisons across Spain and even in other countries (Stewart, 2009). The purpose of this policy was to break communication between ETA's leadership and its members, hindering the organization's ability to operate.

However, things were not so smooth at the beginning. For decades, especially during the Franco dictatorship, France adopted a policy of relative tolerance toward Basque exiles. The French Basque Country (*Iparralde*) became a crucial "sanctuary" where ETA members could reside, plan attacks, and train, largely untouched by the French authorities. France viewed the conflict as a Spanish domestic problem and was reluctant to cooperate fully, especially concerning the extradition of individuals who were considered political refugees. Cooperation began to seriously increase from the mid-1980s, driven by judicial and political shifts. France's shift was influenced by Spain's democratic transition, the realization that ETA was an organized crime and terrorist problem, not just a political issue and the growing use of French territory for logistical support and arms caches. France began extraditing ETA members to Spain, a process that became routine and significantly disrupted the group's leadership. After 2000, particularly post-9/11, the fight against terrorism became a global priority. France and Spain achieved full integration of their police and judicial efforts against ETA, making the French side of the border an extension of the Spanish security perimeter. Cross-border collaboration became seamless, leading



to the capture of nearly every major ETA leader, or *jefe militar*, who had sought refuge in France. This cut off the organization's chain of command.

The cooperation continued even after the ETA's dissolution. Thus, for example, in 2019, one of the most significant and long-sought fugitives, Jose Antonio Urrutikoetxea Bengoetxea, better known as Josu Ternera, was arrested in the French Alps. The Spanish Interior Ministry confirmed that the arrest was the result of a joint operation with France's DGSI, proving the continued effectiveness of the cooperation even after ETA's formal dissolution (Lopez-Fonseca, 2019).

## INDIRECT LEGAL TOOLS

### *Constitutional Ban on Political and Social Support Structures*

Prosecution extended beyond ETA's armed members to its political and social support structures. Spain's "Political Parties Law" of 2002 was a key tool in this effort. The 2002 law allowed for the judicial dissolution of political parties that were found to violate "democratic principles" by, among other things, "assisting and giving political support to terrorist organizations" (Ley Orgánica 6/2002, de 27 de junio, de Partidos Políticos, (Organic Law 6/2002, of June 27, on Political Parties), Boletín Oficial del Estado, BOE-A-2002-12756). The law specifically targeted parties that used violence to achieve political goals, promoted hatred, or sought to undermine the democratic system. This law led to the banning of political parties and organizations deemed to have links to ETA, most notably the political party *Batasuna* (Turano, 2003). Courts found that these entities were part of ETA's overall structure, and their members were prosecuted for collaborating with a terrorist organization. In its decision, the Supreme Court meticulously detailed the evidence proving that these political entities were not independent organizations but were, in fact, "fundamentally indistinct from each other and from the terrorist organisation ETA." While controversial, the law was later upheld by the Spanish Constitutional Court and the European Court of Human Rights, which recognized that the measure was a necessary and proportionate response to a pressing social need in a democratic society (ECHR, Zahtev broj: 25803/04 i 25817/04, Herri Batasuna i Batasuna protiv Španije, 30. jun 2009).

### *Special Legislation on Terrorism Financing*

Spain has also adopted specific legislation to prevent and freeze funds suspected of being used for terrorist activities. This aligns with international efforts to cut off the financial resources of terrorist groups (United Nations, International Convention for the Suppression of the Financing of Terrorism, 1999). Organic Law 12/2003, of 21 May, on the Prevention and Freezing of Terrorist Financing was one of the first specific pieces of legislation in Spain designed to freeze and prevent funds from reaching terrorist organizations. It gave state authorities the power to freeze funds suspected of being used for terrorist activities and permitted the examination and blockade of banking transactions.

Law 10/2010, of April 28, on the prevention of money laundering and terrorist financing is a comprehensive and more recent piece of legislation that consolidated and updated Spain's legal framework to align with European Union directives and international standards. It defines and criminalizes the financing of terrorism, which includes providing, collecting, or distributing funds with the knowledge or intention that they will be used for terrorist acts. Furthermore, it establishes obligations for "obliged subjects," such as financial institutions, lawyers, and real estate agents, to report suspicious transactions to the Spanish financial intelligence unit, *SEPBLAC*. Finally, it sets out penalties for non-compliance, including administrative and criminal sanctions.



The difference between Law 12/2003 and Law 10/2010 in the context of the fight against terrorist financing, specifically concerning ETA, represents a shift from a narrow, reaction-based focus to a broad, consolidated preventive regime. While both laws served as critical tools against ETA's financial infrastructure (including extortion, "revolutionary tax," and fraud), their legal nature and scope were fundamentally different. Law 12/2003 focused specifically on the immediate blocking (freezing) of funds and assets linked to terrorist groups, primarily in response to the rise of international terrorism post-9/11 and to supplement efforts against ETA, while the Law 10/2010 consolidated all anti-money laundering (AML) and counter-terrorist financing (CFT) obligations into a single, comprehensive legal framework, harmonizing Spanish law with the Third EU Anti-Money Laundering Directive.

Law 12/2003 remains in force after the adoption of the Law 10/2010, but with a narrower scope. Law 10/2010 stripped Law 12/2003 of its preventive content and re-named it the "Law on the Blocking of Terrorist Financing," leaving it focused almost exclusively on the administrative freezing of funds, while it itself became the current and primary law governing all anti-money laundering and counter-terrorist financing obligations in Spain.

Financial Action Task Force (FATF), an inter-governmental body that sets international standards to combat money laundering and terrorist financing, has repeatedly evaluated Spain's legal framework. Their reports, such as the 2014 and follow-up assessments, confirm that Spain has a robust legal system that is largely compliant with international standards (FATF, 2014). These reports specifically mention that Spain has strong legal measures in place, although they have, at times, pointed out areas for improvement, such as the need for faster implementation of targeted financial sanctions.

### *Criminalization of Terrorism Apology or Glorification*

The provision criminalizing the "apology for or glorification of terrorism" is a key part of Spain's counter-terrorism legal framework, and it has indeed been a major subject of controversy and legal debate, particularly concerning its impact on freedom of expression. The legal basis for this is Article 578 of the Spanish Criminal Code, which makes it a crime to "glorify terrorism or humiliate victims of terrorist crimes." This provision was initially aimed at groups like ETA, but its scope was broadened, particularly in a 2015 amendment, to address new threats, notably the use of social media for extremist propaganda. The law does not require the act to directly incite a terrorist attack. Instead, it punishes the public glorification or humiliation itself.

The law has been used to prosecute numerous individuals, including artists, rappers, social media users, and most importantly, Basque politicians, for things they wrote or said. Some of the most well-known cases include rapper Valtonyc, convicted for lyrics that were deemed to glorify ETA and other groups and for insulting the monarchy (Bekaert, 2020); rapper Pablo Hasél, sentenced to prison for lyrics and tweets that glorified terrorism and insulted the monarchy (Gómez-Aller, 2021); and student Cassandra Vera, given a suspended prison sentence for a series of jokes she made on Twitter about the 1973 assassination of a Franco-era prime minister by ETA (Spanish Supreme Court, *The State v. Cassandra Vera*, February 26, 2018, Decision, STC 493/2018). The European Court of Human Rights later upheld Hasél's conviction in the case of *Rivadulla Duró v. Spain*, finding that the conviction was a proportionate limitation on his freedom of expression given the context of glorifying violence (EctHR, *Rivadulla Duró v. Spain (The Case of Pablo Hasél)*, 27925/21, Judgment, November 9, 2023).

Two cases deserve special attention since they both involved Spanish courts convicting Basque separatist politicians under anti-terrorism or related laws for public statements, which the European Court of Human Rights ultimately found to be disproportionate interferences with their right to freedom of expression under Article 10 of the Convention.



In the case of *Erkizia Almandoz v. Spain* (Application no. 5869/17), the applicant, a former Basque separatist politician, was convicted in Spain of condoning terrorism for his participation as the main speaker at an event organized to pay tribute to a deceased former member of the ETA terrorist organization. He received a one-year prison sentence and was disqualified from holding public office. The ECtHR found a violation of Article 10 (freedom of expression) of the European Convention on Human Rights. It held that while the conviction amounted to an interference that pursued the legitimate aims of public safety, prevention of disorder and crime, and the protection of the rights of others, the penalty was disproportionate. The Court noted that the applicant's speech did not contain any direct or indirect incitement to terrorist violence and rather advocated continuing along a democratic path. The domestic courts' assessment that the speech amounted to "hate speech" was not followed by the ECtHR.

In the case of *Otegi Mondragón v. Spain* (Application no. 2034/07), a Basque politician, Mr. Arnaldo Otegi Mondragón, during a press conference made critical remarks about the King of Spain following a police operation against a Basque newspaper and allegations of ill-treatment. He was subsequently convicted of serious insult against the King and sentenced to one year's imprisonment. The ECtHR found a violation of Article 10 (freedom of expression). It acknowledged that the interference pursued the legitimate aim of "protection of the reputation or rights of others" (the King's reputation). However, it ruled that the imposition of a prison sentence for value judgments made in the context of a public debate of general interest, even if potentially hurtful, was a disproportionate limitation on freedom of expression in a democratic society. The King, as Head of State, is not immune from political criticism.

Organizations like Amnesty International and Human Rights Watch have been highly critical of the law. They argue that its broad and vague wording has a "chilling effect" on freedom of expression. They contend that the law has been used to punish satire, criticism, and art that may be offensive but does not pose a real and immediate threat of violence (Amnesty International, 2021). The Council of Europe's Commissioner for Human Rights and the UN Committee against Torture have both expressed concern about the law (COE Commissioner HR, 2018; CAT, 2015). They argue that it should be reformed to comply with international human rights standards, which require that any restrictions on freedom of expression must be necessary, proportionate, and based on a clear and imminent risk of violence (Council of Europe Commissioner for Human Rights, "Misuse of anti-terror legislation threatens freedom of expression", Comment, 4 December 2018). In Spain, there is an ongoing debate among legal scholars and judges about the application of Article 578. The central issue is how to balance the right to free expression with the state's legitimate need to protect national security and the dignity of victims of terrorism (Gascón Cuenca, 2020; Alonso & Reinares, 2005; Miró-Llinares & Gómez-Bellví, 2020; Martín-Herrera<sup>2022</sup>).

Some judges have taken a very literal interpretation of the law, while others have been more lenient, looking for a clear intention to incite violence. The different rulings in similar cases have highlighted the lack of a consistent judicial standard. The differing outcomes in the cases of *Pablo Hasél* and *Cassandra Vera* are often cited to illustrate the problem. While both individuals were prosecuted for online speech that made reference to historical acts of terrorism, the Supreme Court upheld Hasél's conviction while overturning Vera's. The difference in the rulings was often attributed to the judicial interpretation of the context, intent, and potential for harm of the statements. The Supreme Court found Vera's jokes to be satirical and not a real threat, but it took a different view of Hasél's lyrics and tweets, which were seen as more overtly confrontational and glorifying of violence (Duhart, 2025).

Lastly, the phenomenon of *ongi etorri* serves as another point of contention in the freedom of Expression vs. public order debate. It is a public welcome or homage offered in some Basque municipalities to members of the ETA, or members of the radical *abertzale* (Basque nationalist) left after they are released from prison, having served sentences for terrorism-related crimes. These events are often public



and symbolic, sometimes featuring traditional Basque ceremonies, banners, applause, and other forms of community recognition for the released prisoners (Gorter, Cenoz & van der Worp, 2021). The events have repeatedly led to legal debate in Spain, balancing the right to freedom of expression and assembly against laws concerning the glorification of terrorism and the protection of the victims' rights.

## CONCLUSIONS

In the end, the results of the analyzed legal fight against ETA have been mixed, and the process is still ongoing. Even after ETA's dissolution in 2018, the legal process has continued. The Spanish judiciary is still pursuing members of the organization for past crimes, including many unsolved murders. The prosecution of former ETA members for long-standing crimes has been a major point of contention, with victims' associations calling for justice and some activists arguing that the legal actions are politically motivated. Victims' associations point out that nearly half of the murders committed by ETA remain unsolved. They argue that the defeat and disbandment of ETA should not mean an end to the search for justice for these victims. For them, a democratic society cannot "turn the page" without holding the perpetrators of these crimes accountable. A mission report from the European Parliament's Committee on Petitions, following a visit to Spain in November 2021, directly addresses this issue. The report was in response to a petition from victims of ETA terrorism. It states that, according to the petitioner, there were 379 unsolved murders perpetrated by ETA, which represents almost half (44%) of the total number of victims. The report notes that the Victims of Terrorism Foundation (*Fundación de Víctimas del Terrorismo*) also cited more than 300 unsolved cases (European Parliament, "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", ETA2019-2024, 25.04.2022).<sup>2</sup>

Overall, the prosecution of ETA was a multi-faceted approach that combined robust policing and intelligence-gathering with a specific and powerful legal framework designed to counter terrorism. It was instrumental in weakening and ultimately defeating the organization.

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