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EUROPESE DEMOKRATISCHE ADVOKATEN
EUROPEAN DEMOCRATIC LAWYERS

London, Farciennes, Barcelona, Düsseldorf, 4th November 2013

Motion regarding the situation of Lawyers and Human Rights defenders in the Basque Country

We, members of the European lawyers organisations, ELDH and EDL, denounce the criminalisation and harassment of Human Rights defenders, lawyers and political activists by the Spanish authorities.

Despite the fact that Basque parties, institutions and civil society have been engaged in a process towards the peaceful resolution of the conflict for years and despite the fact that ETA has declared the definitive cessation of its armed activities, the violation of Basque lawyers' and citizens' rights continues.

On the 30th of September, 18 people were arrested, 4 offices searched, 32 Twitter accounts and 138 Facebook accounts closed down and bank accounts frozen during a police operation against Herrera, the Basque Human Rights organisation for the defence of political prisoners' and exiles' rights.

Herrera, a legally registered association, has been campaigning for the end of the policy of dispersion, the release of prisoners affected by the doctrine 197/2006, the release of the seriously ill prisoners as well as the dismissal of trials with accusations for mere political activity. Last January 2013, more than 115.000 people marched on the streets of Bilbao in support of these demands.

The 18 human right activists arrested during the police operation, ordered by the special court Audiencia Nacional, have been released waiting for trial and under severe precautionary measures including the ban of all political activities or the interdiction of leaving the Spanish State. In fact, the Spanish justice has banned all public activity of Herrera in defence of civil and political rights like the right of association, the right to a defence and the right to a fair trial, all included in the European Convention of Human Rights.

As European lawyers and citizens working for the defence of civil and political rights, we are especially concerned by the arrest of the lawyer Oskar Sanchez, representative of the Basque Human Rights Observatory, Behatokia. The Spanish Guardia Civil has taken away the electronical devices in Behatokia's office including documents from different court cases. Oskar Sanchez is one of the lawyers in charge of the appeal against the doctrine 197/2006 before the ECHR in Strasbourg. We ask the Court to give back the files without copying them, as they are confidential.

These facts constitute a clear attack on the basic rights of lawyers to practice their work and shows that Spanish authorities continue attacking fundamental rights of Basque lawyers as we demonstrated this year during the celebration of the Day of the Endangered Lawyer 2013.

Unfortunately, the criminalisation and persecution of political activities affects not only Herrera but also a large number of Basque citizens and organisations. More than 200 people will be brought to trial by the Spanish Audiencia Nacional for their mere political activity in political parties, youth organisations, internationalist associations...

Two of this trials have started on October 2013 and, currently, 76 activists of political parties and youth organizations (Case 35/02 and Case 26/11) are under trial, accused of being members of a terrorist organisation. The prosecutor demands more than 600 years of prison. We are gravely concerned by the complaints of several defendants, who claim they were submitted to torture during incommunicado

detention¹.

As we have stated several times last years, the application of laws of exception hollow out universal principles of law, basic guarantees and fundamental rights of detainees and those who are under trial. The extensive interpretation of terrorist activities and the application of these laws of exception have lead to the violation of fundamental rights, as the right to a defence and the presumption of innocence.

Taking into consideration the efforts of Basque political actors to reach a peaceful resolution of the conflict, as well as the grave violations of civil and political rights of lawyers, human rights defenders and political activists by the Spanish authorities, we, the ELDH and EDL:

- Urge the Spanish authorities to stop the persecution of legitimate and legal activities of the Human Rights organisation Herrera; the immediate release of prisoners affected by the doctrine 197/2006 specially after the judgement of ECHR², for it breaches the Human Rights Convention; to stop the dispersal policy of Basque Political prisoners and instead place them in prisons close to their homes, the release of the seriously ill prisoners and the dismissal of accusations for mere political activities.
- Support the fundamental demands based on the European Convention of Human Rights, the UN's "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment", the International Covenant on Economic, Social and Cultural Rights - ICESCR and the International Covenant on Civil and Political Rights ICCPR.
- Denounce the detention, the violation of the right to defence and to professional secrecy of our colleagues in Behatokia, especially of Oscar Sanchez, arrested for three days last 30th September. We reject the criminalisation of the exercise of the right to a defence, which aims at limiting this right and demand the immediate reinstatement of Oskar Sanchez' rights as a lawyer, the restoration all his work documents and the end all precautionary measures including the prohibition to leave the Spanish State. In case the Judge considers he has to interrogate Mr Sanchez, he can ask him to go to the court without sending the Guardia Civil to arrest him.
- We demand the dismissal of the court cases against 76 political activists included in the cases 25/02 and 26/11. We reject the arbitrary and inadmissible extension of the concept of terrorism to include public and democratic activities that fall under the right of expression and the right to a free political and social engagement We demand as well the abolition of exceptional courts like the Audiencia Nacional.

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¹ "The Commissioner regrets that human rights violations –in particular, ill-treatment- in the context of incommunicado detention by the Guardia Civil continue to occur, despite long-standing recommendations by several international human rights institutions". The commissioner focuses his attention to all the judgements against Spain in cases of torture, by Strasbourg and UN CAT. "The Commissioner notes with concern that the failure of the authorities to identify the perpetrators of ill-treatment is a main reason for dismissing complaints against law enforcement officials and for the closure of investigations into complaints concerning the excessive use of force". "The Commissioner notes with deep concern that charges relating to allegations of ill-treatment inflicted by law enforcement officials are frequently dismissed by judges". See the last Report CommDH(2013)18 of Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Spain from 3 to 7 June 2013.

² Del Río Prada v Spain, judgement of the 21st of October 2013