Anti-Terrorist Legislation In Spain

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1. Anti-terrorist legislation changed significantly in Spain during the final phase of the dictatorship. At that time, the provisions of the Penal Code dealt mainly with episodic or individual terrorism, or terrorism by disorganized and unstable groups. Acts perpetrated by more permanent organizations (the communists, anarchists and separatists) to undermine the unity of Spain, the integrity of its territories and its institutional order, were tried by the military courts on the basis of the Code of Military Justice. Less than two months before the death of General Franco, Legislative Decree No. 10/1975 lengthened the list of terrorist offenses and increased sentences to their maximum levels if the victim was an agent of the authorities or a member of the security or armed forces, going as far as the death penalty for crimes of abduction or assassination.

This system was progressively dismantled during the pre-constitutional period: terrorism was no longer tried under military jurisdiction and finally, by December 1978, it was so fully incorporated into the Penal Code that all direct reference to terrorism had disappeared.

Continuing acts of terrorism (mainly committed by the Basque separatist movement Euskadi ta Askatasuna or ETA) brought about a rapid change in this state of affairs. The Constitution contained provisions allowing for the restriction of some of the basic rights of members of armed gangs or terrorist cells. The democratically elected parliament quickly took advantage of these powers. This marked the beginning of a period of frequent legislative reforms which have continued to the present day (1981, 1984, 1988, 1995, 2000, 2003). These reforms relate to all aspects of the criminal law (including new criminal law applicable to juveniles). On some occasions, the reforms were blatantly contradictory in terms of the criteria they laid down to govern intervention in this area.

2. The concept of terrorism is closely linked with the Constitution in Spain. Article 55 (2) allows for the restriction of certain procedural rights in connection with the acts of armed gangs or terrorist cells.

According to this provision, the definition, according to Spanish law (which also punishes purely individual terrorism (Article 577)), of whether offenses constitute acts of terrorism requires the aim or end purpose of the acts of members or collaborators of armed gangs, organizations or groups (or individual terrorists) to be:

- to cause serious disruption to "public order"; or
- to undermine the constitutional order.

The Penal Code does not contain a precise definition as to what is meant by the term “terrorist group”. Case law combines a subjective criterion, the end purpose of the criminal acts, with other objective criteria, a sufficiently large group with a structure that demonstrates a degree of permanence (including a hierarchy), possessing arms and explosives in a similar quantity to that necessary for the deposit (Judgment of January 25, 1988). Since Constitutional Court Judgment No. 199/1987, a group is deemed to be a terrorist group if it engenders an intense feeling of insecurity in members of the population so that “citizens are unable to exercise the fundamental rights inherent in their ordinary and habitual coexistence as members of society”, which is particularly caused “by the use of the weapons in their possession and by the type of crimes they commit” and, finally, by the systematic commission of serious offenses using weapons and explosives.

3. Membership of an armed group or of terrorist groups and organizations is defined as a criminal offense in Articles 515 (2) and 516 (2) of the Penal Code. It carries a sentence of between six and twelve years imprisonment and offenders are denied the right to be employed in a public capacity or be entrusted with public responsibilities for a period of six to fourteen years.

The instigators and leaders of armed gangs and terrorist organizations and anyone who runs such a group are liable to a term of eight to fourteen years’ imprisonment and are denied the right to be employed in a public capacity or be entrusted with public responsibilities for a period of eight to fifteen years (Article 516-1).

Inciting others, conspiring or purposing to commit these offenses is also punishable by a sentence one or two degrees lower than the sentence for the offense itself (Article 519).

4. Aside from the offenses mentioned above, there are regulations referring to so-called terrorist offenses, separate from those dealing with terrorist groups and associations, which feature among the offenses that are contrary to “public order” (Title XXII, Volume II), Chapter V, Section 2.

Terrorist offenses include:

- so-called individual and/or urban terrorism;
- terrorist cooperation;
- exalting terrorism; and
- a series of common offenses aggravated by the fact that they are committed for specified terrorist ends.

(Source: http://www.sos-attentats.org/publications/english.htm#cuesta)
4.1. Individual and/or urban terrorism (Article 577 of the Penal Code) means:
- committing acts of homicide, causing bodily injury, abduction, unlawful detention, the issue of threats or coercion through duress; or
- committing acts of arson, criminal damage or destruction, and possession, manufacturing, storage, trafficking in or supplying arms, munitions, explosive, inflammable, incendiary or asphyxiating substances or devices, or their components;
without belonging to an armed gang, terrorist organization or group, with the aim of undermining the constitutional order or seriously disrupting public order, or contributing to these ends by terrorizing the inhabitants of an urban community or the members of a social, political or professional group.
The sentence imposed will be in the upper range of the punishments laid down by law for such offenses.

4.2. Terrorist cooperation is defined as:
- Procuring economic resources (Article 575) by violating the property rights of others to benefit armed gangs and terrorist cells. The sentence applicable is one degree higher than the punishment laid down by law for the same standard offenses.
- The performance, procurement or supply of any other act of collaboration (Article 576). The following are deemed acts of collaboration:
- information about, or surveillance of, persons, goods or property;
- building, fitting and equipping, selling or using lodgings or warehouses;
- concealing or transporting any person connected with an armed gang or terrorist organization or group;
- organizing or taking part in any training program or, generally, any similar cooperation or assistance, or any economic or other form of involvement in the activities of armed gangs or terrorist organizations and groups.
Terrorist cooperation carries a sentence of five to ten years and a penalty of 18 to 24 months. However, there is provision for heavier sentencing:
- if the information about, or the surveillance of, individuals endangers their lives, physical safety, freedom or property; the sentence applicable will be in the upper range of the punishments laid down by law for this offense;
- if the act is actually committed, those cooperating are deemed to be co-perpetrators or criminal participants in the offenses committed.

4.3. Following the latest law reform, exalting terrorism has replaced “apology” (support or encouragement of a criminal offense in public or in the press) because there was some doubt as to the constitutionality of the previous rules.
Article 579 punishes any praise or justification of terrorist offenses or of those involved in committing them through any form of public expression or broadcast. Exalting terrorism also covers acts that serve to discredit, scorn or humiliate the victims of terrorist offenses, their families or relations.
This offense carries a sentence of one to two years imprisonment (and some freedom restrictions – such as prohibiting the offender from approaching the victim – Article 47 of the Penal Code).

4.4. Among those common offenses classified as terrorist offenses due to intent are:
- arson and criminal damage (Article 571) punishable by a term of imprisonment of 15 to 20 years, without prejudice to any additional punishment that may apply if there has been an attack on someone’s life, physical safety or health; causing loss of human life (Article 572 (1)) carries a sentence of 20 to 30 years imprisonment; causing serious bodily harm, abduction and unlawful detention (Article 572 (2)): imprisonment for 15 to 20 years; any other bodily harm, unlawful detention, threats or coercion by duress (Article 572 (3)): imprisonment for 10 to 15 years;
- weapons, munitions, explosives, inflammable and incendiary devices (Article 573): 6 to 10 years imprisonment;
- any other offense or wrongdoing (Article 574): a sentence in the upper range of that normally imposed for such offenses.

4.5. Acts of terrorism are also affected by a series of common provisions contained in the Penal Code.
- Preparatory acts for the commission of these offenses, including conspiring, purposing or inciting others (Article 579 (1)) are punishable by sentences one or two degrees lower that those for the corresponding prepared offenses.
- For terrorist offenses, absolute disqualification (Article 579 (2)) is imposed as the principal sentence “for a term of six to twenty years more than the term of the custodial sentence, taking the seriousness of the offense, the number of offenses committed and the offender's circumstances into consideration.”
- Any foreign sentences imposed are taken into account for the purpose of assessing international recidivism (Article 580).

If the offender dissociates himself (Article 579 (3)), the sentence is reduced by one or two degrees. Dissociation means that the offender has:
- voluntarily given up his criminal activities; and
- gives himself up to the authorities, admitting the activities in which he has been involved and, also, cooperates actively with the authorities to stop the offense being committed or provides effective assistance in obtaining decisive evidence leading to the identification or capture of other offenders or to prevent the acts or development of armed gangs, terrorist organizations or groups to which he belonged or with which he collaborated.

Finally, terrorist offenders are frequently concerned by the rules laid down in Article 78 of the Penal Code. This article provides that the amount of time to be served before an inmate is entitled to be classified as a third level penitentiary inmate, to temporary exit rights or prison privileges or to release on probation must be calculated on the
basis of the aggregate sentence imposed where this exceeds double the legally stipulated time limit for serving sentences (in Article 76), i.e. three times the term of the longest sentence without this exceeding:
- twenty years, in general;
- twenty five years, in exceptional circumstances, where the offender has been convicted of at least two offenses and one of these offenses carries a maximum prison sentence of twenty years;
- thirty years, where the offender has been convicted of at least two offenses and one of these offenses carries a prison sentence exceeding twenty years; or
- forty years, where the offender has been convicted of at least two offenses and two of these offenses carry a term of imprisonment exceeding twenty years or he has been convicted of at least two terrorist offenses and one of these offenses carries a prison sentence exceeding twenty years.

5. From a procedural point of view, and according to what is allowed under the Constitution, a series of restrictions has been imposed on the basic rights of members of armed gangs or terrorist cells (or those acting jointly with them).

Police custody may be extended to up to five days, 48 hours longer than the standard 72 hour period (Article 520 bis of the Penal Procedure Act), which applies without the right to communicate with the outside world and without the right to choose legal counsel (a lawyer is appointed automatically) during police questioning (Article 527).

The right of privacy at any home where such individuals have been hidden or sheltered and the right to privacy of communication for individuals under suspicion in investigations into such offenses (Articles 533 and 579 Penal Procedure Act) are also limited.

Also, acts of terrorism are investigated and judged by the Audiencia Nacional (a specialized central court that sits in Madrid) and are governed by the principles of extraterritoriality and universal jurisdiction. Accused terrorists employed in a public capacity or entrusted with public responsibilities are suspended from their jobs (Article 384 bis of the Penal Procedure Act) and they may be remanded in custody for periods exceeding the standard custody periods and will be detained for a further period of one month if the public prosecutor appeals against the decision of the court to release them (Article 504 bis of the Penal Procedure Act).

6. Terrorism is also a case for specific treatment under juvenile criminal law. Following the introduction of a new system of treatment for juvenile delinquents under Institutional Act No. 5/2000 (which came into force in January 2001), the exceptional seriousness of acts of terrorism was the subject of Institutional Act No. 7/2000, which, in an attempt to provide a broader spectrum of punishments and general preventive measures, disregarded the main purpose of the legislation concerning juvenile delinquents by extending the period of incarceration in “closed conditions” (for young offenders found guilty of acts of terrorism, where any individual act carried a term of imprisonment of more than 15 years) to up to ten years – plus a period of probation of five years – for juveniles of at least 16 years old (and less than 18 years) and up to five years - plus a period of probation of three years – for juveniles of at least 14 years of age (and less than 16 years). A period of absolute disqualification of 4 to 15 years is added to these measures of incarceration under mandatory “closed conditions”.

Acts of terrorism committed by juveniles less than 18 years old are within the jurisdiction of the Central Juvenile Judge of the Audiencia Nacional, whose decisions in matters of prevention prevail over any sentences imposed by other judges or juvenile court divisions, served (in the same way as any final measures prescribed according to the adult legislation) in institutions (and under the supervision of specialist staff) that the government places at the disposal of the Audiencia Nacional by agreement with the Autonomous Communities.

7. At the beginning of the 1980s, legislation was passed whereby the State accepted to pay damages and compensation to the victims of terrorism for the acts of terrorism that they had suffered.


According to these regulations, the State is bound to compensate for personal injury (whether physical or psychological), the costs of medical treatment and any damage to property caused to those who are not responsible for criminal acts by or as a consequence of terrorist offenses committed by armed gangs or terrorist cells, or by those seriously disrupting public order or public safety. In addition, there is also provision for financial aid for research and studies, psychological or psycho-pedagogical assistance and other extraordinary aid intended, in exceptional circumstances, to alleviate the personal or family hardship of victims that are not covered or are insufficiently covered by the standard aid programs.

The right to benefit from these allowances requires proof of a causal link between the damage or suffering and terrorism. The government report and, depending on the circumstances, the final judicial report, will normally provide evidence of this link. Compensation for damage to property is subject to compensation under insurance policies and any other compensation payable for the same case by another public agency or authority.

The aid and compensation payments are handled by the Ministry of the Interior and are processed expeditiously and with emphasis on the interests of the victims, avoiding any formalities that might create delays or complicate claims. If the facts of a case are well-known or information about a case is already filed in the archives of the Ministry of the Interior, the claimant is not required to provide any form of documentary evidence.

8. In conclusion, Spanish anti-terrorist criminal legislation is a typical example of emergency legislation containing exceptions to the general rules. This legislation covers a broad range of offenses. The scope of offenses is often very wide and the treatment of offenders unorthodox compared with strict rules of legality. Offenses carry sentences that
which is essential for a full understanding of the reality of the situation. Avoid social demoralization, individual s and groups of individuals must learn fr om the experience of being a victim of great importance) to avoid making their circumstances even more difficult to bear, but particularly, because, to

compensation program, separate from t he general legislation applicable to the victims of violent crime and sexual offenses. Specific legislation, the Victims of Terrorism Solidarity Act, has been passed in their favor and they benefit from aid programs set up by some Autonomous Communities.

9. Anti-terrorist policy has recently given rise to new legislative developments, but this time outside the scope of the criminal law.

The Political Parties Act No. 6/2002 outlaws a new form of action or conduct which does not carry any criminal or administrative sanction, but allows for the dissolution of political parties which pursue activities damaging to the foundations of democracy, particularly where the aim of these activities is to destroy or undermine individual freedom, eliminating or disabling the democratic system (Article 9). The commission of certain “serious and repeated” acts is deemed to be a demonstration of this form of unlawful conduct. Evidence is provided by means of the repetition or accumulation of acts included in a long list such as: express or tacit support for terrorist acts, exculpating or minimizing the significance of terrorist acts, encouraging a culture of civil conflict and confrontation (or aimed at intimidating, reversing the opinion, neutralizing or socially isolating those who oppose terrorism), allowing individuals who have been found guilty of acts of terrorism and who have not publicly denounced terrorism to sit as members of the executive bodies of the party, including such individuals in their electoral lists or allowing individuals who have a dual political affinity to remain members of the party; using symbols, messages or other items representing, or identified with, terrorism, violence or other associated conduct as tools for the party’s activities; making over electoral rights or privileges enjoyed by political parties to terrorists or those collaborating with terrorists; regular collaboration with groups or entities acting systematically in concert with a violent or terrorist organization, or protecting or supporting terrorism or terrorists; giving support to terrorism through institutions of government by means of administrative, economic or other measures; promoting, giving coverage to, or participating in activities rewarding, paying homage to, or honoring terrorist or violent acts or those who commit them or collaborate with them; giving coverage to acts of disruption, intimidation or social duress relating to terrorism or violence. On the basis of this new legislation – which is strongly criticized by civil liberty movements but nevertheless declared constitutional by the Constitutional Court (Judgment of March 12, 2003) – the Special Division of the Supreme Court (Judgment of March 27, 2003) formed for this purpose, held that Batasuna, the political party which forms part of the so-called Basque National Liberation Movement, of which ETA is a member, was unlawful.

10. The sheer number of victims of terrorism has driven those suffering directly from acts of assassination, injury, persecution and attacks (and their families, relations and friends) to get together, to find the human warmth and companionship that they need to try to transform their pain into something positive and overcome their state of being victims. The social presence of such associations obviously raises the question (particularly since the truce declared by ETA in 1998, that was broken in 1999) of just how much social and political initiative should be afforded to the victims of terrorism.

Obviously, it cannot be expected that the authorities will merely channel and apply their proposals and courses of action; responsibility for tackling and fighting terrorism and its consequences rests with society as a whole and its leaders. They cannot hope to escape this responsibility given that all the victims or the vast majority of them support their objectives and strategies. However, being a victim of terrorism does not automatically mean that the positions taken and proposals made by the victims should be accepted without reserve from a political or justice standpoint.

However, it should be said that when decisions are taken regarding subjects that are particularly sensitive, for everyone and for the defense and development of fundamental values, it is essential to consider the views of victims and the groups to which they belong; those social groups potentially most affected by such a decision in a social and democratic system governed by the rule of law should always be consulted and this not only (although this is indeed of great importance) to avoid making their circumstances even more difficult to bear, but particularly, because, to avoid social demoralization, individuals and groups of individuals must learn from the experience of being a victim which is essential for a full understanding of the reality of the situation.

This is also (and especially) applicable in any process of dialogue to persuade people to abandon terrorist violence, if we do not wish to see victims once again used as instruments for political ends in the name of peace and justice. While waiting for the end of terrorism to come (and until this day arrives), the victims are essential to ensure that justice is done inside a justice system not vengeful or retaliatory but rather based on rehabilitation and encouraging an acceptance of responsibility and favoring reconciliation. This process of justice is not incompatible with generosity and forgiveness; it is incompatible with renouncing truth and with collective amnesia. For forgiveness to be effective and not lead to individual or social demoralization, it is absolutely necessary to be aware of what is pardoned and the acceptance of pardon by the perpetrator of the suffering himself.