

Opinion No. 17/2009 (Spain)

Communication addressed to the Government on 28 May 2009

Concerning Mr. Karmelo Landa Mendibe

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 17/2008.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information in due course.
3. (Same text as paragraph 3 of Opinion No. 17/2008.)
4. The Working Group welcomes with satisfaction the cooperation received from the Government with regard to the allegations formulated. The Working Group has transmitted the reply of the Government to the source of the communication, has received the observations of the source and considers that it is in a position to render an Opinion on the facts and circumstances of the case under consideration, taking into account the allegations formulated, the Government's reply and the observations of the source.
5. According to the source, Mr. Karmelo Landa Mendibe, of Spanish nationality, Professor at the University of the Basque Country in Bilbao, member of the European Parliament (1990-1994) and of the Basque Parliament (1994-1998) with the Herri Batasuna

coalition, was arrested on 11 February 2008 at approximately 2.00 a.m., in his residence, by a large group of National Police officers in civilian clothes, armed and with their faces covered.

6. The persons carrying out the arrest showed no order, decision or warrant issued by a public authority and stating the grounds for the arrest. He was detained after a house search which lasted two hours. Mr. Landa Mendibe was forcibly removed from his residence, handcuffed, and together with confiscated items, namely two computers, two cell phones, an agenda and books related to his work as a university professor. His wife witnessed the arrest, which was filmed and photographed by journalists, who had accompanied the National Police officers during the operation, and was widely disseminated in television news bulletins and newspapers on the following days.

7. Mr. Landa Mendibe was put in an unmarked vehicle, where a hood or sackcloth was placed over his head. He was informed that as of that moment he was being held incommunicado and without the right to have his own lawyer.

8. After a long trip at daybreak, he was committed to a jail in the city of San Sebastián. A woman presented herself as a forensic surgeon and informed him that she had been brought from Madrid “to look after him”. Later he was taken again to Bilbao, where he was locked up in the jail of the Police Headquarters. Subsequently he was taken to the General Directorate of the National Police in Madrid, where he was kept for two days in a very small cell of three meters by four, without windows or furniture. Throughout that time, Mr. Landa Mendibe was not interrogated or asked any question.

9. On 13 February 2008, he was presented to the regular judge of Examining Court No. 5 of the National High Court (*Audiencia Nacional*), where he was informed of his indictment for participation in the ETA terrorist organization and, as a consequence, an order was issued for his outright provisional imprisonment. The judge, also, asked him no question. The detainee, however, denied the accusation categorically and denounced the way in which he had been arrested and the mistreatment suffered.

10. Mr. Landa Mendibe reminded the judge that in earlier proceedings, conducted by the same judge, the Constitutional Court had invalidated the judgement handed down after a trial during which Mr. Landa Mendibe had been held in preventive custody for two years, from 1997 to 1999.

11. After that appearance, Mr. Landa Mendibe was transferred in a Civil Guard van, handcuffed and practically unable to move, to Soto del Real prison in Madrid and spent the night of 13 to 14 February in the corridors of the prison’s Revenue section.

12. On 14 February, the prison administration order notified to Mr. Landa Mendibe referred to “the detainee’s criminal capacity and dangerousness, clearly manifested in the crimes committed (terrorism), for which he is currently in prison” and to “the detainee’s ties with the ETA terrorist organization”. The Ministry of the Interior decided to classify the detainee as an inmate to be kept under close supervision and include him in the related FIES 1-3 list.

13. Mr. Landa Mendibe was placed in a cell which he shared with a young man who presented haematomas and fight bruises on the face. The clothes that he had been wearing were taken off and he had to don a white jumpsuit with a zipper in front, several sizes too small. When he protested for all this, he was sent to a small cell in the special solitary-confinement unit, where he was left completely naked. The cell, infested with cockroaches creeping on the floor and walls, was extremely dirty and constantly illuminated with a blinding white light.

14. On 17 February, the authorities refused to allow Mr. Landa Mendibe’s relatives to visit him. They had come from Bilbao for that purpose. On 18 February, he was transferred

to an ordinary cell in Unit 1, where he was informed that he had committed particularly grave faults and therefore the prison director had ordered that he should again be placed in solitary confinement and held incommunicado for 6-14 days. However, on 20 February he was transferred to the Madrid II (Alcalá-Meco) prison, located in the town of Alcalá de Henares.

15. Mr. Landa Mendibe remained in the Alcalá-Meco prison until 18 December 2008. During that period, he made the following requests, which were rejected:

- (a) Request to be jailed in a unit with pre-trial detainees, not sentenced offenders and convicts: Formulated on 18 March 2008 and rejected;
- (b) Request to participate in the activities of the prison sports centre and practice athletics: Formulated on 27 March 2008 and rejected;
- (c) Request to have an interview with the prison inspection judge during one of the judge's regular visits to the prison: Formulated on 9 April 2008 and left unanswered;
- (d) Request to be allowed to have a laptop and a printer in order to continue working on his doctoral thesis: Formulated on 7 July 2008 and rejected;
- (e) Request to be allowed to have a blood pressure gauge: Formulated on 7 July 2008 and rejected;
- (f) Request to be allowed to maintain contact by telephone with his defence layer beyond the weekly quota of telephone calls with his family: Formulated on 6 August 2008 and rejected;
- (g) Request to receive a copy of the house rules of the prison: Left unanswered.

16. On 19 August 2008, Mr. Landa Mendibe was punished with prohibition of family visits and, for 30 days, of exit to the prison courtyard because, during a search, he was found in possession of an album with family photographs and a music record. The penalty was not notified in writing and thus Mr. Landa Mendibe was unable to challenge it. On 13 December 2008, he was transported in a Civil Guard bus to the Valdemoro prison, approximately 60 kilometres from Madrid. Despite the short distance between the two detention facilities, the trip lasted more than six hours. During the transport, he was locked up with another inmate in an opaque metal compartment. Upon arrival, he was placed for five days in solitary confinement without any explanation. Neither his lawyer nor his relatives were informed of this transfer. Five days later, under similar conditions, he was transported to the Cáceres prison in Extremadura, 300 kilometres from Madrid and more than 600 kilometres from Bilbao, where his wife resides. There is currently no direct public transportation between Bilbao and Cáceres.

17. Mr. Landa Mendibe is currently under trial in case No. 35/02 of the Examining Court No. 5 of the National High Court, hoping that the hearing will take place. He has been charged with belonging to the ETA terrorist organization under article 515 (2) of the Criminal Code. However, according to the source, the file contains no evidence that could justify such a serious accusation.

18. Mr. Landa Mendibe's release on bail has been requested on various occasions, only to be rejected every time. The latest such rejection occurred in July 2008. A new request is currently pending.

19. According to the source, Mr. Landa Mendibe has been deprived of his right to personal liberty and security and to not be subjected to arbitrary arrest or detention (article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights). His arrest and trial constitute retaliation for exercising the right to freedom of opinion and expression (article 19 of the Declaration and

article 19 of the Covenant). Mr. Landa Mendibe's peaceful participation in legitimate political opposition activities never harmed the rights or reputation of others. He has not acted against national security, public order or public or moral health, nor engaged in propaganda in favour of war or in the promotion of national, racial or religious hatred in order to incite others to discrimination, hostility or violence. Only in such cases would the authorities have been justified in restricting his exercise of the freedoms in question (cf. articles 19 and 20 of the Covenant). There has also been a violation of Mr. Landa Mendibe's right to be treated with humanity and with respect for the inherent dignity of the human person; to be recognized as a pre-trial detainee; to be segregated from convicted persons and to be subject to separate treatment appropriate to his status as a non-convicted person (article 10 of the Covenant).

20. Mr. Landa Mendibe has been subjected to cruel and degrading treatment incompatible with his right to physical and mental integrity under article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights; and with articles 1 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which (under article 2) obliges Spain to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction".

21. Under articles 12 and 16, in combination, of the above Convention, the Spanish State must proceed with a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture or cruel, inhuman or degrading treatment has been committed. Although Mr. Landa Mendibe denounced the mistreatment to which he was subjected during his arrest and detention to the National High Court judge who indicted him, the judge disregarded the claim and did not order, as he should have done according to the law, the appropriate judicial investigation.

22. The source adds that no independent police mechanism has yet been set up in Spain to carry out the effective and impartial investigation referred to in article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

23. Inclusion in the FIES 1-3 list of highly dangerous persons is reserved to prisoners serving sentences for serious terrorist crimes. Mr. Landa Mendibe was characterized as such a person on the first day of his detention. During his preventive custody, for more than 15 months, in Spanish detention facilities, Mr. Landa Mendibe has been subjected to extremely hard detention conditions, which imply continual mistreatment.

24. Mr. Landa Mendibe's inclusion in the FIES 1-3 list immediately after his arrest entails a violation of the principle of presumption of innocence during the proceedings. That fundamental principle is enshrined in article 11 of the Universal Declaration of Human Rights and in article 14 (2) of the International Covenant on Civil and Political Rights

25. As already mentioned, the Prison Administration on various occasions did not recognize the principle of presumption of innocence in the case of Mr. Landa Mendibe; and illegal restrictions incompatible with his human rights, those that are subject to legal reservation, have been imposed on him.

26. Moreover, Mr. Landa Mendibe's rights to be tried within a reasonable time or to be released (article 9 (3) of the Covenant) and to be tried without undue delay (article 14 (3) (c) of the Covenant) have been violated.

27. Under article 9 (3) of the International Covenant on Civil and Political Rights, "it shall not be the general rule that persons awaiting trial shall be detained in custody", although the detainee's release "may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the

judgement". The provisional detention ordered by the examining judge more than 15 months ago and the long period that has already elapsed are incompatible with the above provision, binding on Spain.

28. The source adds that there has also been a violation of the provision of article 14 (2) (b) of the Covenant for adequate time and facilities for the preparation of the defence of the detainee, who should be able to communicate with counsel of his or her own choosing.

29. The successive transfers to various detention facilities located in different autonomous regions without notifying the detainee's relatives or counsel and without previously informing the detainee have seriously restricted Mr. Landa Mendibe's right to family life and his family's entitlement to protection by the State (articles 17 and 23 of the International Covenant on Civil and Political Rights). These apparently unnecessary transfers seem to be part of a deliberate policy of the Government to disperse Basque prisoners all over Spanish territory in order to prevent them from receiving assistance from their relatives.

30. Moreover, the source considers that there have been violations of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information and of some fundamental principles in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988 (in particular, Principles 4, 8, 15, 16, 18-20, 28, 30, 33, 36, 38 and 39).

31. The source states that the non-compliance of the acts described with the law is confirmed by the convergent practice developed by United Nations treaty bodies (the Human Rights Committee) and non-treaty thematic mechanisms for the protection of human rights (the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the independence of judges and lawyers). The Human Rights Committee and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism have expressed concern over the problems caused in Spain by an inadequate definition of terrorism. The Human Rights Committee has even recommended amending articles 572-580 of the Criminal Code.

32. The afore-mentioned international mechanisms have also expressed concern at:

- The maintenance of incommunicado detention in the legislation and in daily practice;
- The relation between that measure and torture and mistreatment;
- The use of the length of the applicable sentence as a criterion for determining the length of provisional detention;
- The filing, with the National High Court, of legal actions which could unwarrantedly restrict freedom of expression and association;
- The character of special court ascribed to the National High Court.

33. According to the source, the proceedings against Mr. Landa Mendibe before that special court must be reviewed because the use of such special courts as the National High Court to combat and repress terrorism should be considered illegal. Moreover, the Act on Political Parties currently in force has allowed banning the political group to which Mr. Landa Mendibe belonged and is a key factor in his detention.

34. In its reply, the Government does not deny that Mr. Landa Mendibe was arrested by order of the judicial authority to which case 35/02 has been assigned. That would justify the deprivation of liberty and imply that it has not been arbitrary. The Government denies any irregularities in relation to the arrest and during the following days; and adds that Mr. Landa Mendibe is currently tried “as the presumed perpetrator of a crime consisting in participating in a terrorist organization”.

35. The Government states that Mr. Landa Mendibe has had the benefit of all hygiene measures, garments, medical examinations and other necessities stipulated by the legislation on prisons; that he has been allowed to call his mother “free of charge” and that he received the visit of his lawyer on 14 February.

36. The Government adds that, in accordance with national legislation, orders were given to listen in on Mr. Landa Mendibe’s communications, save for those with his lawyer. The inclusion of the prisoner in the FIES 1-3 list is, according to the Government, appropriate for those falling “within the category characterized as armed gangs, in accordance with the law, but was resisted by Landa because the list includes ordinary prisoners, an argument common to inmates connected with the ETA terrorist organization”. He was subjected to solitary confinement in view of his behaviour. Because of his misconduct, other penalties imposed on him according to the regulations have included the suspension of oral communications for three months and of the delivery of food packages. The Government also confirms the prisoner’s transfer to the town of Cáceres, attributing it to his inappropriate behaviour; and maintains that, since that transfer, he receives visits and communications ordinarily.

37. The Government also confirms the rejection of requests, stating that Landa “could have submitted an appropriate request or complaint to the Central Prison Inspection Judge”.

38. On the merits of the matter, the Government maintains that, in the case under consideration, Spanish ordinary legislation has been applied. The Government also maintains that the National High Court is not a special court but “a body integral to the Spanish judicial structure and competent in various areas, not only criminal matters, since it fulfils an important role with regard to actions under administrative law and social legislation. In criminal matters, the National High Court is called upon to judge a broad range of offences, including those related to terrorism, whereby the pre-trial function (incumbent upon courts of first instance) is distinct from the specific trial function (fulfilled by the courts of justice)”. It is noted that the status of the National High Court as an ordinary court was acknowledged by the European Court of Human Rights in 1986, in the Barberá case.

39. The Government does not deny the lack of incriminatory evidence because it holds that “it would be useless and in contradiction with the presumption (of innocence) in question to try to explain, in this document or at any level other than the ordinary judge designated by the law to hear the case, the origin of or grounds for Mr. Karmelo Landa’s criminal incrimination”. This argument extends to the security measures imposed on the person concerned, including deprivation of liberty.

40. The communication quotes various provisions of the Act on criminal procedure on judicial guarantees for the accused and on ordering, extending and rejecting preventive custody. It also quotes prison legislation provisions formulated at the constitutional level, in the Prisons Organization Act, in the related Regulations and in relevant amendments.

41. Lastly, the communication maintains that Mr. Landa Mendibe is incriminated for his “presumed participation in the structure and the executive bodies (National Board) of Batasuna”. The Spanish Supreme Court has decreed that political group to be illegal on the grounds of its ties with the ETA terrorist gang, and the Constitutional Court has issued a similar ruling. The communication adds that the European Court of Human Rights has

expressed the same opinion, recorded in its judgement in Case No. 25803/4 and 2581/04, *Batasuna versus Spain*.

42. In a letter addressed to the Working Group on 28 August 2009, the source rectifies what it considers to be various factual errors in the Government's reply and refutes the Government's arguments.

43. The Working Group will pronounce separately on four issues referred to in the foregoing: Mr. Landa Mendibe's arrest, the nature of the court, the acts attributed to the prisoner and their legal characterization, and respect for the rules of due process of law.

Mr. Karmelo Landa Mendibe's detention

44. The versions provided in the initial communication of the source and the Government's reply are incompatible because the former states numerous abuses against the detainee (see paragraphs 5-18 of this Opinion), while the latter denies all of the allegations outright, claiming that no irregularities have been committed (para. 34). Although, generally speaking, the parties provide no evidence in support of their assertions, there are at least two undeniable facts which, considered together, allow maintaining that the presumption of Landa's innocence was impaired.

45. First, in view of Mr. Landa Mendibe's complaints and accusations to the effect that he was subjected to torture, or in view of the mere fact that there were reasonable grounds for thinking that acts of torture took place, the Spanish State should have ordered a prompt and impartial investigation into these allegations, in compliance with articles 12 and 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and did not do so. The Working Group does not doubt that, in this case, such reasonable grounds existed. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed concern over the number of "allegations of physical and psychological ill-treatment declared before the investigating judge" which "were ignored" (A/HRC/10/3/Add.2, para. 23).

46. Second, Mr. Landa Mendibe was indisputably subjected to long periods of incommunicado detention; and it is well known that international human rights law considers prolonged incommunicado detention as a form of torture or cruel and inhuman treatment. Moreover, in this case, that measure was used repeatedly. In the report on his mission to Spain, the Special Rapporteur states that "the incommunicado regime might have been used for the purpose of obtaining information that could further the investigations rather than merely in respect of actual terrorism suspects" (*ibid.*, para. 22).

47. In the Working Group's view, the existence of various judicial bodies neither is illegitimate nor affects the human right to be tried by an independent and impartial court with due guarantees, provided that such bodies' composition and function, under common superior organs and with magistrates selected and appointed on the basis of objectively and transparently applied criteria of ability, show the independence and impartiality of the bodies. The scope of their jurisdiction must not be based on corporate factors or ideological or religious considerations (as, for instance, is the case with, *inter alia*, military, people's and public order courts). The Working Group is of the opinion that the National High Court has generally ensured respect for those requirements and therefore its involvement alone does not suffice for considering or suspecting a particular judgement to be arbitrary.

48. Further, the Working Group understands that, in his report, the Special Rapporteur does not discredit the National High Court, since he states that he "is aware of a judgement by the European Court of Human Rights in 1988 (a view held earlier, in 1986, by the European Commission of Human Rights), which characterized the *Audiencia Nacional* as an ordinary court, but considers it, however, problematic that a single central specialized court has exclusive competence in applying and interpreting terrorist crimes, the scope of

which has become problematically broad”. In paragraph 58 of the report, the Special Rapporteur “requests the Spanish Government to give consideration to the possibility of including terrorist crimes in the jurisdiction of ordinary territorial courts, instead of a single central specialized court, the *Audiencia Nacional*”. In other words, the Special Rapporteur does not call into question the existence of that body (which also has jurisdiction in the administrative, labour and social areas, and over crimes involving drug trafficking and corruption, organized crime, crimes against the King and his family or against members of the Government and crimes subject to universal jurisdiction) nor considers that the exercise of its jurisdiction affects the right to be tried by an independent and impartial court. What seems problematic to the Special Rapporteur is only the territorial scope of the Court’s jurisdiction over terrorist crimes.

The acts attributed to Landa and their legal characterization

49. The Working Group does not share the Government’s view that it would be useless to discuss, at a level other than the judge, “the origin of or grounds for Mr. Karmelo Landa’s indictment” nor “the security measures imposed on a person”. That is, in fact, the Working Group’s job in respect of allegations of arbitrary detention.

50. In accordance with the information received from the Government, the sole act for which Mr. Landa Mendibe is accused consists in “presumed participation in the structure and the executive bodies of the National Board of Batasuna”. The Government adds that “the Spanish Supreme Court has decreed that political group to be illegal on the grounds of its ties with the ETA terrorist gang, and the Constitutional Court has issued a similar ruling”.

51. The Working Group considers that the State has an institutional, political and moral obligation to guarantee the security of all persons from terrorism. Everyone has the human right to security of person, enshrined in article 3 of the Universal Declaration of Human Rights (along with the right to life and liberty) and article 9 of the International Covenant on Civil and Political Rights (along with the right to liberty). That obligation implies the adoption of public policies and measures for preventing terrorist action and hindering impunity for such acts.

52. However, all public policies and measures implemented by States must be respectful of the human rights of all persons. Where such policies and measures ultimately lead to violations of those rights, the State forfeits its legitimacy.

53. According to the source, the crime having served as a basis for the indictment is characterized in article 515 of the Spanish Criminal Code, worded as follows:

“Illegal associations are punishable and consist of:

- (1) Associations which are aimed at committing any crime or which, once created, promote such commission; and associations which are aimed at committing or promoting the commission of offences in an organized, coordinated and repetitive manner;
- (2) Armed gangs, and terrorist organizations or groups;
- (3) Associations which, although pursuing a lawful goal, use violence, disturbance or personal coercion to achieve their aims;
- (4) Paramilitary organizations;
- (5) Associations promoting or inciting to discrimination, hatred or violence against persons, groups or associations because of their ideology, religion or beliefs, the affiliation of all or some of their members with an ethnic group, race or nation, or their gender, sexual orientation, family situation, illness or disability.”

Article 516 sanctions “the promoters and leaders of armed gangs and terrorist organizations, and those in charge of any of their groups” and the members of such organizations.

54. Based on the information provided by the Government, it would seem that Mr. Landa Mendibe fulfils the role of a member, and participates in the executive bodies, of a terrorist organization. Relying on judgements of the Supreme Court and Constitutional Court of Spain, the Government considers the Batasuna political party as a terrorist group.

55. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism correctly notes that the quoted article 515 does not provide a definition of the term “terrorist organization”, and he states the view that “counter-terrorism measures should not be used to limit the rights of NGOs, the media or political parties. Any measures affecting the exercise of rights fundamental for a democratic society must be applied in accordance with precise criteria established by law, as well as in compliance with the principles of proportionality and necessity” (A/HRC/10/3/Add.2). He also criticizes the implementation of the concept of “terrorist organization” by the Spanish courts inasmuch as it does not “seem to provide sufficient precision and may be applied to cover activities that fall outside the scope of crimes of a genuinely terrorist nature”. In that respect, he recalls that any restriction on fundamental human rights must be lawful, proportionate and efficient in relation to the goal of countering terrorism. The Working Group shares these views.

56. The sole charge that, according to the Government, has been brought against Mr. Landa Mendibe (presumed participation in the structure and the executive bodies (National Board) of Batasuna), without any attribution to him of the role of promoter, organizer, conspirator, instigator, accomplice or harbourer of any criminal or terrorist act and without information on its commission and on whether it was executed and completed or remained in the stage of plan, attempt or foiled endeavour, allows the Working Group to consider that the only grounds for accusing this person is merely his membership of the Batasuna political party, declared illegal. That act in itself is not a crime but the exercise of a human right recognized in the Universal Declaration of Human Rights (articles 19, 20 and 21) and in the International Covenant on Civil and Political Rights (articles 18, 19 and 22).

57. Moreover, according to the information provided to the Working Group, the judgements of the Constitutional Court and Supreme Court declaring the illegality of Batasuna do not change that organization, in itself, into an illegal or criminal organization. Membership and leadership of a political party, legal or illegal, are legitimate acts and indisputable manifestations of freedom of expression and opinion and of the right of association.

Respect for the rules of due process of law

58. After duly weighing the explanations formulated by the Government, the Working Group considers as established various infringements of the rules of due process of law, such as:

(a) Not informing Mr. Landa Mendibe at the time of his arrest of the grounds for such arrest, since —even in the event that he was informed of the charge of “presumed participation in the structure and the executive bodies (National Board) of Batasuna”— he was not notified of the “reasons” for nor of the “nature and cause”, “in detail”, of the charge against him (articles 9 and 14 (3) (a) of the International Covenant on Civil and Political Rights);

(b) Not trying him within a reasonable time and without undue delay, since he has already been deprived of liberty for 19 months (articles 9 and 14 (3) (c)) of the Covenant);

(c) Not allowing him to enjoy the right to liberty during the proceedings, even subject to appropriate guarantees (article 9 (3) of the Covenant), a right whose enjoyment in this case is justified inasmuch as Mr. Landa Mendibe never tried to escape justice;

(d) Not having respected his right to presumption of innocence, in combination with the cruel, inhuman or degrading treatment or punishment referred to in paragraphs 44-46 of this Opinion and having taken place as from his deprivation of liberty, and with his being immediately considered as a dangerous criminal and therefore subjected to the incarceration regime reserved to such persons (article 14 (2) of the Covenant).

59. In light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Mr. Karmelo Landa Mendibe is arbitrary, violating the provisions of articles 9, 10, 11 and 18-21 of the Universal Declaration of Human Rights and of articles 9, 10, 14, 18, 19, 21 and 22 of the International Covenant on Civil and Political Rights, and falls into categories I, II and III of the criteria used in considering cases submitted to the Working Group.

60. Consequent upon the Opinion rendered, the Working Group requests the Government of Spain:

(a) To remedy the situation of Mr. Karmelo Landa Mendibe, in conformity with the provisions of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights, by granting provisional release up to the end of the trial and by, moreover, taking measures to ensure that subsequent proceedings against him should not suffer further undue delays;

(b) To take measures of public reparation and other compensation in favour of this person;

(c) Without prejudice to espousing, as appropriate, the recommendations contained in the mission report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/10/3/Add.2), to adopt public policies and concrete measures in order to combat the scourge of terrorism from a human rights perspective; namely with respect for the human rights of all persons, and in particular the rights related to the conduct of judicial proceedings.

Adopted on 4 September 2009