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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-third session (31 August-4 September 2015)

Opinion No. 36/2015 concerning Aránzazu Zulueta Amuchástegui (Spain)

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which clarified and extended the Working Group's mandate by resolution 1997/50. The Human Rights Council confirmed the mandate by its decision 1/102 and extended it for a three-year period by its resolution 15/18 of 30 September 2010. The mandate was extended for a further three-year period by resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), the Working Group transmitted a communication concerning Aránzazu Zulueta Amuchástegui to the Government of Spain on 17 September 2014. The Government replied to the communication on 4 December 2014. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group considers that deprivation of liberty is arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);



(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. According to the information provided by the source in the allegation letter, Ms. Zulueta, a Spanish national aged 50 years' old who is a lawyer by profession and a member of the Vizcaya Bar Association, was arrested on 14 April 2010 during a counter-terrorism operation carried out by the Civil Guard.

5. Her admission to prison was ordered during preliminary inquiry No. 49/2010 initiated by Fernando Grande-Marlaska, the presiding judge of Central Investigating Court No. 3 of the National High Court.

6. After being released on bail, Ms. Zulueta was rearrested on 8 January 2014 in her law office on Elcano Street, Bilbao, by a sizeable group of heavily armed officers of the Civil Guard. In addition, Central Investigating Court No. 6 ordered a search of her office, which was subsequently extended to take in offices occupied by other lawyers. The searches were carried out between 8 and 10 January 2014 and resulted in the seizure of numerous documents and computer storage devices containing details of defence strategies, items of evidence and judicial records.

7. The search conducted was prospective and unrestricted, taking in all clients in general and violating client-lawyer confidentiality. This led the President of the Bar Association, Ramón Lasagabaster, to lodge a complaint. The boxes containing the seized documentation were opened several months later, on 27 May 2014, by the court clerk.

8. The source claims that prior to Ms. Zulueta's detention and the search of her office, her telephone calls were being monitored by the National Intelligence Centre. The source states that the 12 January 2014 edition of the daily newspaper *El Mundo* refers to conversations that were recorded by the counter-terrorism services.

9. When the period of police custody ended on 13 January 2014, Ms. Zulueta was brought before the detention judge, Eloy Velasco. In her statement, she categorically denied the charges against her. The judge ruled that she should be placed in pretrial detention without bail on charges of membership of an armed group, pursuant to articles 515.2 and 516.2 of the Criminal Code and ordered her admission to prison. Ms. Zulueta is thus being held in pretrial detention on the same charge from which she was previously released.

10. The source claims that, after the court ruled that she should be placed in pretrial detention without possibility of bail, Ms. Zulueta was sent to Estremera prison in the province of Madrid, where she was immediately placed in solitary confinement. In April 2014 she was transferred to Penitentiary Centre No. III in El Puerto de Santa María in the province of Cádiz, which is more than 960 kilometres from her home and place of work. She was placed under the regime established in article 10 of the General Prisons Act and articles 91.2 and 94 of the Prison Regulations. Although she has not yet been tried and has the right to be presumed innocent, she is being held under a highly restrictive prison regime and is extremely isolated, far from her home town and social and family environment. Since being admitted to prison, Ms. Zulueta has been held in isolation, on her own, without contact with other prisoners.

11. The source is of the view that Ms. Zulueta's arrest and continued pretrial detention are arbitrary and unlawful, in view of the international human rights norms applicable to her case. The source states that spurious political interests and motives are the only reason for detaining the lawyer on the charge of serious — but unsubstantiated — offences. The source also believes that Ms. Zulueta's arrest and the proceedings initiated might have been an act of retaliation for her work as the defence lawyer of persons implicated in counter-terrorism proceedings. Ms. Zulueta has always performed her legal duties and defence role before the competent courts with absolute professionalism and in strict observance of the law.

12. The source maintains that, when performing her duties as a lawyer and defender of human rights and when denouncing violations attributable to the State or to the security forces and law enforcement agencies, Ms. Zulueta has never at any time violated the rights of others. She has never compromised national security, public order, public health or morals and has never engaged in propaganda for war or advocacy of national, racial or religious hatred that constitutes an incitement to discrimination, hostility or violence.

13. The source recognizes the highly political content of many of the cases the lawyer has taken on, in strict compliance with her right to serve as defence counsel in the cases of her choosing, her right to freedom of expression and her right to practise her profession. However, it can hardly be inferred from the accusations against her — which are generic and non-specific — that she has committed acts of a criminal nature; the acts of which she is apparently being charged, or rather the absence of such acts, provide insufficient grounds for keeping her in pretrial detention any longer.

14. The fact that Ms. Zulueta has appeared on a near daily basis before the court hearing the case (the National High Court) and, specifically, before the judge overseeing the preliminary inquiry gives grounds to believe that placing her in detention — and especially in incommunicado detention — and subsequently in solitary confinement, contravenes the principle of proportionality. There is no reason to question Ms. Zulueta's readiness to appear in court, as she has done for decades in the exercise of her profession. It is also completely unjustified, according to the source, to reject the possibility of reviewing her continued detention by invoking an unspecified and unfounded "flight risk" on the part of the lawyer, whose professionalism is well known and recognized by all legal professionals working in the National High Court.

15. The source claims that the case is an example of pretrial detention being used arbitrarily. Ms. Zulueta's personal and family background and professional career, and the fact that she would continue practising in the National High Court if she were released, demonstrate that there is no danger of flight. There is also no possibility of evidence being hidden or destroyed since searches have already been conducted and all documentation has already been seized. It can be concluded, in the absence of prior convictions, that the legal prerequisites necessary to keep holding Ms. Zulueta in pretrial detention are not satisfied.

16. The source maintains that the fact that the authorities ordered her transfer to a prison located 960 kilometres away from her place of work and residence is detrimental to her right to ongoing contact and to prepare an adequate defence with her trusted counsels.

17. The source adds that the conditions in which the lawyer is being detained are extremely harsh, being similar to, if not worse than, those in which persons convicted of serious terrorism-related offences are held. She is enduring a situation of total isolation in a prison far from her personal, family and professional environment.

18. This situation, which has lasted for months, could cause irreparable damage to Ms. Zulueta's physical and mental well-being. It also constitutes punishment prior to conviction, and is therefore totally incompatible with the presumption of innocence to which the lawyer is entitled.

19. According to the source, the fact that Ms. Zulueta is being tried before the National High Court should also be reviewed, since the High Court is considered to be a court of special jurisdiction.

20. The source concludes that Ms. Zulueta's detention is arbitrary and contrary to the principles that should guide lawful detention. The source maintains that her detention falls under categories I, II and III of the categories applied by the Working Group when considering submissions.

21. Lastly, the source maintains that her detention is contrary to articles 8, 9, 10, 12, 19 and 23 of the Universal Declaration of Human Rights; articles 9 (para. 3), 10, 14 (para. 2 (b)), 17, 19 and 23 of the Covenant; and principles 8, 16 (para. 1), 19, 20, 36 (para.1) and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

22. In view of the arbitrary nature of Ms. Zulueta's detention, the source requests her immediate release and that she receive fair compensation for the physical and mental injury she has suffered.

Response from the Government

23. The Government of Spain replied to the communication from the Working Group on 4 December 2014.

24. The Government reports that on 20 May 2008 the French National Police and Spanish Civil Guard carried out a joint counter-terrorism operation which culminated in the arrest of several persons in Bordeaux, France. In the course of their activities in France, the French police seized a large quantity of documentation, some of which was transmitted to the Spanish authorities through the legitimate channels. After this documentation had been examined, on 14 April 2010, as part of preliminary inquiry No. 49/2010 initiated by Central Investigating Court No. 3 of the National High Court, and under the supervision of the presiding judge, Fernando Grande-Marlaska, the Spanish Civil Guard arrested 10 individuals for alleged activities supporting the Euskadi ta Askatasuna (ETA) terrorist group.

25. The persons arrested in this operation were Ms. Aránzazu Zulueta Amuchástegui and nine others. Some of them, including Ms. Zulueta, were admitted to prison pursuant to a court order issued by the competent judge on 19 April 2010, which ruled that Ms. Zulueta be imprisoned without bail.

26. The Government believes that the following conclusions about Ms. Zulueta may be drawn from the content of this order:

- That she is in receipt of documentation originating from within the ETA terrorist group;
- That she meets with militants belonging to the terrorist group and uses an alias in her correspondence (either "Marxel" or "Bixer"). These aliases appear in correspondence seized from her office;
- That she gathers information about persons, vehicles etc., that are potential targets and forwards it to ETA leaders;
- That she acts as a courier between ETA prisoners and the leaders of the terrorist group, either directly or through third parties;

- That she has links with the Koordinazioa Taldea (KT) Coordinating Group, which coordinates ETA prisoners, and could possibly be a member of its management unit;
- That she communicates with the ETA terrorist group by sending and receiving encrypted computer files. Such files have been found on a number of memory sticks, this being the standard information transfer method used by ETA militants for their correspondence;
- That she has personal and family correspondence addressed to an ETA militant in France in her possession, confirming that she works as an intermediary for ETA militants in hiding;
- That she is involved in the transfer and organization of meetings between ETA militants and fugitives and the ETA support structure;
- That she carries out courier activities and provides a point of liaison between various ETA militants and the group's leadership.

27. The reason for her pretrial detention is set out in the first legal ground of the order issued on 19 April 2010. The constitutional legitimacy of pretrial detention is established in articles 502, 503 and 505 of the Criminal Procedure Act, which provide that pretrial detention should be ordered and applied only where there is reasonable evidence indicating that a criminal activity which is specifically defined by law has been committed and can be attributed to a specific person; that the purpose of the custodial measure must be constitutionally legitimate and consistent with the nature of the measure; and that the custodial measure should be conceived, adopted and upheld as an exceptional, subsidiary and temporary measure which is proportionate to achievement of the stated purpose. The second legal ground set out in the order states that the incriminating evidence was gathered during the round of investigations (primarily those concerning the detainees) carried out by members of the Civil Guard's Intelligence Service after studying documentation about the operation conducted in France on 20 May 2008, when the political leaders of the ETA terrorist group were arrested. This documentation details the search and entry procedures and the items found in the possession of the persons arrested. These items are sufficiently explicit, revealing that the arrestees form part of the Halboka group of lawyers, responsible for overseeing discipline among prisoners, under the leadership of ETA, and for other activities such as identifying possible targets and managing the so-called revolutionary tax, *inter alia*.

28. Computer files seized from the lawyers' offices were encrypted in a manner that was hard to decipher. The files contained details of work carried out by Ms. Zulueta in support of the terrorist organization that went beyond the defence duties she performed.

29. Ms. Zulueta filed an appeal against the detention order, which was heard by the third section of the Criminal Chamber of the National High Court — a separate, collegiate court with higher authority which, on 2 December 2010, ordered her release on bail, subject to payment of a €60,000 guarantee.

30. On 25 May 2011, Madrid Central Investigating Court No. 3 opened preliminary inquiry No. 115/2011 and sent a request for international judicial assistance (No. 11/2011) to the Government of France. On 12 July 2011, following instructions and diagrams contained in seized documents stored on a memory stick found hidden behind a picture, officers of the counter-terrorism unit of the French National Police proceeded to search for a number of arms caches, which they located, and seized money, ammunition and various forms of explosive material.

31. In the light of these new developments, by order dated 14 July 2011 the Central Investigating Court decided to rescind Ms. Zulueta's bail and place her in pretrial detention without bail.

32. Ms. Zulueta's legal representative lodged an appeal, which was resolved by order of the Criminal Chamber of the National High Court issued on 14 September 2011. The order authorized the complainant's release on bail, subject to continuation of the precautionary measures imposed by the Chamber in its order of 2 December 2010. The Chamber found that: "It has not been established on this occasion that, since her release in execution of the order of 2 December 2010, the accused has been involved in recurrent criminal activities in support of the terrorist group".

33. A separate investigation resulted in a decision to prosecute Ms. Zulueta, who was arrested on 8 January 2014 together with seven other persons and accused of forming part of the KT Coordinating Group. This counter-terrorism operation culminated in searches of the eight detainees' homes and the law offices at 7 Antziola Street, Hernani, Guipúzcoa, and 20 Elcano Street, Bilbao, Vizcaya, during which computer storage devices were seized.

34. The order issued by Central Investigating Court No. 6 on 13 January 2014 establishes that ETA is a still active terrorist group within which a discrete unit responsible for supervising and managing the organization's jailed militants operates alongside the military and infrastructure units. This unit remains active and is formed of ETA members present in Spanish territory. Known as the KT Coordinating Group, the unit is used by ETA to manage and supervise jailed militants under its direct authority and provides a link through which the organization's leaders can communicate directly with militants in prison. Since February 2013, and possibly earlier, the eight detainees, including Ms. Zulueta, have all been part of the KT Coordinating Group.

35. After a press release issued by the Institutional Relations Office of the Ministry of the Interior reported the Civil Guard's swoop on the KT Coordinating Group before it had even taken place, members of the Group attempted to conceal and destroy evidence, to impede access and to prevent the relevant search and entry procedures. The accused persons arrested at the law offices in Elcano Street, Bilbao, were found spread around the building in the process of destroying documents. In the search carried out in Hernani one of the accused was busy destroying 33 typed and handwritten leaflets containing details about ETA. This fact attests not only to the Coordinating Group's links with the ETA leadership and the group of detainees but also to the latter's membership of ETA.

36. In the order issued on 13 January 2014, the judge ruled to allow the defence teams to exclude from the proceedings all documents seized from the respective lawyers' offices which contained details of defence and trial strategies for cases unconnected to ETA, thereby safeguarding the right to a defence of the third parties concerned. Contrary to the source's claims, in none of the cases was client-lawyer confidentiality violated.

37. All organizations and associations operating under the ETA umbrella which share the organization's goals and support the armed struggle previously led by those who are now prisoners must be treated as ETA terrorist organizations. These structures, which, like the KT Coordinating Group, count the detainees among their members, help to sustain the activities of ETA and prevent its dissolution. Their members are thereby committing the offence of membership of a terrorist organization, as defined in article 571 of the Criminal Code. The eight detainees are directly linked to structures that are an inherent and crucial part of ETA.

38. The order is based solely on the items of evidence mentioned by the judicial authority and not in any case on information gained from telephone conversations tapped by the National Intelligence Centre. The press report mentioned (*El Mundo* edition of 12 January 2014) has nothing to do with either the Ministry of the Interior or the judicial proceedings, nor has it been established whether the content of the report corresponds to information in the Centre's possession.

39. The court order indicates that the prerequisites for a pretrial detention order established in article 503 of the Criminal Procedure Code were met, since the case file attests to the existence of an act which, based on the evidence described, corresponds to the offence of membership of a terrorist group (ETA), as defined and penalized under article 571 of the Criminal Code. This offence carries a sentence of at least two years' imprisonment (in this case, between 6 and 12 years' imprisonment and special disqualification). The case file sets out sufficient grounds to believe that the persons against whom the pretrial detention order was served were criminally responsible for the offence. It reveals that there is a well-founded risk of flight and effective removal from the judicial proceedings.

40. Ms. Zulueta was detained by officers of the Civil Guard, in accordance with article 492 of the Criminal Procedure Code. Her detention was an autonomous, precautionary measure, distinct from court-ordered detention, which is expressly provided for under procedural law. The purpose of the detention is to allow the police to carry out the procedures necessary to investigate the facts.

41. For terrorism-related cases, article 520 bis of the Criminal Procedure Code establishes the possibility of extending the 72-hour period during which detainees may be held by police before a court order is sought by a further 48 hours. Such an extension was justified in Ms. Zulueta's case because of the large amount of incriminating evidence to be analysed. The extension was authorized by the competent judge, with the necessary immediacy, in a reasoned decision set out in the order of 10 January 2014. An appeal was lodged against this order, but was dismissed by the second section of the Criminal Chamber of the National High Court.

42. The acts for which Ms. Zulueta was detained in 2014 are distinct from those at the origin of preliminary inquiry No. 49/2010 undertaken by Central Investigating Court No. 3. The *non bis in idem* principle of double jeopardy doctrine does not therefore apply — not only because the appropriate time for such an assessment, which is generally made much later, has not been reached but also, and primarily, because the case involves a separate offence, that of membership of the ETA terrorist group. The facts that have led to Ms. Zulueta's trial date from 2012 and not from 2010. With the exception of two persons, the co-accused are different, as are the circumstances and the events that prompted the investigations.

43. The Government adds that the periods which Ms. Zulueta spent in jail marked a rupture of her membership of the terrorist organization, converting it, in line with the case law of the Supreme Court in judgement No. 5173/2003 and No. 2050/2007, into two distinct periods of membership. The latter Supreme Court judgement establishes that: "The offence [of membership of a terrorist organization] ends when the offender's membership of the organization ends, whether by voluntary cessation or separation from the organization, due to expulsion by the organization's leadership, or due to an event of force majeure, such as a conviction for the offence, which puts an end to and marks the rupture of the previous unlawful situation". Thus, convicted persons who rejoin ETA upon their release can be tried again for the same offence; the acts constituting the offence are different in that they relate to a new membership of the terrorist organization.

44. The committal order of 30 June 2014 was issued by Central Investigating Court No. 3 of the National High Court in the context of preliminary enquiry No. 10/2013, which followed on preliminary inquiry No. 49/2010. The judge ordered Ms. Zulueta's transfer to a prison in Madrid in order to guarantee her right to a defence.

45. The order of 30 June 2014 states that Ms. Zulueta is responsible for coordinating the reports that ETA requires detainees to provide in order to give account of the information they have disclosed in police and court testimonies and any errors they may have committed that led to their arrest. Whenever a member of ETA was admitted to prison, he or she was required to prepare a report and arrange for its delivery to the ETA group of lawyers. The lawyer taking receipt of the report ensured its delivery to Ms. Zulueta, who then delivered it to the responsible member of the KT Coordinating Group, who in turn forwarded it to the ETA leadership. The order establishes a number of facts, as detailed below:

(a) Ms. Zulueta assisted with the collection of the so-called "revolutionary tax"; the evidence indicates that in July 2006 she informed ETA that a person would pay the "tax" in two instalments and that she would personally assume responsibility for forwarding the amount corresponding to the first instalment to the terrorist organization. In October of the same year, the ETA leadership commissioned from her a report on the security of the main building of the National High Court, with a view to planting an explosive device on the premises;

(b) In 2007, following the arrest of several persons accused of organized urban violence, Ms. Zulueta gave the ETA leadership information about how the detainees should conduct themselves. In October of the same year, she shared with the ETA leadership her suspicion that a person detained in a counter-terrorism operation might be a police informer. After this police operation, ETA contacted her to ask her to contact those persons who had not been arrested with a view to recruiting them and informing them about the possibility of joining ETA;

(c) In 2009, Ms. Zulueta was thought by ETA to be ideally placed to lead the terrorist group's Amaruna (spider's web) intelligence network, with a mandate to expand throughout the Basque Country with a view to recruiting militants, reporting on targets and obtaining data on potential future victims of the "revolutionary tax";

(d) On 12 January 2010, Ms. Zulueta flew from Biarritz to Paris on flight No. EZY 3706, ostensibly in order to visit an ETA prisoner but in reality to attend a meeting about the revolutionary tax. The meeting took place on 15 January 2010 at 11 a.m.

46. The Government denies that there was a politically motivated conspiracy against Ms. Zulueta. The proceedings instituted against her involve a further nine persons. Six judges have been involved — five Spanish and one French — and the charges against her are specific and detailed.

47. With regard to Ms. Zulueta's detention, which began when she was admitted to prison on 13 January 2014 in execution of an order issued by Central Investigating Court No. 6 of the National High Court for her detention at Penitentiary Centre Madrid V in Soto del Real, the Government reports that the prison's assessment board decided to suggest to the General Secretariat of Prisons that she should be placed under the closed regime for pretrial detainees provided for under article 10 of the General Prisons Act and that she should therefore be transferred to another detention facility which had a department specifically equipped to accommodate detainees held under the closed regime. In a decision issued on 24 March 2014, the General Secretariat agreed to place Ms. Zulueta under the closed regime pursuant to article 91.2 of the Prison Regulations.

48. With regard to Ms. Zulueta's transfer, the Government maintains that the rationale for separating members of a terrorist organization is to facilitate their reintegration, remove them from the disciplinary structure of a criminal organization and achieve greater security in prisons. This approach is consistent with the Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders, and in line with article 31 of the Prison Regulations. Decisions to transfer a prisoner are subject to the discretion of the administrative authority, in accordance with article 79 of the General Prisons Act.

49. Since March 2014, Ms. Zulueta has been detained in a closed facility, on the suggestion of the assessment board of Penitentiary Centre Madrid V and in implementation of article 10 of the General Prisons Act. The closed regime is used for detainees classified as category I prisoners. One of the factors determining this classification is "membership of criminal organizations or armed gangs, for so long as such prisoners demonstrate no clear signs of having been removed from the internal discipline of such organizations or groups (art. 102 of the Prison Regulations). Ms. Zulueta was never placed in solitary confinement and article 90.2 of the Prison Regulations prohibits application of the closed regime in so extensive a manner that it becomes equivalent to solitary confinement. The Government clarifies that, under the closed regime, prisoners are guaranteed a minimum daily contact with other detainees, as required pursuant to article 94 of the Prison Regulations.

50. With regard to the views of the Working Group on Arbitrary Detention, all judicial decisions concerning Ms. Zulueta's freedom have been taken by the competent judicial body, in accordance with legally established procedures and on the basis of legal considerations that are established in procedural law, after reviewing the existing evidence in detail and at all times respecting her right to a defence.

Comments from the source

51. The source maintains, in the comments on the Government's response of 4 March 2015, that the content of the response does not disprove any of the allegations made.

52. Ms. Zulueta has been detained twice for the same offence and has been the subject of legal proceedings related to the same acts and the same alleged offence on two occasions. Far from clarifying the situation, the Government's explanation actually makes it less comprehensible since it makes references to various judicial decisions which are related to different procedures.

53. The orders mentioned in the response were issued by Central Investigating Court No. 3 in the context of preliminary inquiry No. 10/2013. As part of this inquiry, Ms. Zulueta was arrested on 14 April 2010 and 14 July 2011. On two occasions, on 2 December 2010 and 14 September 2011, the Criminal Chamber of the National High Court ruled that Ms. Zulueta should be released on bail. In the course of this first inquiry, she spent almost 10 months in pretrial detention. She was subsequently released on bail, having provided a financial guarantee, subject to a requirement to report to the court closest to her home and a ban on leaving Spain.

54. The indictment order issued on 30 June 2014 charges Ms. Zulueta with, inter alia, the following alleged offences: leading the group of lawyers, under orders from the ETA leadership, and coordinating the reports in which prisoners give details of their arrest and any errors they may have committed which led to their arrest. The order provides for Ms. Zulueta's prosecution on the charge of membership of a terrorist organization, as defined under the current article 571 of the Criminal Code. Ms. Zulueta also faces prosecution on the charge of storing arms and explosives, as defined in article 573.

55. On 5 November 2012, the authorities agreed to reduce the financial guarantee provided by Ms. Zulueta to €20,000 and to reduce the frequency of her obligatory court appearances “in view of the current stage of the proceedings, the conduct of the accused, who has been complying with the reporting requirement established for almost two years, and the fact that no particular flight risk is apparent”.

56. Ms. Zulueta’s current detention originates from the second set of proceedings instituted against her, i.e. preliminary inquiry No. 11/2013 of Central Investigating Court No. 6, which resulted in her subsequent arrest and committal to prison by order dated 13 January 2014. Thus, according to the source, Ms. Zulueta was arrested for a third time for the same offence, that is, her alleged membership of ETA. In the current proceedings, Ms. Zulueta’s alleged membership of the KT Coordinating Group is under investigation.

57. In the course of this second set of proceedings, on 12 January 2015, 15 other persons were also arrested, including 12 lawyers who were colleagues of Ms. Zulueta and who were charged with various offences, including membership of a terrorist organization, tax fraud and money-laundering. These 12 lawyers were released on bail subject to precautionary measures but without needing to provide any form of guarantee. For the other three persons, imprisonment without bail was ordered.

58. In the order issued on 12 January 2015 Ms. Zulueta is again accused of being a member of the so-called “group of lawyers” and, thus, of the offence of belonging to a terrorist organization, that is, exactly the same offence as in the first proceedings (preliminary inquiry No. 10/2013 of Central Investigating Court No. 3), in that she is described as being the person who by order of the ETA leadership, manages and has ultimate responsibility for the “group of lawyers”. The order also states that the essential aim of the group of lawyers was to monitor prisoners belonging to the organization in order to ensure their continued loyalty and in such a way that, through their prison visits, lawyers became familiar with prisoners’ thoughts and state of mind and communicated this information to the ETA leadership.

59. The source highlights that in the indictment order issued in the first proceedings the accused are charged with acts already mentioned which have continued “until the present date”. In Ms. Zulueta’s case, the acts took place “from at least 1999 until the present date”. From the judicial perspective, the acts being investigated in the current proceedings, and for which Ms. Zulueta is being held in prison, and the acts investigated in the first proceedings (preliminary inquiry No. 10/2013 of Central Investigating Court No. 3) are different manifestations or specific episodes, occurring at different times, of a single act of the criminal offence that constitutes the point of reference - in this case, that of possible membership of or affiliation with a criminal organization, as defined in article 571 of the Criminal Code.

60. Ms. Zulueta is accused of a continuing offence, that is, the offence of membership of a terrorist organization. Thus, it is clear that one of the two proceedings (either the current proceedings, for which she is being held in prison, or the first proceedings before Central Investigating Court No. 3) must to be dismissed in application of the *non bis in idem* principle. The authorities cannot simultaneously subject Ms. Zulueta to two criminal proceedings related to the same charge without violating the *non bis in idem* principle and thus infringing her rights.

61. Ms. Zulueta has been in pretrial detention for more than 14 months, despite having applied for bail on several occasions. Bail has been routinely rejected both by the Investigating Court and by the Criminal Chamber — the most senior court responsible for hearing appeals.

62. The source draws attention to the individual opinion issued by Judge José Ricardo de Prada Solaesa in relation to the order issued on 12 December 2014, which

dismissed the appeal against the order refusing Ms. Zulueta's release. According to Judge de Prada Solaesa, Ms. Zulueta's pretrial detention is not proportionate to the facts as no risk of flight is considered to exist and the potential risk of a repeated offence could be prevented through some form of prohibitive measure under which she is prevented from visiting detainees in prison or similar facilities. Judge de Prada Solaesa also expressed serious doubt as to whether the acts of which Ms. Zulueta is charged constituted an offence.

63. The activities which Ms. Zulueta is accused of should be considered innocuous from the criminal perspective; they do not have the effect of disturbing public peace or constitutional order which typifies terrorist offences. Furthermore, she has not been engaged in any kind of activity which constitutes a threat to the life, integrity or property of persons.

64. On 27 February 2015 the Criminal Chamber issued an order agreeing the continued pretrial detention of one of the persons arrested at the same time as Ms. Zulueta (order of the Criminal Chamber of 27 February 2015 concerning Mikel Almandoz). Under the terms of this order, Mr. Almandoz was able to avoid pretrial detention by providing a guarantee and complying with prohibitive measures preventing him from visiting ETA prisoners as well as other measures of a precautionary nature. Since all those arrested at the same time as Ms. Zulueta face the same charges, it is hard to understand why the same approach has not been applied in her case.

65. Ms. Zulueta has been held in Penitentiary Centre Madrid VII, in Estremera, since July 2014, when the judge overseeing the first proceedings instructed the Prisons Administration to transfer her from Cádiz to a prison located in the Autonomous Community of Madrid, in order to guarantee her right to a defence. However, Ms. Zulueta is still segregated from other prisoners; she is being held in the admissions unit of Madrid VII prison and the only contacts she has are sporadic ones with prisoners passing through this unit. She is still denied access to any form of activity, other than whatever exercise she is able to take in the small courtyard to which she has access for four hours each day.

66. The Prisons Administration continues to apply article 10 of the General Prisons Act in respect of Ms. Zulueta, as well as articles 91.2 and 94 of the Prison Regulations, which establish a requirement for four hours in a shared area each day, for group activities with at least four other prisoners and for cultural, sporting and other activities, but these requirements are in practice systematically ignored and unmet. The authorities justify this situation by citing "her association with the activities of a still active terrorist organization, to which, all the signs would suggest, she remains linked even while in prison, and her continuing association with individuals affiliated to the ETA terrorist group and with its strategies".

Discussion

67. According to the information provided by both the source and the Government, Ms. Zulueta has been deprived of her liberty and subsequently released on bail on two previous occasions (in 2010 and 2011). Ms. Zulueta was arrested again on 8 January 2014 in her law office. She was brought before the competent judge, who ordered that she be placed in pretrial detention without bail on charges of membership of an armed organization and that she be admitted to prison.

68. The source maintains that Ms. Zulueta is being held in pretrial detention on the same charge in respect of which she was previously released, in violation of the *non bis in idem* principle. The Government, meanwhile, maintains that the acts for which Ms. Zulueta was detained in 2014 are distinct from those at the origin of preliminary

inquiry No. 49/2010, overseen by Central Investigating Court No. 3. The Government also notes that the acts at the origin of Ms. Zulueta's arrest and prosecution date from 2012.

69. The Working Group has a mandate to ascertain whether a detention is arbitrary, according to the categories established in its methods of work. These categories include cases of total or partial non-observance of the international norms relating to the right to a fair trial, including the right not to be tried or punished for any criminal offence for which a person has already been convicted or acquitted in a final judgement. There is nothing in the information received by the parties to suggest that Ms. Zulueta has any prior final convictions against her. Accordingly, the Working Group has no reason to believe that the lawyer has been convicted or prosecuted for the same offences for which she is currently being deprived of her liberty and, likewise, cannot conclude that the *non bis in idem* principle established, inter alia, under article 14, paragraph 7, of the Covenant has been violated.

70. The Working Group received information about Ms. Zulueta's transfer from Penitentiary Centre III in El Puerto de Santa María in the province of Cádiz to a prison in the province of Madrid, where she has been placed in solitary confinement — or, according to the Government's classification, under the closed regime — with very limited contact with other people.

71. The Human Rights Committee recently expressed concern about the practice of court-authorized incommunicado detention in Spain and recommended, as it had done previously, that the State party take legislative measures to put an end to incommunicado detention (see CCPR/C/ESP/CO/6, para. 17).

72. Since solitary confinement or the closed prison regime could be considered torture or cruel, inhuman or degrading treatment, the Working Group will bring these allegations to the attention of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment so that he may apprise himself of the aforementioned circumstances.

73. The Working Group reiterates the obligation of all States, including Spain, to protect and guarantee all the human rights of all persons when investigating, prosecuting and punishing terrorist offences. The Working Group likewise recalls the obligation of States to promote and protect those who work to defend human rights, in accordance with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms adopted by the General Assembly (resolution 53/144, annex).

74. The source contends that Ms. Zulueta's arrest and prosecution were carried out in retaliation for her work as a lawyer and defender of the human rights of persons accused of belonging to terrorist organizations. However, the Working Group has received insufficient information to conclude that the criminal proceedings against Ms. Zulueta were brought exclusively or primarily in retaliation for or in order to prevent her work as a lawyer and defender of the human rights of victims of abuse on the part of the law enforcement bodies in the fight against terrorism.

75. The Working Group has a mandate to ascertain whether a detention is arbitrary, when States have committed a serious violation of international standards related to the right to a fair and impartial trial. In its general comment No. 35 (2014) on article 9 of the Covenant (Liberty and security of person), the Human Rights Committee states that: "Consideration for parole or other forms of early release must be in accordance with the law and such release must not be denied on grounds that are arbitrary within the meaning of article 9" (CCPR/C/GC/35, para. 20). Article 9, paragraph 3, of the Covenant states that: "It shall not be the general rule that persons awaiting trial shall

be detained in custody, but 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.”

76. Based on the information received, the Working Group sees no grounds to conclude that the decisions to refuse Ms. Zulueta bail taken by the Investigating Court and the Criminal Chamber were automatic, as asserted by the source, and without legal basis. Information was received from the parties about various decisions ordering pretrial detention, extensions of detention, applications for bail and appeals against refused applications, including reasoned individual opinions from one of the judges involved in the proceedings. The vast majority of the persons detained on the occasion on which Ms. Zulueta was deprived of her liberty were released on bail as provided by law and in accordance with established procedure, which suggests that persons awaiting trial are not detained in custody as a general rule.

77. Due to the lack of sufficient information, the Working Group was unable to conclude that there was a lack of due diligence on the part of the authorities responsible for the investigation or prosecution, or to determine whether the period of pretrial detention was unreasonable. Lastly, the Working Group is not convinced that Ms. Zulueta’s pretrial detention had any purpose other than to guarantee her appearance in court.

Disposition

78. In the light of the above, the Working Group renders the following opinion:

In the light of the above and based on the information obtained to date, the Working Group is not in a position to conclude that the detention of Aránzazu Zulueta Amuchástegui falls within any of the categories of arbitrariness used by the Working Group in accordance with its methods of work.

79. Taking account of Ms. Zulueta’s right to inviolability of the person and her right to humane treatment and inherent respect for her dignity, the Working Group decides, in accordance with paragraph 33 (a) of its methods of work, to transmit those allegations that might constitute torture or cruel, inhuman or degrading treatment or punishment to the Special Rapporteur on torture for consideration and appropriate action.

[Adopted on 4 September 2015]