

Lander FERNANDEZ ARRINDA

A Basque case in Rome



LANDER LIBERO

LANDER ASKATU

Lander è un militante del movimento basco che si è sempre battuto per i diritti politici e sociali del suo popolo. È stato arrestato a Roma con un'operazione di polizia spropositata per un cittadino europeo che da oltre un anno viveva nella nostra città alla luce del sole. Vogliamo che Lander torni libero subito. Vogliamo che le forze democratiche del nostro paese si battano per far cessare il perenne stato d'eccezione che vige nei paesi baschi nei confronti dei militanti politici.

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THE CASE OF LANDER FERNANDEZ

Since June 2012 Lander Fernandez has been under home detention in execution of an arrest warrant issued by Spain against him. The precautionary measure is preparatory for an extradition request made by the Spanish judicial authorities to process Lander Fernandez in front of the Audiencia Nacional in Madrid. We strongly oppose this measure because the accusations against Lander Fernandez are driven by political bias that find their maximum achievement in front of a court deprived of any neutrality and impartiality. And that's not all. To date, the only offense attributed to Lander Fernandez is the damage to an empty bus which took place in February 2002.

To better understand our arguments, we must recall the milestones of this story where the violation of human rights intertwines the limitation of democracy for the Basque people:

THE FACTS Lander Fernandez Arrinda (LANDER) was arrested in Rome with a massive police operation on the 13th of June 2012 at 8:30 am outside his apartment on his way to meet his lawyers. Over fifteen police officers were involved (armed and face covered) to arrest a European citizen who had been legally living in Italy for over a year; LANDER was sent to the Regina Coeli prison, where he spent two days in judicial isolation. Due to the conditions of the above mentioned prison institution, LANDER could not completely benefit from the daily hour in the open air nor receive his meal on the first day of detention, as personally reported by Senator Marco Perduca who went to visit him in the penitentiary.

Up to now LANDER is investigated only for the offense he has been charged with, since the trial has yet to be held by Spanish authorities. Therefore no definitive verdict has been issued against him.

THE ACCUSATION The Spanish judicial authorities attribute to LANDER the crime of "terrorism through an incendiary bottle". In particular, it would deal with the fire of an empty bus, which took place on the 20th of February 2002, in league with Aingeru Cardano, a member of the alleged organization called "Kale Borroka", which, according to the accusation, would cooperate with the terrorist organization called ETA.

EXTRADITION PROCESS Our judicial system provides as a first step that the Court of Appeal of Rome is responsible for the extradition proceedings. From the papers sent by the authorities of Madrid no crime of terrorism is proved. The facts set out in the judgment of validation of precautionary measures, which was issued by the 4th Criminal Section of the Court of Appeal in Rome on the 15th of June 2012, only concern the damage to a still bus without passengers on board, through the use of an incendiary bottle. So, the only crime attributable to the suspect is the damage to an empty bus. Moreover, the connection of this event to the type of terrorism is based on unfounded assumptions. Effectively there is no Spanish court order which ascertains the existence of an association called "Kale Borroka" and it is therefore impossible to prove its connection to ETA. In the light of these elements also the 4th Criminal Section of the Court of Appeal of Rome has deemed necessary to have an additional evidence by the Spanish judicial authorities to establish the link between Mr Fernandez and the terrorist group ETA and to investigate the possibility that the offense he had been charged could endanger the population. Additional documents sent by the Spanish Judge underlines that Mr Fernandez "is not accused of any crime of belonging to terrorist organization"(recorded documents for the extradition proceedings at the Court of Appeal of Rome). Furthermore, according to the report prepared by the Basque Autonomous Police the action would not have produced "any kind of risk to the life or physical integrity of any person "(see bibliography doc. 25). Despite these evidences, the 4th Section of the Court of Appeal, on the 8th of January 2013, issued a judgment in favor of extradition. The Court justified the judgement qualifying the offense attributed to Lander in accordance with Article 423 C.p. aggravated according to the circumstances of Article 1 Law no. 15 of 06.02.1980 (see bibliography doc. 26).

ARGUMENTS AGAINST THE EXTRADITION OF LANDER

There are many reasons leading us to oppose the extradition request made by the Spanish judicial authorities.

TORTURE The legal action against LANDER results from a statement extorted from his co-defendant Aingeru Cardano. That testimony, which places LANDER in the crime scene, was reported during the so-called period of incomunicacion (forbidden communication). This regime, as provided by Spanish law and applied exclusively by the Audiencia Nacional, allows the court to hold the arrested person to a maximum of 13 days, without giving him the right to appoint a lawyer, have access to a doctor or inform the family of the place where he is located. It is evident that the application of these measures makes episodes of torture possible: just as Aingeru Cardano denounced, stating that he suffered such treatments during his period of incomunicacion and retracting in front of the court what he had declared about LANDER during that period. The above mentioned case has been reported and documented by the UN Special Rapporteur Theo Van Boven in the informative report of the 30th of March 2005 to the Commission on Human Rights of the United Nations (E/CN.4/2005/62/Add.1, p. 326 - see bibliography doc. 6).

Since 1978 over ten thousand Basque activists have denounced that they had been tortured inside police stations during this lapse of time. For this reason, many international organizations such as the UN, Amnesty International and Human Rights Watch (see Bibliography) denounced this particular regime, calling upon the Spanish government to respect the International Bill of Human Rights and the Convention against Torture.

We would like to remind that according to the art. 13 of the Italian Constitution, "Personal liberty is inviolable."

No form of detention, inspection or personal search nor any other restriction of personal freedom is allowed, unless through an act justified by judicial authority and only in the cases and modalities provided by law. In exceptional cases of necessity and urgency, strictly defined by law, public security authorities may adopt temporary measures, which must be reported to the judicial authorities within forty-eight hours and, if this latter has not ratified them during the next forty-eight hours, these are intended revoked and become null and void. Any physical or moral violence on persons subject to restrictions of freedom is however punished.

LAPSE OF TIME (PRESCRIPTION) From the judgment of arrest validation issued by the Court of Appeal of Rome it emerges that the legal action in question falls within the regime of the European Convention on Extradition of the 13th of December 1957. Article 10 of the Convention states explicitly that "Extradition shall not be granted when the person claimed has, according to the law of either the requesting or the requested Party, become immune by reason of lapse of time from prosecution or punishment."

As we have previously pointed out, the only crime that emerges from the papers sent to the Italian judicial authority which can be charged to LANDER is the damage of a bus. We remind that such an offense would have been committed in February 2002. According to our legal system, therefore, the lapse of time has passed and that would generate a prohibitive condition to extradition. Such prohibitive condition would fall only if a "terrorist" aggravating factor would be added to the alleged offense committed by Mr Fernandez. This hypothesis, however, could not find any justification. As documented in the report of the Basque police (reference bibliography to be added), the offense Fernandez is charged of would have not compromise the safety of anyone and, also, it has not been claimed by any terrorist group.

TERRORISM We have previously shown that the fact of damage is inserted, by Spanish judicial authority, in the type of terrorism on the basis of unfounded arguments. We have also noted that the offenses in question are judged by a special court called Audiencia Nacional. The jurisprudence of this authority contributed to expand dramatically the type of terrorism, making it an offense vaguely defined. It is the result of the judge Baltasar Garzón's mind the so called theory "Everything is ETA". In brief, each event linked to the cause of Basque independence is automatically reduced to ETA terrorist association. The case involving LANDER is an example. The crime of damaging a bus is connected to the terrorist dimension exclusively because it occurred during a demonstration held in Bilbao in 2002. The same event, occurred in a different context, would have acquired a different legal definition. This interpretation, endorsed by the Audiencia Nacional, was criticized by the UN Special Rapporteur Martin Scheinin in 2008. The accusation made by the international representative is clear: "The Spanish legal system qualifies as terrorism crimes that are not"(see Bibliography, doc. 12)

SPECIAL COURT The Audiencia Nacional is the court competent for the proceedings against LANDER. The Audiencia Nacional is created through the Royal Decree-Law on the 4th of January 1977, on the same day when the Court of Public Order was deleted (TOP) by the francoist regime, and is located in the same building in which the TOP was. Since it was founded, this court has received many disapproval. Some concern its competences, others its lack of impartiality and independence. There are no clear boundaries within which the Audiencia Nacional can exercise its powers of judgment. The original competence on terrorism has been extended to various crimes such as drug trafficking, corruption and the mafia organization. In many EU countries special legislations have succeeded over time to combat the terrorist phenomena. In no country, however, a court ad hoc has ever been established to judge a particular type of crime. We are talking of an exceptional court that, waiving the ordinary rules of attribution of competence, judges all the offenses listed above in its sole seat located in Madrid. So the right to be tried by a natural judge previously established by law is de facto denied. The requirements listed above and ignored by the Audiencia Nacional are provided by many Constitutions of the Western countries: they ensure that every citizen should be judged by a judge of the place where the offense was committed, therefore able to better understand the social context in which the crime was committed. These are the preconditions that every judge must adopt so that his judgment is independent and impartial. This regime has been condemned by the Association of European Democrats Lawyers that, on the 19th of April 2008, called for the repeal of exceptional courts such as the Audiencia Nacional. (See Bibliography, doc. 20)

SUMMARY There are many alarming elements in this story which we have so far analyzed:

- Spanish law legitimizes the use of inquisitorial tools that often lead to episodes of torture;
- According to international law the lapse of time (prescription) is a prohibitive condition to extradition;
- The Audiencia Nacional is an exception within the EU courts;
- The jurisdiction of this special court covers many types of crime, including terrorism. The jurisprudence of the Audiencia Nacional had an extensive vocation that has been criticized by several international organizations. LANDER, however, is only accused of having set fire to a bus (offense of damage), without any evidence linking that fact to a terrorist type;
- The history and activities of the Audencia Nacional demonstrate the prejudice that Spanish institutions have always had towards Basque independentism.

A TEN YEAR-LONG STORY

Lander Fernandez is a Basque citizen, born in Bilbao 32 years ago.

On the 19th of May 2009, exiting the school of Elorrieta (Bilbao), LANDER was approached by some individuals who claimed to be Basque police officers. These people, after leading him in an isolated place, threatened him saying that if he had not collaborated with them, a judge would have used the evidence he had at his disposal to imprison him for ten years. A similar situation occurred again on the 27th of May, when LANDER noticed some suspicious men following him all day long. Back home, those men came to him: they were the same individuals who had kidnapped him a few days earlier, with a fourth person. After having threatened him, as already happened on the 19th of May, the alleged policemen pushed LANDER making him to fall to the ground. Between shouts and threats, they told him that he was under arrest. The young man tried to free himself, but he was silenced with a tissue inserted into his mouth. His cries managed to draw the attention of the neighborhood causing the escape of his stalkers and preventing him from the arrest. At the health post where LANDER went after the incident, the doctor observed injuries on the right elbow, on the shin of the right leg and under his right eye caused by the violent fall. On the same day in which the attack took place, the 27th of May 2009, LANDER leaned formally denounced the fact to the Court of Bilbao. He also found the courage to denounce publicly the stalking and threats suffered by the police convening a public press conference, which was held on the 28th of May 2009. LANDER told in front of media his kidnapping and the aggressions he had suffered on the 19th and 27th of May.

At the end of May, LANDER, following the travel program he had planned long before, along with some friends went to Venezuela, from which he would return on the 14th of June. That same day, however, LANDER found the police waiting for him at Barajas airport in Madrid, where he was arrested. The police told him a trial against him had been opened, the result of an open investigation for setting fire to a bus during the riots occurred seven years earlier, in February 2002.

In summer 2008 another open trial against LANDER by the Audiencia Nacional started. In August of the same year, LANDER was arrested in Berriatua (Bizkaia) by the Guardia Civil and found in possession of lottery tickets. The proceeds of the raffle would have been used to fund the legal expenses of Basques political prisoners' families. Only for this reason, the Audiencia Nacional decided to open an investigation against him for collaboration with an armed group. The accusation was denied by the judge of second degree who expressly stated that the lottery in question was meant to "guarantee the human rights and dignity of Basque political prisoners and refugees" and that therefore it was not "connected to any terrorist group."

These are incontrovertible elements that denote a judicial harassment of the Spanish authorities against LANDER, based on political biases trying in vain to find excuses on regulatory elements. This hostile climate prevented LANDER from living peacefully in his own country. For this reason LANDER decided to move to Rome in May 2011. Here he found a job in the tavern of the social center "Corto Circuito" and an accommodation in the Garbatella neighbourhood thanks to the movement for the right to housing "Action". After living for a few months in the capital, LANDER noticed to be subject to continuous stalking on his way to work and during his public life. For this reason, LANDER decided to go to consult a lawyer to ask for legal support.

In May 2012, a year after his arrival in Rome, LANDER was informed by his Basque lawyer that the legal action relating to the events of 2002 (in which he was accused of having damaged a bus) would start at the Audiencia Nacional in Madrid on the 21st of June. Aware of the bias of the court that would judge him, LANDER decided not to appear in court. As the trial in absentia is not provided in the Spanish judicial system, the Spanish authorities sent to the Italian State the request to arrest LANDER in order to proceed to the subsequent extradition.

On the 13th of June 2012 LANDER was involved in a spectacular police operation - a score of armed and face covered police officers were involved - and arrested in his house in Garbatella. On the same morning, the Italian and Spanish press reported the news of the arrest in Rome of a "Basque terrorist" without taking into account the actual elements that characterize the case: the newspapers celebrated their mediatic trial against LANDER, without providing him with the right of reply. For months, then, Mr Fernandez has been forced to bear the restrictive measures of home detention without being able to benefit of work permits.

REPRESSION OF FUNDAMENTAL RIGHTS IN THE SPANISH STATE: CONDEMNATIONS BY INTERNATIONAL ORGANIZATIONS

Spanish special legislation allows police to hold the arrested for a maximum of 13 days. During these days he can not appoint a trusted lawyer, be in contact privately with the court-appointed lawyer, see any trusted doctor not inform his family about where he is. The implementation of these restrictions can easily lead to episodes of torture.

International organizations such as the UN, Amnesty International and Human Rights Watch rebuked the Spanish government over the respect of human rights. In particular, we point out a few excerpts of the following condemnations by the mentioned international organisms (the complete documents are available in the Bibliography):

- In January 2005 **Human Rights Watch** published a report called "Setting an Example? Counter-Terrorism Measures in Spain". The report examines some aspects concerning the regime of counter-terrorism in Spain carried out through violations of international law and human rights by national government. The organization called for specific recommendations for the Spanish government to adapt the anti-terrorism measures to international standards.
- **Amnesty International** has criticized Spain several times through its Annual Reports. In the "Annual Report 2012" it denounces that "Spain has maintained the regime of incommunicado detention for those suspected of terrorism-related crimes. Spain has continued to disregard the requests of international organizations on human rights for the abolition of the use of incommunicado detention".
- **Amnesty International** published three additional documents. Two of these concern the torture and impunity of such a crime in Spain: "Spain: Adding insult to injury. The effective impunity of police officers in cases of torture and other ill-treatment " (2007), " Spain: Adding insult to injury. Police impunity two years on" (2009). In 2009 it published "Spain: Out of shadows. Time to end incommunicado detention" which criticized the special prison regime and called for its end.

The UN Special Rapporteurs Theo van Boven, Manfred Nowak and Martin Scheinin also criticized the Spanish regime in various reports drawn up after their visits (available in the Bibliography):

- **Theo van Boven**, UN Special Rapporteur on Torture, visited Spain between the 5th and 10th of October 2003 as part of his mandate. The report published in 2004 contains a review of the allegations of torture or ill-treatment, in particular with regard to people detained under anti-terrorism measures. The Special Rapporteur believes that torture and ill-treatment are not always used in Spain but that the system does allow the occurrence of such episodes, particularly in the case of people detained in solitary confinement for terrorist activities.
Therefore, it calls on the Spanish government to adopt a series of measures in order to fulfill its commitment to prevent and punish acts of torture and other ill-treatment.
- **Martin Scheinin**, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms within the fight against terrorism, visited Spain between the 7th and the 14th of May 2008 on invitation from the government of Madrid.
The report analyzes the devices of the Spanish law to fight terrorism and concludes that some legal definitions of terrorist acts do not fully respect the rule of law. His report examines in detail the use of solitary confinement. While noting the establishment of a prevention mechanism in order to safeguard the rights of detainees, the Special Rapporteur is concerned about the allegations of torture and other ill-treatment reported by suspected terrorists, held in solitary confinement. In conclusion, the Special Rapporteur recommends that several measures are to be taken in order to ensure that anti-terrorism measures are in full compliance with international standards on human rights.

- **Manfred Nowak**, by virtue of previous visits, in the reports from 2006 and 2010 verifies whether the various states have approved the recommendations to adapt the national judicial measures to the international law. Concerning the Spanish government, Nowak called for the abolition of solitary confinement in order to protect human rights. Manfred Nowak, in the 2006 report, states that "Isolation violates adequate safeguards against ill-treatment and torture" and that the allegations of torture do not concern only the period of questioning, but also the time of the transfer to Madrid. In addition, with regard to the expulsion of Basque political prisoners from their land, he stated that "it represents a danger and an economic burden for the family and it is sometimes an obstacle to the preparation of the defense".

CURRENT SITUATION: PEACE PROCESS AND VIOLATION OF HUMAN RIGHTS

Since 2009, the Basque separatist movement has been carrying forward the resolution process concerning the conflict with the Spanish and the French States. The Basque left separatist forces were re-united around a common political platform, which aims at starting building the Basque Country from the bottom up, without waiting for the decisions of Madrid and Paris. Today, this platform manages more than 100 municipalities, among them the city of Donostia (San Sebastian) and also the province of Gipuzkoa.

In October 2011, international eminent persons such as Kofi Annan and Gerry Adams promoted the International Declaration of Peace, by reinforcing the process of dialogue initiated by the movement. Within this framework of initiatives, ETA declared the cessation of armed activity and has become available to dialogue.

Despite the progress made in the direction of peace, the Spanish government continues with its repressive policies and criminalization of the movement.

Between 2008 and 2011 there have been over 800 arrests and hundreds of Basque activists denounced that they have been subject to torture by the police.

Many arrests have been perpetrated by following the only charge of participation to political organizations guilty of supporting the independence of the Basque Country. Among them, the separatist youth organization SEGI has suffered numerous arrests. Today, 613 prisoners form the EPPK (Collective of Basque political prisoners), are dispersed in 87 different jails. Of all the prisoners, only 7 are detained in the Basque Country. Most of detainees are imprisoned in Spain, 446 prisoners in 47 different jails. In the French jails there are 140 prisoners, detained in 33 prisons. Concerning the other cases of detention, a prisoner is under arrest in Portugal, one in Northern Ireland, one in Scotland, one in Mexico, three in England and another one is under home detention in Rome. In addition, 11 seriously ill prisoners are in detention regime in their homes. Lastly, a prisoner is confined in Autun (France).

The average distance between the prison and the prisoners' families is about 600 km. Over the past 23 years, this policy of distancing the prisoners from their homelands has caused more than 350 accidents, including 16 deaths. An "extraordinary" penitentiary policy which does not respect the rights of the political prisoners nor those of their families.

PAROT DOCTRINE (doctrina 197/2006)

On the 11th of July 2012 the European Court of Human Rights condemned Spain for having extended for other 10 years the term of imprisonment of Ines Del Rio Prada and called for her release "as soon as possible".

According to the court in Strasbourg, Madrid made an error in applying retroactively the "Parot Doctrine", a ruling which provides the possibility of increasing the detention against an already sentenced individual.

The measure was included in the reform of the Spanish Criminal Code of 2003 in order to circumvent one of the key principles of the Constitution, which defines life imprisonment "inconsistent with the intent of rehabilitation of the sentences involving the deprivation of freedom and prohibits "cruel and inhuman treatments" (see Bibliography doc. 14). The European Court of Human Rights has expressed its opposition to the Doctrine 197/2006, granting the appeal lodged by the defense of Inés Del Rio. Although this ruling is related exclusively to the case of Inés, it also expresses a clear judgment against the "Parot Doctrine" which violates human rights and "must be immediately repealed." This doctrine has been applied to about 200 political prisoners.

PAROLE

Another exceptional measure applied against the Basque political prisoners is the denial of freedom of speech. There are 150 Basque political prisoners to be released, since they have already served two-thirds or three quarters of their sentence.

PRISON AND HEALTH

To these evident human rights violations, we must add the condition of thirteen Basque political prisoners still detained with serious and incurable diseases:

- **Jesus Maria MARTIN HERNANDO (Basauri - 1962)**. Imprisoned in 2002. Schizophrenia with raving component.
- **Iñaki ERRO ZAZU (Iruñea - 1960)**. Imprisoned in 1987. Severe ischemic heart disease.
- **Josetxo Arizkuren RUIZ (Iruñea - 1958)**. Imprisoned in 1999. Severe ischemic heart disease.
- **Isidro Garalde Bedialauneta (Ondarroa - 1951)**. Imprisoned in 1985. Ischemic heart disease and prostatitis.
- **Jose Ramon Lopez de Abetxuko LIKINIANO (Gasteiz - 1949)**. Imprisoned in 1989. Symptomatic bradycardia and prostate adenoma.
- **Gotzone Luzuriaga LOPEZ FERNANDEZ (Agurain 1959)**. Imprisoned since 1989. Breast cancer.
- **Jose Angel Biguri FIRE (Menagarai - 1955)**. Imprisoned in 1989. Prostate cancer.
- **Inmaculada Bernas Berriozabal (Zegama/Elorrio - 1951)**. Imprisoned since 2009. Diabetes mellitus, hypertension, asthma and arthropathy.
- **Gari ARRUARTE SANTA CRUZ (Hernani - 1980)**. Imprisoned in 2003. Ankylosing spondylitis and arthralgia of the lower limbs.
- **Iñaki Etxeberria MARTIN (Iruñea - 1964)**. Imprisoned in 1996. Long-standing myopia, retinal haemorrhage in the right eye and bilateral glaucoma.
- **Jesus Maria Mendinueta FLORES (Arbizu - 1968)**. Imprisoned in 1991. Discopathy of the spine, discus hernia and rheumatic disease with a systemic impact.
- **Aitzol Gogorza Otaegi (Orereta - 1975)**. Imprisoned in 1999. Obsessive - compulsive disorder.
- **Jose Miguel Etxeandia Meabe (Larrabetzu - 1960)**. Imprisoned in 2003. Obsessive - compulsive disorder and hepatitis C.

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