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27th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE

Yerevan (12-13 October 2006)

**VICTIMS:
PLACE, RIGHTS AND ASSISTANCE**

Report presented by the Ministry of Justice of

SPAIN

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ASSISTANCE AND AID FOR THE VICTIMS OF TERRORISM IN SPAIN

FROM 1979 TO THE PRESENT DAY

The Spanish state's provision of aid for the victims of terrorism may be said to have begun its first phase in 1979 with *Royal Decree-Law 3/1979 of 26 January on protection for citizen security*, which criminalised certain types of conduct involving the public defence and the preparation of terrorist acts and sped up the process for trying persons accused of such crimes. This law instated a state indemnity for personal **damage** inflicted on the occasion of activities committed by armed groups, organised bands and persons connected thereto.

This first stage (1979-1990) gave way to a second in which the system of indemnity coverage for the victims of terrorism was strengthened.

In **1996** the government created within the structure of the Ministry of the Interior a **Subdirectorate-General of Citizen Service and Assistance for the Victims of Terrorism**, whose object was to provide economic compensation and aid for victims and their families.

From the legislative standpoint, the system of indemnities was enlarged considerably. First, what is termed the '**ordinary procedure**' was set up by Act 13/1996 of 30 December on fiscal measures, administrative measures and measures of a social nature and Royal Decree 288/2003 of 7 March approving the Regulation on Aid and Compensation for the Victims of Crimes of Terrorism. These rules are based upon a philosophy of compensation and assistance, under which the state provides compensation for bodily harm (physical and mental), the expenses of medical treatment and property damage inflicted as a consequence or on the occasion of crimes of terrorism.

While the ordinary procedure of victim assistance in Spain can stand as an example for neighbouring countries, the terms of what is known as the '**extraordinary indemnity and aid procedure**' earn exceptional recognition for the Spanish state's effort to help the victims of terrorism.

Indeed, **Act 32/1999** on solidarity with the victims of terrorism made for a qualitative change of the first magnitude.

The truth is that victims of terrorism in the 70s and 80s could not receive proper economic compensation. In some cases, the enforcement of civil liability sentences stemming from crimes was stymied by insolvency on the part of the persons who were supposed to pay. In other cases, the police were unable to prove definitively who the perpetrators of attacks were and consequently there was no debtor to take action against for any money at all. There was even a large number of victims of unsolved attacks, cases dismissed for lack of evidence and acquittals.

At present, however, the state is giving an exceptional amount of support, because it is shouldering payment of the indemnities ordered in convictions and paying up the full amount. In other words, the state is paying instead of the debtor, after transfer of the proper monetary claim. Thus, victims of terrorism who have secured a conviction of their attackers receive the indemnities awarded to them by the criminal courts, which convict insolvency used to prevent them from ever collecting. Moreover, in those cases where

there are no indemnities set by court (as in dismissals, acquittals and cases of procedural flaws), a compensatory mechanism was instituted that advanced civil liability payments, measured according to the degrees of incapacity recognised by labour legislation or, for permanent non-disabling injuries, the scales established by the Civil Liability and Automobile Insurance Act. Where the perpetrators of such attacks are eventually convicted, the state pays the difference between the sums actually paid and the sums awarded in the sentence. Any hypothetical surplus would not lead to refunds on the grounds of improper payment.

The Solidarity Act of 1999 also created honorific distinctions to honour the victims of terrorism. It founded the Royal Order of Civil Recognition, in the degree of the Great Cross, awarded posthumously to the dead, and in the degree of the Commandery, awarded to those injured and kidnapped in terrorist acts. At the same time, it established different types of aid, such as exemptions from academic fees and financing for medical treatment, prostheses and surgery whenever shown to be currently needed and not covered by a public or private insurance system.

Another interesting point is that, in keeping with the way Spain's territory is organised and government powers are distributed, some autonomous communities (regions) have also enacted rules aimed at helping the victims of terrorist acts. Such is the case of the autonomous communities of the Basque Country, Navarra, the Valencian Community, Madrid and Extremadura.

The magnitude and consequences of the attacks of 11 May 2004 had the effect, inter alia, of making the government re-examine the mechanisms it had established for serving and assisting the victims of terrorism. To strengthen those mechanisms and consolidate institutional support, it was decided to create the office of the **High Commissioner for Support for the Victims of Terrorism (2004-2006)**, who answered directly to the President of the Government, to assume, inter alia, the function of putting together the mechanisms for coordination and cooperation among the different territorial administrations conducting actions in this field, thus creating the best channels for dispensing comprehensive service.

For example, nearness to and direct service for the victims of terrorism and their families, and for the different collectives that represent them, was increased. This enabled a full diagnostic to be run of the problems and concerns that affect victims and at the same time a great number of problems were solved and various general support initiatives were boosted in fields that had lain practically unexplored until then, such as education, access to housing, justice free of charge, restraining measures to keep persons convicted of terrorism away from their victims, procedural and police information and exceptional pension payments for eligible domestic partners.

The high spot in this work has been the preparation of a legislative draft, the Bill on Comprehensive Protection for the Victims of Terrorism, which seeks to unify in a single law all current legislation on aid for the victims of terrorism and at the same time to incorporate new dimensions of protection. In drawing up the bill, account has been taken of all Spain's experience, as a society and as a country, current legislation and the observations and suggestions of victims, stated directly or through associations and other collectives.

The new Act on Comprehensive Protection for the Victims of Terrorism that emerges from the legislative process must fall between the lines indicated by the Council of

Europe in March 2005. It must be a law that encases the entire framework of rules, assistance measures and recognition measures aimed at the persons who have suffered the scourge of terrorism in their lives, families and homes. It must also work to knit up the holes that have been detected in the victim aid and support system, with the recognition of new rights and new social benefits. What individuals receive benefits must be re-examined and some benefit requirements must be made more flexible. Furthermore, a transition must be made away from the merely compensatory philosophy and to a philosophy that attends to victim needs in a comprehensive way and, above all, is based on the principle of respect for the dignity of victims, not only as a moral principle but also as a legal principle, with binding effects in different realms of protection.

Lastly, **Royal Decree 991/2006 of 8 September** was recently enacted, creating a new Directorate-General of Support for the Victims of Terrorism at the Ministry of the Interior. This directorate-general assumes, from the organisational standpoint, the sole exercise of powers in matters of service and support for the victims of terrorism, with the purpose of enhancing the government's effectiveness with and nearness to the victims of terrorism. The directorate-general has two subdirectorates-general, the Subdirectorates-General of Support for the Victims of Terrorism, which espouses the philosophy and fills the shoes of the now-extinct High Commissioner, and the Subdirectorates-General of Aid, which is the result of the former Subdirectorates-General of the Ministry of the Interior. In this way the government, through the Ministry of the Interior, at a single directorate, fully handles all questions pertaining to the victims of terrorism, thus making progress in the improvement of coordination and personalized service.

Lastly, between 1 December 2004 and 1 December 2005, the Ministry of the Interior of Spain acknowledged indemnities due to 967 victims of terrorism, who received a total of 21.6 million euros.

