
Report on the disappearance of José Miguel Etxeberria Álvarez, *Naparra, 11 June 1980*

UNESCO Chair for Human Rights and
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Introduction

The Basque Government's General Secretariat of Human Rights, Coexistence and Cooperation requested this report from the UPV/EHU University of the Basque Country's Chair for Human Rights and Public Authorities within the framework of the partnership agreement held between both institutions and to execute the research area on landmark cases involving politically motivated violations of human rights in the Basque Country.

The report is organised into three building blocks: the description of events; the legal analysis of the legal proceedings and a series of conclusions and final recommendations. The aim of the Report is to summarise the status of the issue in as in-depth manner as possible given the available sources rather than being an investigation explaining the events, which the Chair has neither the capacity nor the authority to do.

This paper was mainly drafted by the researchers from the Chair Bertha Gaztelumendi, Mikel Anderez, Iñigo Gordon and Uxue Martín, under the coordination of Dr. Enara Garro and led by Dr. Jon-M. Landa.

I

Background to the
Naparra case

1. The disappearance of José Miguel Etxeberria, “Naparra”

José Miguel Etxeberria Álvarez, also known as *Naparra* or *Bakunin*, was born on 14 April 1958 in Pamplona. He went to the local Jesuit school where he joined the Navarre Students' Committees that were involved in anti-Franco activities. He was an avid reader and the texts of Trotsky and Bakunin dominated his time during this time. He became a *LKI* sympathiser following the death of Franco and he became increasingly involved in political issues, dropping out of school. He then went on to join the ranks of the ETA political-military *Bereziak* commandos and following its split, he decided to join ETA m¹. However, his criticism of its decision-making hierarchical structure and his libertarian views led to his departure from ETA m and his joining of the Autonomous Anti-capitalist Commandos (Comandos Autónomos Anticapitalistas or CCAA in Spanish) at the end of 1978. It was around this time that he began to be referred to as *Naparra* or *Bakunin*.

He went into hiding in Lapurdi in December 1978 following the arrest of an alleged member of the Autonomous Anti-capitalist Commandos in Alsasua. Following the information published in the Spanish national newspaper *EL PAÍS*², José Miguel Etxeberria managed to escape being arrested in the political raid that took place in this Navarre town, managing to cross the border and settle in Lapurdi. Once there, he obtained a residency permit from the French State. He had also sought political refugee status on at least one occasion from OFPRA (the French Office for the Protection of Refugees and Stateless Persons). *Naparra* has been credited with restructuring and reorganising the Autonomous Anti-capitalist Commandos.

In fact, four years following the disappearance of Moreno Bergaretxe, or “*Pertur*”, in Behobia (Hendaya) on 23 June 1976, Jose Miguel Etxeberria, *Naparra*, disappeared just a few kilometres from this town in San Juan de Luz when he was 22 years old. Apparently, something that his family insist on, *Naparra* had a meeting that was a setup, just like what happened to Moreno Bergaretxe. Both cases took place within the context of intense violence that was reaching one of its highest peaks of the Spanish Transition at this particular time³.

On 11 June 1980, José Miguel Etxeberria left his house for what he believed was a meeting in Ziburu. He was last seen around 2.30 p.m. driving his metallic brown Simca 1100 car at the access to the Bayonne-San Juan de Luz, highway He was also supposedly seen later in the *Consolation* bar in San Juan de Luz at around 4 p.m. having a discussion with someone⁴.

José Miguel's parents, Francisco Etxeberria and Celestina Álvarez, reported him missing at Bayonne Court-house on 18 June 1980. His car was located close to Ziburu the following day, 19 June⁵.

The day after the discovery of his car, the Autonomous Anti-capitalist Commandos⁶ published an article stat-

1 ZABALZA, R. *Voluntarios. Semillas de libertad [Seeds of Freedom]*, Txalaparta, Tafalla, 2000, p. 133 and 134.

2 GOÑI, F. “Desaparecido un refugiado del País vasco francés”. [Disappearance of a refugee from the French Basque Country]. *El País*, 18 June 1980.

3 SÁNCHEZ SOLER, M.: *La Transición sangrienta. [The bloody Transition] Una Historia violenta del proceso democrático en España (1975-1983)*, [A violent history of the democratic process in Spain] Península, Barcelona, 2010.

4 Preliminary Proceedings no. 245/1999 of the Criminal Investigation Court No. 2 assigned to the National Court, folio 3 (Volume I).

5 *Ibid.*

6 Formed at the end of the seventies, the Autonomous Anti-capitalist Commandos (CCAA) were a diffusely structured armed group that emerged principally from the splintering of the armed wing of ETA, known as *Komando Bereziak*. The CCAA was believed to have had approximately fifty members during the 1980s. The emergence of the so-called Autonomous Coordinator in the Basque Country as well as the CCAA lay in the evolution of the separatist Left towards Autonomism This process was directly tied with the experiences related to proletarian independence that took place in the Basque Country, the tipping point of which was the events that took place in Vitoria-Gasteiz on 3 March 1976. There was a sense of optimism in different social sectors following the end of the dictatorship that suggested that political change was possible. However, the model adopted to resolve the conflicts raised in the assembly, namely the legalisation of trade unions and political parties, was not enough to appease those who wished to move further beyond these commonplace ways of resolving conflicts with businesses and official bodies, due to their ideology, viewing an “armed conflict” as the ideal way to achieve their goals. The decision to

ing that José Miguel Etxeberria “is an active member of our group who went into hiding in ‘78, who since then never gave up his fight, which we believe is the main reason for his disappearance”⁷. The writer criticised the lack of commitment of French police to clarify the case, due to the fact that the car had been found by third parties beside the police station after *Naparra*’s disappearance had already been reported.⁸

2. Claims of responsibility

In the months following his disappearance, the Spanish Basque Battalion (BVE) published five statements taking responsibility for the crime, referring to different burial places in each one⁹.

These five claims from the BVE made from the tenth day following his disappearance could be described as a prime example of how to generate confusion and create a macabre game involving deceit and false expectations with the aim of concealing where Etxeberria was actually located. The initial claim of responsibility took place on 21 June with an anonymous call made to the *DEIA* newspaper, stating that the BVE had kidnapped him. The newspaper reprinted the statement the following day:

“Claiming responsibility for the kidnapping of “Naparra” in Ciboure, France. He is in Spain. Following the latest murders by ETA, he had no chance. The Spanish Basque Battalion is the only solution. Long live united Spain. Spanish Basque Battalion. Commando Esteban Beldarrain”.

Almost a month later, on 3 July 1980, a commando from the BVE, relayed through an anonymous call made to the *DEIA* newspaper, stated that he had murdered *Naparra* on 30 June and had buried him in the Xantako (Donibane Lohitzune-San Juan de Luz) vicinity. It read as follows:

“José Miguel Etxeberria ‘Naparra’ was executed on 30th last and was buried close to Biarritz, in the vicinity of Txantako. Our commandos will continue acting in France against ETA Marxist terrorists and against tourist buildings from the South of France and the Costa Azul. We claim responsibility herein for the attack on the Mont-de-Marsan Bullring. We will blow up other buildings in the French Basque Country and Costa Azul in the near future without any warning”. Long live united Spain. Spanish Basque Battalion. Commando Esteban Beldarrain”¹⁰.

The French police force combed the location superficially without any clue. Facing the failure to locate *Naparra*’s body using the details they were given, Etxeberria’s family members called on the supposed kidnappers to provide them with precise instructions to allow them to locate his body¹¹.

The BVE issued a new notification to the *DEIA* newspaper on 16 July 1980, stating:

“Let’s not forget that Naparra’s body has been buried in Txantako. Drawings were sent to the Bayonne Sub-prefecture from Hendaya on the 8th for the attention of the Sub-prefecture with the exact location where the body could be found.

move towards an “armed conflict” lead to the creation of the Autonomous Armed Group Coordinator in 1977 with the aim of several groups taking coordinated action to back the Basque social and proletarian movements that were becoming stagnant due to the trade union and political dynamism. See the report *Bahía de Pasaia (Gipuzkoa) 22 March 1984, Informe sobre una ejecución extrajudicial encubierta, [Report on a covered-up extra-judicial execution]* UNESCO Chair for Human Rights and Public Authorities, 2019, p. 4 [unpublished].

7 Preliminary Proceedings no. 245/1999, *op. cit.*, folio 3 (Volume I).

8 *Ibid.*

9 Iñigo Iruin, lawyer for the family, recalled that between 21 June and 2 August of that year, the BVE made five claims taking credit for the kidnapping and murder of *Naparra*, while appearing before the media to state that they had demanded the opening of the case before the Prosecutor’s Office and the Spanish National Court’s Criminal Investigation Court no. 2. EUROPA PRESS. “The family of José Miguel Etxeberria ‘Naparra’ call for his case to be reopened 36 years following his disappearance.” *..El Mundo*, 1 October 2016.

10 Preliminary Proceedings no. 245/1999, *op. cit.*, folio 4 (Volume I).

11 RUIZ DE AZUA, V. “El Batallón Vasco Español anuncia que ha asesinado a “*Naparra*” [The Spanish Basque Battalion announces that it has murdered “*Naparra*”] *El País*, 5 July 1980.

We have news that these drawings have been received and that the Sub-prefecture has notified the French government of this. We also wish to let the family know that those who kill ETA Marxists terrorists, or those who are shot in the leg, or extorted for amounts above what they can pay, who have to look for money high and low for fear of reprisals or death,... these also have parents and family. Has ETA ever worried about them? Spanish Basque Battalion "José María Arrizabalaga" Long Live United Spain"¹².

There was a new claim, this time in a piece in the newspaper *EGIN* in Hernani on 24 July 1980. Someone made a phone call identifying himself as a member of the BVE, and stated the following:

"Naparra's body was taken by French policy at 12 at night in the vicinity of Txantako. There were three policemen from Biarritz, two of whom were tall and slim, about 28-30 years of age, and another one who was well-built and strong, and about 24 years of age. One of them was on duty on 13th at the door of Biarritz police station".

On 2 August, the *EGIN* newspaper received a phone call and an anonymous caller stated that:

"Naparra's body was moved to San Vicente de Tirost close to Dax; about 30 kilometres away, three policemen from Biarritz police station. One of the policemen was tall and strong and the other two were shorter, aged about 22"¹³.

The family, for their part, and numerous volunteers combed the Txantako area in Ziburu on repeated occasions to no avail.

3. The Spanish Basque Battalion (BVE)

At the end of the dictatorship, the Presidency's Central Documentation Service [intelligence organisation], created by Admiral Carrero Blanco, backed the creation of a network of mercenaries with ultra ideologies and with militarily experience. Many were Italian neo-fascists who had taken refuge in Franco's Spain and who subsequently merged thanks to that network within acronyms such as The Spanish Basque Battalion (BVE), Anticomunist Apostolic Alliance (Triple A), Anti-Terrorism ETA (ATE), Spanish National Action (ANE), Anti-terrorist group ETA (GAE), etc. Also camouflaged under these acronyms, the State security services¹⁴ were mixed up in the same criminal activities directed primarily against supporters or members of the various ETAs, on both sides of the Bidasoa river¹⁵.

The impunity surrounding these cases was a result of the lack of police activity directed at investigating and detaining the perpetrators, which led to the strengthening of these paramilitary groups that had the State's backing, especially in the French Basque Country.

These ultra-right-wing terrorist groups acted violently against ETA refugees and the nationalist environment but also against citizens with no political ties. This is the case involving several of the murders carried out by Ladislao Zabala and Ignacio M^a Iturbide¹⁶ in the so-called *triangle of death* (Andoain, Urnieta, Hernani). Or the attack on *the Hendayais* bar on 23 November 1980, where two people were killed and nine seriously in-

12 Preliminary Proceedings no. 245/1999, *op. cit.*, folio 5 (Volume I).

13 *Ibid.* The French judicial police reported that the Sub-prefecture had not received the drawings or the letter referred to in the statement according to the article published in the *EGIN* newspaper on 12 July about the *Naparra* case.

14 *According to general José Antonio Sáenz de Santa María, many of these attacks involved the collaboration (action or omission) of a sector of the Administration, as well as of the neo-fascist groupings".* F. SOLDEVILLA, G.: *Héroes, heterodoxos y traidores. [Heroes, unorthodox and traitors] Historia de Euskadiko Ezkerra [History of Euskadiko Ezkerra] (1974-1994)*, Tecnos, Madrid, 2013, p. 65.

15 MOLINA, F./PÉREZ, J.A. "El monopolio de la violencia ilegítima ["The monopoly of illegitimate violence:] Terrorismos paraestatales y brutalidad policial" [Parastatal terrorism and police brutality]" in FUSI, J.P./PÉREZ, J.A.: *Euskadi 1960-2011. Dictadura, transición y democracia [Dictatorship, transition and democracy]*, Biblioteca Nueva, Madrid, 2017, pp. 151-173.

16 They murdered seven people between 1979 and 1981 acting with impunity, despite the fact that their activities were known both by the authorities and locals from the area, until their arrest in March 1981, when they were tried and convicted. Please see: MOLINA, F./PÉREZ, J.A. "El monopolio ["The monopoly [... *op. cit.*, p. 169.

jured from the machine-gun fire. Only two of these people had any sort of relationship with Basque refugees. Their killers fled across the Irun border. In fact, they were allowed to continue with their escape at the border post because they showed a document that linked them to Manuel Ballesteros, the Commissioner in charge for the Unified Command in the Fight against Terrorism¹⁷.

BVE made its first public appearance at the end of July 1976, claiming responsibility for the disappearance and death of Eduardo Moreno Bergaretxe, or *Pertur*, which still remains unsolved¹⁸. This act was subsequently claimed by Antiterrorism ETA(ATE) and Triple A¹⁹. It was common during this time by several groups to claim responsibility for the same attack. However, it was not long before BVE became the bastion or emblem of the first dirty war that, according to certain analyses, aimed to kill Jean Pierre Cherid in Biarritz in 1984, one of their leaders and key members, while preparing an explosive device. A significant number of BVE militants at this time went on to join the Freedom Anti-terrorist Groups (GAL), created in 1983, as a second wave of State terrorism or dirty war.

1980 was the bloodiest year of this violence. Apart from being blamed for the case in question, namely the abduction and subsequent death of José Miguel Etxeberria, *Naparra*, the BVE fatally attacked Carlos Saldise in Lezo (Gipuzkoa) on 15 January of that year. On the 19th of this month, they placed a bomb at Bar Aldama in Alonsotegi (Bizkaia), killing four people and seriously injuring eight others. GAE (Spanish Armed Groups), BVE's namesake, claimed responsibility. The case is still unresolved, and its perpetrators are still unknown. Another BVE bomb killed two Roma teenage siblings, one of whom was pregnant. Ana Teresa Barrueta and M^a José Bravo, who were also teenagers, were brutally raped and tortured before being killed, in Bilbao (9 January) and Donostia (San Sebastián) (8 May), respectively. Yolanda González, a student with no nationalist political affiliation, was also murdered after being tortured in Madrid (1 February). That year, 20 people were murdered by extreme right-wing or vigilante groups with absolute impunity. A total of 40 victims were killed by attacks by BVE and their "satellite" groups²⁰. Most of the cases remain unsolved and their perpetrators therefore have not been arrested or prosecuted or convicted²¹.

Sánchez Soler sums up BVE's activity as follows:

*"The plot of the dirty war against ETA terrorism was covered up for several years, under the auspices of the Spanish Basque Battalion (BVE); working in the style of "death squads" in Latin America. In the Basque Country the BVE planted bombs, reached a new record in attacks on autonomous and regional institutions, opening machine gun fire on militants from the Basque Left... running riot"*²².

17 WOODWORTH, P.: *Guerra sucia, manos limpias. ETA, el GAL y la democracia española* [Dirty War, clean hands. ETA, the GAL and Spanish democracy] Crítica, Barcelona, 2002 pp. 31-32.

18 CHAIR OF HUMAN RIGHTS AND PUBLIC AUTHORITIES (UPV/EHU). "Informe sobre el caso Pertur: Estado actualizado de la cuestión", *Secretaría General de Derechos Humanos, Convivencia y Cooperación del Gobierno Vasco*, 2017, *passim*. ["Report on the Pertur case Updated status of the issue", *Secretary General of Human Rights, Coexistence and Cooperation of the Basque Government*], 2017, *passim*.

19 MORALES, J.L./TODA, T./IMAZ, M.: *La trama del GAL* [The plot of GAL] *Revolución*, Madrid, 1988, pp. 30-31.

20 FONSECA, C. (coord.)/GARRO, E./MARTIN, J.A./RODRÍGUEZ, J.M. (advis.). "Informe sobre la situación procesal de los atentados perpetrados por organizaciones terroristas con resultado de muerte entre 1960 y 2014. Caso Vasco" [Report on the procedural situation of the attacks perpetrated by terrorist organisations resulting in death, between 1960 and 2014. Basque Case], *General Secretariat for Peace and Coexistence of the Basque Government*, 2014, p. 21.

In the report its authors state that there is only proof of the existence of six judgments (15%) and 10 provisional dismissals (25%). The procedural situation of the cases remains unknown for the remaining 24 murders (60%). They also added that many of these crimes were perpetrated in France, which makes it very difficult to follow proceedings investigations beyond press coverage.

21 MORALES, J.L./TODA, T./IMAZ, M.: *La trama* [The plot] *op. cit.*, p. 19-32 and MOLINA, F./PÉREZ, J.A. "El monopolio [The monopoly]... *op. cit.*, p. 168-170.

22 SÁNCHEZ SOLER, M.: *La Transición sangrienta* [The bloody Transition] ... *op. cit.*, p.191.

4. Hypotheses on the disappearance

The journalist Pepe Rei pointed to the BVE paramilitary group as a possible perpetrator for the disappearance in his book *“Intxaurrondo la trama verde [Intxaurrondo the green plot]”*²³. The family also supports this hypothesis. To mark the 20th anniversary of *Naparra’s* disappearance, the magazine *ARGIA* published an extensive report on the case, mentioning two hypotheses considered after the event²⁴.

One hypothesis points the finger of blame at BVE and argues that the former autonomous member “*Escaleras*” participated in the disappearance. So *Escaleras*, the alias used by Julio Cabezas Centeno, or Mikel as he was known, would have surrendered to the orders of Commissioner Ballesteros and mercenary Jean Pierre Cherid and would be directly responsible for the death of *Naparra*. *Escaleras* is now deceased.

In this regard, we should also add a quote from Teresa Rilo (wife of Jean Pierre Cherid) in the book entitled, *Cherid. Un sicario en las cloacas del Estado [A gunman in the sewers of the State]*²⁵, about her cousin Julio Cabezas, aka “*Escaleras*”. Julio was born in Renteria in 1958 and by the age of 20 had joined the Capitalists Autonomous Commandos. He apparently then lived in the French Basque Country where he once fled for fear of reprisals from his commando companions after he had spent money that they had delivered him. Cabezas took refuge in the family home in Pontevedra and asked his cousin Teresa for help to hide him in her house in Madrid. When Jean Pierre Cherid found out what his cousin was involved in, he sent him to his friend, Inspector Antonio González Pacheco, or *Billy the Kid*, in his hideout in Galicia. “*Escaleras*” ended up being detained and tortured. A few days later, the police arrested four of his fellow commando companions and Julio was sentenced to eight months in prison for collaborating with an armed group. Following his release from prison, he settled in Madrid with Cherid and his wife Rilo. He was inseparable from Cherid’s from thereon in²⁶. Teresa Rilo wrote, “*I don’t know if Julio became a confidant of Billy the Kid, or if he collaborated with the Spanish Basque Battalion. I don’t know, although I imagine that he worked for Jean Pierre.*”²⁷

Meanwhile the second hypothesis points the finger at his companions-in-arms for the disappearance that is part of an all too familiar context at this time. And in fact, during the early years of the dirty war in the mid-1970s, the authorities tried to divert attention from the attacks perpetrated by the extreme right-wing groups with the involvement of police services to defend the thesis that everything was due to a settling of scores between members of ETA²⁸.

According to the information produced and published by the *EFE Agency* on 28 June 1980 around the case of *Naparra* case, the Autonomous Commandos was accused of having killed its member, despite the fact that the BVE had already publicly claimed responsibility. The note was worded as follows:

“*José Miguel Etxeberria, aka Naparra and Bakunin, has been murdered, possibly by his own colleagues from the Autonomous Commandos, according to Efe, in Madrid, well-known sources from French Basque Country. Apparently, according to these sources, José Miguel Etxeberria disappeared on 11 June in the south of France, travelling that day to Brussels in the company of José Luis Arzuaga Amundarain, aka Solomo, who was residing in Bordeaux at that time, with the request to buy weapons in the Belgian capital. The Spanish Basque Battalion claimed responsibility on Sunday 22 last, of José Miguel Etxeberria’s abduction*”²⁹.

23 REI, P.: *Intxaurrondo. La trama verde*. [The green plot] Txalaparta, Tafalla, 1997.

24 ASURMENDI, M. “*Naparra’* afera duela hogei urte desagertu zen “*Naparra*” Iparraldean”. *Argia*, 18 June 2000. Available online: <https://www.argia.eus/argia-astekaria/1766/duela-hogei-urte-desagertu-zen-Naparra-iparraldean> [last accessed: 28/11/2019].

25 PASCUAL, A.M./RILO, T.: *Cherid. Un sicario en las cloacas del Estado [A gunman in the sewers of the State]*, Garaje Ediciones, Madrid, 2019, pp. 137-152.

26 PASCUAL, A.M./RILO, T.: *Cherid... op. cit.*, pp. 137-152.

27 PASCUAL, A.M./RILO, T.: *Cherid... op. cit.*, p. 142.

28 BABY, S.: *El mito de la transición pacífica. Violencia y política en España [The myth of the peaceful transition. Violence and politics in Spain] (1975-1982)*, p. 586.

29 EL PAÍS. “Asesinado un miembro de los comandos autónomos” [Murder of a member of the autonomous commandos] *El País*, 28 June 1980.

The strength and credibility of the information is in question due to the failure to reveal the sources of these statements, as we will analyse in point number five of this report. The press of the time also failed to this story alive, as has been shown. But both the family and the Autonomous Commandos challenged this, denying the news in the newspaper *EGIN* from 17 July 1980.

The family's position in this regard is that *Naparra* "had an arrangement to meet with someone on 11 (of June), but it is not clear if he went to the meeting or not". Another section of the report of the weekly publication *ARGIA* stated that the ETA military wing informed the family on more than one occasion that they had nothing to do with the disappearance of *Naparra*³⁰.

Given what has been published by the media and the journalistic investigations carried out, there are no assurances of what happened in the hours prior to the disappearance and where this came from. What did become more credible is who perpetrated the crime: the repeated claims of responsibility of the BVE on the one hand along with the recent reports that point to the fabric of the dirty war revealed by a former agent from CESID - which led to the reopening of the case- substantially swaying the accusatory balance in this direction.

5. Investigations and judicial process in France (1980-1982)

The first report was filed by Etxeberria's family before the Court of Bayonne on 17 June 1980, six days after his disappearance. On 27 June, following the complaint filed by *Naparra*'s family, the French Prosecution requested the High Court of Bayonne to open a judicial investigation into the alleged commission of a crime of illegal detention and abduction³¹. The Examining Magistrate of Bayonne, Judge Larque, initiated proceedings and ordered the police to conduct several investigations.

Meanwhile the investigation conducted by the French police focused largely on the "score settling" hypothesis within the Commandos. Therefore, in the report on the findings of the investigation sent to the judicial authority, the Chief Inspector of the Judicial Police of Bordeaux plainly rejected the hypothesis that blamed the Spanish extreme right for perpetrating the disappearance for two reasons: on the one hand, the "little fuss" generated by disappearance among Basque refugees as well as the fact that the disappearance did not correlate with "the methods employed" by the extreme right³².

Below is an overview of the milestones of the police investigation in France, which was conducted by the Judicial Police of Bordeaux (*Service régional de Police judiciaire*), which reports to the French Police General Directorate (*Direction Générale de la Police Nationale*). Judicial police officials from the Department of La Rochelle, as well as the Municipal Police of San Juan de Luz-Donibane Lohitzune participated in the investigation.

In the days following the disappearance, several press releases were published where the BVE claimed responsibility for the abduction and subsequent murder of *Naparra*, indicating that his body would have been buried in Txantako (San Juan de Luz-Donibane Lohitzune). However, this also did not encourage the French police to conduct their investigations in this line given the practical absence of proceedings aimed at verifying this hypothesis.

One week after the disappearance, on 19 June, French Police located the Simca 1100 car in a car park in Ziburu-Ciboure, with all its doors locked except the boot, after being advised by an attorney who had received an anonymous tip off informing him where the car was located. Several objects including a hoe and metal shovel

30 ASURMENDI, M. "‘*Naparra*’ afera duela hogei urte desagertu zen ‘*Naparra*’ Iparraldean". *Argia*, 18 June 2000. Available online: <https://www.argia.eus/argia-astekaria/1766/duela-hogei-urte-desagertu-zen-Naparra-iparraldean> [last accessed: 28/11/2019].

31 Investigation No. 66/80 of Judge Larque, High Court of Bayonne.

32 Report dated 5 June 1981, of the Chief Inspector of the Judicial Police of Bordeaux. Preliminary Proceedings no. 245/1999, *op. cit.*, folios 713-515 (Volume III).

with the handle sheared off were found in his car³³. Unfortunately, there is no indication that the objects found during the search of the vehicle were analysed or that subsequent forensic checks were made, except for the pieced together documentation. Also on record is that a destroyed document was found that the police pieced back together, containing two hand-written names, Jokin and Ana. The reconstituted document pointed to the “score settling” hypothesis, since it contained two references, which read as follows: “*spending the Commando’s money and the responsibility of the commando [in reference to Jokin]*” and “[Ana] *talks too much, is spending the money with Jokin. Jokin is accused of not being committed enough to her*”³⁴. However, there is no record of the document having undergone expert analysis to corroborate its involvement³⁵. Quite the opposite in fact, with *Naparra*’s father, in his initial witness statement, denying that it was his son’s handwriting while his writing was recognised in another document³⁶.

5.1. Investigations on Basque refugees and the detention of José Arzuaga (aka “Solomo”)

As pointed out by the investigation conclusion police report, the “score settling” hypothesis was what the French research focused on³⁷. The police questioned more than a dozen people who were either Basque refugees in the French Basque Country or who were closely related to the same. This hypothesis was initially assumed despite the conviction of the victim’s relatives, who had stated from the outset that “the only credible hypothesis” was the one assigning blame to the BVE³⁸, an organisation which had publicly claimed responsibility for the kidnapping; and despite the fact that the Commandos themselves emphatically denied their involvement in the disappearance of *Naparra*, therefore demanding clarification of the events³⁹.

In accordance with the “score settling” hypothesis published by EFE that pointed the finger directly at José Arzuaga (aka *Solomo*), with whom *Naparra* would have travelled to Brussels to buy weapons for the organisation, the French police began questioning him and searched his home in Bordeaux, without any of the proceedings being able to back up this hypothesis. Following his detention and questioning, Arzuaga denied having belonged to the Autonomous Commandos or having travelled to Belgium with *Naparra*, which he was able to prove by not having missed work. He also attributed the EFE’s information that had implicated him in the abduction to a campaign of “confusion” by the Spanish police⁴⁰. It is worth mentioning that French police contacted the state news agency EFE in order to obtain additional information on the “score settling” hypothesis, but the Deputy Director of the Agency would only state that the information came from France from a secret source that it could not reveal⁴¹.

In the ensuing days, police continued to investigate *Naparra*’s closest social circle. Statements were taken from workers from different bars frequented by Basque refugees and *Naparra* himself. Some said that they knew *Naparra* and testified that they had seen him in the days prior to his disappearance but failed to provide information that would clarify the disappearance, apart from all agreeing that he was “quite wary”⁴².

33 Precinct receipt, Preliminary Proceedings n° 245/1999, *op. cit.*, folio 703 (Volume III).

34 Preliminary Proceedings no. 245/1999, *op. cit.*, folios 786-787 (Volume III).

35 The document was also not recorded in the summary proceedings, beyond a generic reference to its content.

36 Statement of Francisco Etxeberria, *Naparra*’s father, 3 July 1980. Preliminary Proceedings no. 245/1999, *op. cit.*, folios 149-150 (Volume I).

37 Preliminary Proceedings no. 245/1999, *op. cit.*, folio 714 (Volume III).

38 Witness Statement of Francisco Etxeberria, *Naparra*’s father, 3 July 1980. Preliminary Proceedings no. 245/1999, *op. cit.*, folios 742-744 (Volume III).

39 Statement of the Autonomous Anti-capitalist Commandos, October 1980. Preliminary Proceedings no. 245/1999, *op. cit.*, folio 825 (Volume III).

40 Statements from José Luis Arzuaga, 30 June and 1 July 1980. Preliminary Proceedings no. 245/1999, *op. cit.*, folio 788 and seq. (Volume III).

41 Information report 2 July 1980. Preliminary Proceedings no. 245/1999, *op. cit.*, folio 770 and seq. (Volume III).

42 Statements from Francis Darjo, a barman from the *Maitena* bar, 14 February 1981. Preliminary Proceedings no. 245/1999, *op. cit.*, folio 723 and seq. (Volume III). In addition, the statement of Danielle Múgica, from the *Consolation* bar, 11 July 1981 in Preliminary Proceedings No. 245/1999, *op. cit.*, folios 729 and seq. (Volume III).

After certain information indicating that *Naparra*'s Simca had been parked in front of Ziburu-Ciboure's Erdian residence, police searched the apartment and found explosive devices and other evidence that suggested that its five occupants belonged to "an association declared to be prohibited in France under a ministerial order", and they were arrested⁴³. However, this arrest did not seem to be connected with *Naparra*'s disappearance and there is no record of this line of investigation being followed up.

5.2. Investigation proceedings related to the hypothesis pointing the finger of blame at the Spanish Basque Battalion

As far as we have ascertained, the only proceedings in the French police investigation around the hypothesis of BVE's involvement is the taking of a statement from Jean Pierre Foixet at Saintes prison (Charente Maritime) on 25 May 1981. Foixet was in prison for the attack on the Mont-de-Marsan bull ring in June 1980. While the police investigations does not contain the grounds for his interrogation, it can be assumed to be due to the fact that one of BVE's announcements that claimed responsibility for *Naparra*'s kidnapping also claimed responsibility for the bull ring attack, both of which took place very close to each other. The statement was brief and unsuccessful since Foixet denied any link to the BVE and stated that the attack at the bullring was an individual action spurred on by his opposition to bullfighting⁴⁴.

The investigation was closed in France a year and a half following fruitless enquiries. The Prosecutor requested the file of the proceedings, in the light of the scant police report that reflected the poor results of the proceedings conducted over a year and a half. The Prosecutor's Office in its request for closure, stated very emphatically that "following the investigations conducted by the Regional Judicial Police Service of Bordeaux [*Naparra*] had been the victim of score settling within the organisation itself"⁴⁵, thus endorsing the "score settling" hypothesis. The Examining Magistrate of Bayonne, Mr Cousteaux, closed the investigation in a short resolution dated 10 February 1982, which the Prosecutor Office's request is fully reproduced in the same⁴⁶.

6. Investigations and judicial process in Spain (1999-2004)

After being closed by the French judicial authorities in 1982, the investigation remained in deadlock for seventeen years until 1999 when José Miguel Etxeberria Álvarez's family launched an appeal to the criminal jurisdiction in Spain in 2004. In this section, we seek to address the "milestones" of the proceedings that have been extracted from the summary proceedings analysis⁴⁷. The key points will be kept in mind while never overlooking the subsequent legal analysis.

6.1. Lawsuit filed by the family and initiation of proceedings in Spain

Naparra's family filed a lawsuit on 13 September 1999 before the Spanish National Court's Criminal Investigation Court no. 2. Therefore, in terms of the content of the lawsuit, the items that have been deemed most relevant to the subject of this report are detailed below.

43 Record of transfer and registration, 3 July 1980. Preliminary Proceedings no. 245/1999, *op. cit.*, folio 757 and seq. (Volume III).

44 Records of questioning of Jean Pierre Foixet, 25 May 1981. Preliminary Proceedings no. 245/1999, *op. cit.*, folio 719 and seq. (Volume III).

45 Document 9 February 1982 of the Prosecutor's Office of the Provincial Court of Pau. Preliminary Proceedings no. 245/1999, *op. cit.*, folios 705-706 (Volume III).

46 Preliminary Proceedings no. 245/1999, *op. cit.*, folio 708 (Volume III).

47 Preliminary Proceedings no. 245/1999 of the Criminal Investigation Court No. 2 assigned to the National Court

First of all, it points towards the person or people who are members of or collaborating with the BVE⁴⁸ as alleged perpetrators of a crime involving illegal detention of Art. 480 et seq. and a crime involving murder of Art. 406 of the Criminal Code of 1973 - as provisional classification-under the terms of the list of events contained in section 4 of the lawsuit⁴⁹.

Secondly, the plaintiffs accompanied the lawsuit with three documents: 1.- An uncertified copy of the proceedings conducted before the French criminal jurisdiction; 2.- Press Kit; 3.- Copy of two statements signed by BVE and made public on 3 July 1980 and 16 July 1980.

Thirdly, in the interests of verifying the facts, the court was ordered to admit the lawsuit to proceedings, initiate preliminary proceedings and conduct the proper proceedings, with a particular interest in the following⁵⁰: Sending Letters Rogatory to the High Court of Bayonne to submit the full testimony of proceedings No. 66/80 (a), referred to above, and getting them translated (b); sending an official letter to the Judicial Police Chief of Police and the Head of the Civil Guard's General Directorate Information Service, requesting them to submit a report in relation to the BVE (c) and (d); and sending an official letter to the newspaper *DEIA*, requesting the sending of the copies of the editions corresponding to 22 June 1980, 4 July 1980 and 17 July 1980, as well as the originals or copies of press releases sent to these newspaper by the BVE and published on the dates indicated above (e).

Judge Ismael Moreno ordered the initiation of Preliminary Proceedings on 16 September 1999 and requested the conduct of all the proceedings requested by the plaintiffs in resolution dated 1 October 1999⁵¹.

6.2. Letters Rogatory to France

One of the proceedings in the investigation requested to be conducted from the beginning was the Letters Rogatory to France, with a request made to send the actions carried out in this country. However, since its request in October 1999, one thing that is certain is that these documents related to the French case were never received by Judge Ismael Moreno until the mid-2000s. Following the failure to respond to the summons without response, compliance of the International Letters Rogatory had to be reiterated on 14 January 2000⁵² to which the French authorities responded on 23 February of the same year, indicating that it had not been possible to locate the procedure in question⁵³. Finally, due to the existence of a third summons dated 25 May, to which a copy of the documentation relating to the French case provided by the prosecution in the lawsuit document was attached-procedure no. 66/80 followed by the High Court of Bayonne was sent, which became part of the Spanish case.

6.3. Civil Guard and Judicial Police Reports

Through the Ruling dated 1 October 1999 and from the Criminal Investigation Court No. 2, Judge Ismael Moreno Chamarro issued an official letter to both the General Commissioner of the Judicial Police and to the Head of the Civil Guard's General Directorate Information Service requiring the preparation and submission

48 The third section of the lawsuit in particular contains the following: "*The defendant(s) is/are a person/people responsible for the events detailed below, the circumstances of which are currently unknown, initially only stating that they were members of the self-styled Spanish Basque Battalion, or would collaborate in their operation, financing or organisation, providing infrastructure, economic resources, weapons, information on objectives, and everything necessary for the execution of the criminal actions and to ensure their impunity*". Preliminary Proceedings no. 245/1999, *op. cit.*, folio 2 (Volume I).

49 The above-mentioned list of the facts from the lawsuit contains essentially the same information included in the factual story of the previous sections of the report.

50 See section 5 of the lawsuit. Preliminary Proceedings no. 245/1999, *op. cit.*, folios 6-7 (Volume I).

51 Ruling of the Criminal Investigation Court No. 2 assigned to the National Court of from 1 October 1999. Preliminary Proceedings no. 245/1999, *op. cit.*, folio 65-66 (Volume I).

52 Order of the Criminal Investigation Court No. 2 assigned to the National Court of 14 January 2001. Preliminary Proceedings no. 245/1999, *op. cit.*, folio 291 (Volume I).

53 Order of the Criminal Investigation Court No. 2 assigned to the National Court of 14 January 2001. Preliminary Proceedings no. 245/1999, *op. cit.*, folio 291 (Volume I).

of both reports (hereinafter referred to as “Police Report” and “Civil Guard Report”) that would shed light on any data available on the self-styled BVE as well as the kidnapping of *Naparra*. With regard to the BVE, there was an express request, though far from being the only one, that included a list of attacks claimed by that organisation and another one on suspected members from the same.

In response to the letter sent to the General Commissioner of the Judicial Police on 11 October 1999 the General Commissariat of Information Technical Secretariat sent the letter received from the Court on 1st of the same month to the Central Intelligence Unit (ICU) to allow it to notify the Technical Secretariat anything necessary in this regard. The UCI sent a response in report format on 2 November 1999. The General Commissariat of Information delivered this report to Judge Ismael Moreno Chamarro the following day, who under the order dated 13 November 1999 attached it to Preliminary Proceedings 245/99-I, which had been brought through the Ruling dated 16 September 1999. Proceedings No. 88 instructed by the *San Sebastián* Police Headquarter’s Provincial Information Section were also attached to the report on 12 March 1981 breaking down and summarising as much as possible to provide content of interest for the purpose of the study. A news article published by the newspaper *DEIA* on 4 July 1980⁵⁴ was also attached since there is apparently no more details about the kidnapping of *Naparra* other than those published. With regard to the official letter sent to the Head of the Civil Guard’s General Directorate Information Service, the Special Central Unit No. 1 (UCE -1) was responsible for drafting the required report, therefore complying with the letter from the Court dated 1 October 1999. The report is dated 16 November 1999. Judge Ismael Moreno Chamarro, through order dated 18 November, also attached this to Preliminary Proceedings 245/99-I.

We briefly pause at this point to summarise the content of the report “Police Report” and the⁵⁵ “Civil Guard Report”⁵⁶. Both are written in a succinct manner and following a paired structure so that they will be analysed together point by point. The Police report confines itself abstractly to the existence of a series of attacks from 1978 to 1982 in the Basque Country and France directed against property or people linked to the Basque left. Responsibility, according to the report, is usually claimed by one or several ultra-right violent groups, which could include the BVE, either through phone calls or announcements in Basque newspapers. However, no list of criminal acts claimed by the BVE are provided, such as that of the Civil Guard’s report. This latter lists ten victims who were murdered⁵⁷, eight who were wounded⁵⁸, and five explosions of devices, along with another one that was able to be deactivated but that was turned off on time⁵⁹. However, both the Police Report and the Civil Guard report refer to the alleged militants from BVE Ladislao Zabala Solchaga and Ignacio Iturbide Alcaín as perpetrators or alleged perpetrators of these attacks and others for which no responsibility was claimed. Both were arrested at the beginning of March 1981⁶⁰, denying belonging to the BVE. They were sentenced by the National Court in 1985.⁶¹ Finally, both reports indicated that no

54 DEIA. “El Batallón Vasco-Español afirma que ha dado muerte a ‘*Naparra*’” [“The Spanish Basque Battalion claims responsibility for the death of ‘*Naparra*’”] *Deia*, 4 July 1980.

55 Preliminary Proceedings no. 245/1999, *op. cit.*, folios 205-206 (Volume I).

56 Preliminary Proceedings no. 245/1999, *op. cit.*, folios 272-275 (Volume I).

57 Of these 10 victims claimed by the BVE, seven took place in the same year that *Naparra* disappeared. This is the following list of victims, ordered chronologically according to the date of the attack resulting in death: Ignacio ECHAVE OROBENGOA (05.10.1975), Martín MER-QUELANZ SARRIEGUI (23.05.1978), Tomás ALBA IRAZOSTA (28.09.1979), Carlos SALDISE CORTA (16.01.1980), Jesús María ZUBICARAY BADIOLA (02.02.1980), Felipe SAGARNA ORMAZABAL (19.04.1980), Luis ELIZONDO ARRIETA (07.09.1980), Miguel María ALBALAIZ ECHEVARRÍA (07.09.1980), Joaquín ANTIMASBERES ESCOZ (14.11.1980) and Francisco Javier ANSA CINCUNEGUI (03.03.1981).

58 All of them, bar one, were due to the explosion of a device at the “Conexo-Etxe” bar in Berriz (Bizkaia) on 24 January 1981. The list of people injured in the attack is as follows: Lourdes GARROCHASTEGUI URÍA, Máximo GARCÍA SÁNCHEZ, Petra CONCEPCIÓN TENA, Pedro GALINDO PADILLA, María CONCEPCIÓN TENA, Aurelio CONCEPCIÓN CANO and Ana TENA LASO. The remaining victim was Andrés ECHEVARRÍA ECHEVARRÍA, during the murder of Joaquín Antimares Escocoz in 1980.

59 The first placed at the General Basque Council headquarters in San Sebastian (10.08.1979), the second in the *Batzoki* of Valle de Trápaga (07.12.1979), the third at a Tourist Office in Biarritz (28.06.1980), the fourth at a bar in the town of Bayonne (15.09.1980) and the fifth at the “Conexo-Etxe” bar in Berriz (24.01.1981). The sixth and last, which was deactivated on time, was placed under a private vehicle in Hendaia.

60 RUIZ DE AZUA, V. “Arrest of two alleged members of the Spanish Basque Battalion, possible perpetrators of seven murders”. *El País*, 05 March 1981. Ignacio Iturbide Alcaín went on to be rearrested in March 1998 for the illegal holding of arms. See PINAZO, F. “Detenido en Valencia un ex miembro del Batallón Vasco Español”. [Arrest in Valencia of an ex member of the Spanish Basque Battalion]. *El País*, 14 March 1998.

61 YOLDI, J. “Iturbide y Zabala, del Batallón Vasco Español, condenados a 231 años de cárcel cada uno por siete asesinatos” [“Iturbide and Zabala, from the Spanish Basque Battalion, sentenced to 231 years in prison each for seven murders”]. *El País*, 26 June 1985.

further information is available on *Naparra* than those known claims of responsibility about his kidnapping and murder carried out by the BVE⁶². Both also echo another statement, in this case of the autonomous commandos, to the newspaper *DEIA*, casting doubt on BVE's claims of responsibility and directly accusing ETA-m of being behind the kidnapping and murder of *Naparra*⁶³. Due to the fact that the investigations on the case took place entirely in France, no further information on anything is available in this regard.

With regard to Proceedings No. 88 brought by the San Sebastián Police Headquarter's Provincial Information Section on 12 March 1981, a copy of which is attached to the first of the reports referred to above⁶⁴, particularly noteworthy are the sworn statement, inspection, dispatch and registration, and the involvement of several detainees involved or related in any way to criminal activities claimed by extreme right armed organisations, particularly the BVE. Among those of greatest interest are the witness statement of Ladislao Zabala Solchaga⁶⁵ and Ignacio Iturbide Alcain⁶⁶ on 6 March 1981. In both, Zabala and Iturbide denied not only forming part but also being aware of the existence of the BVE as an organised terrorist structure. All in all, they state having claimed responsibility on behalf of the BVE for certain attacks that took place for which they were also interrogated. They justify their armed struggle on the grounds that it was intended to confront ETA. Specifically, to make its existence known and to unsettle the terrorist gang. Everything was part of its particular crusade against that organisation. They also believe that the BVE does not exist as a structured organisation, but that many actions that are simply aligned with it bearing its hallmark without any real relationship other than a common ideological affinity with these acronyms. They insist that this shows that it has always been an armed struggle that was funded from their own resources and without links to any infrastructure⁶⁷.

6.4. Dismissal of testimonial evidence requested by the plaintiffs

One of the most interesting moments from a legal point of view from these proceedings occurred as a result of the request for four witness statements by witnesses made by the plaintiffs. Section three of the letter dated 2 September 2002 requested Judge Ismael Moreno to admit the statements made by the four witnesses to the investigation proceedings: José Antonio Sáenz de Santamaría, Juan Antonio González Pacheco (known as "*Billy the kid*"), Manuel Ballesteros García, and José Luis Fernández Dopico⁶⁸.

However, this proposal made by the private prosecution was dismissed through Ruling dated 28 April 2003⁶⁹, with the unfavourable report for the conduct of such witness statements having also occurred through the Prosecutor's Office.

62 The Police report does indeed highlight a news item in *DEIA* in this regard. It states that there was a phone call to the newspaper on 3 July 1980, where someone claiming to be from commando Esteban Beldarráin (BVE) revealed that *Naparra* was executed on 30 of June and buried in the "Txantako" region. *DEIA*. "The Spanish Basque Battalion. *cit.* An extract of BVE's claim of responsibility consists of folios 46 and 47 of the Summary Proceedings (Volume I), and the news item in *DEIA* on folios 261 and 262 (Volume I).

63 See also: GONZÁLEZ, A. "Los comandos autónomos dudan del secuestro de "*Naparra*". [Autonomous commandos cast doubt on the kidnapping of '*Naparra*'] *El País*, 11 July 1980.

64 Preliminary Proceedings no. 245/1999, *op. cit.*, folios 207-260 (Volume I).

65 Preliminary Proceedings no. 245/1999, *op. cit.*, folios 212-220 (Volume I).

66 Preliminary Proceedings no. 245/1999, *op. cit.*, folios 221-229 (Volume I).

67 The documented proceedings that took place also contain statements also made by people who, due to being linked to the illegal activities of Zabala and Iturbide, were also detained. These were Jesús Jiménez Gortazar, Benito Santos Medina and José Luis Jiménez Clavería. The three of them when asked about the possible linkage of Zabala and Iturbide to the BVE, denied having any awareness of this. Preliminary proceedings 245/99, *op. cit.*, folios 230, 233 and 236.

68 Sáenz de Santamaría, a professional soldier, was general inspector of the National Police Corps at the time of *Naparra*'s disappearance, and had been appointed Government Delegate in the Basque Country, where he led the fight against terrorism, subsequently being appointed Director General of the Civil Guard. González Pacheco was Inspector of the National Police attached to the Central Brigade of Information Ballesteros led the Spanish National Police General Commissariat of Information. Finally, Fernández Dopico was Secretary of the Department of State Security in 1980, who would be later appointed Director General of the National Police.

69 Ruling of the Criminal Investigation Court No. 2 assigned to the National Court of from 28 April 2003.

Judge Ismael Moreno began his argument in this Ruling in the abstract, making reference to the jurisprudence of the Constitutional Court and the Supreme Court in relation to the right to use the evidence relevant to the defence recognised in Article 24.2 EC⁷⁰.

Following the presentation of this doctrine, this jurisprudence in legal reasoning two argues against the admission of the proposed testimonial proceedings due to believing that “(...) *it can only lead to an undue delay of the procedure*” given that its “(...) *relationship with the events, its capacity or ability for the proper conduct of the investigation, in short, its relevance and necessity, is not sufficiently justified* (...)”:

It more specifically states that “(...), *as indicated by the Prosecutor’s Office in its report (...), the fact that the witnesses, whose statements have been requested, held certain positions in the administration on the dates when the facts investigated may have taken place or some type of relationship with people who could be somewhat linked with the investigation, in no way justifies allowing a series of witnesses- which could be for an indefinite period of time- regarding which there are no minimally objective aspects that would suggest that they might know or provide any information of interest to the case that would further clarify the facts*”:

The argument and the conclusion from the Ruling of 28 April 2003 was in line with those contained in the previous report from the Prosecutor’s Office. The only thing worth mentioning from this latter item is in order to hold up the non-association of one of the people put forward as a witness -José Antonio Sáenz de Santamaría- appealing the constitutional presumption of innocence in the following terms: “*Any details from the summary links [him] (...) with the facts beyond the position he held concurrently to the same. His position does not mean that Sáenz de Santamaría was aware of the events and who committed them, concealing them from justice insomuch as the constitutional presumption of innocence is applicable from the same at the very least*”.

In terms of the negative outcome, the private prosecution filed an appeal for amendment and subsidiary appeal, dated 30 April 2003 against the aforementioned Ruling dated 28 April.

The amendment was dismissed by Judge Ismael Moreno through Ruling of 30 May 2003, considering that the allegations from the plaintiffs “*did not distort the reasons that were taken into account for the issue of the resolution that is being appealed herein*” and that this resolution would therefore remain in its own terms⁷¹.

Following the negative result of the resolution, the subsidiary appeal was admitted for processing, where the Spanish Court’s Criminal Division (section three) was given responsibility for resolving it through Ruling 3 December 2003⁷². The court dismissed the appeal, the arguments of which were essentially identical to those of the examining magistrate.

The main argument supporting their decision was the lack of objective data suggesting that the people put forward as witnesses have knowledge about the facts and perpetrators of the disappearance. In this regard, particular emphasis is put on the fact that in order to bring a witness to a process, there must be evidence of knowledge of the events, the perpetrators, or some type of information related to the reality, where the fact that something might be contributed is not sufficient⁷³.

Finally, following this line of argument, the Court pointed out that the fact of holding a particular position - head of the State Security Forces, for example- at the same time that the events took place does not mean that the person has specific knowledge related to a particular crime, as is the specific involving the disap-

70 Ibid., legal reasoning One.

71 Ruling of the Criminal Investigation Court No. 2 assigned to the National Court of 30 May 2003, Legal Reasoning One.

72 Ruling from the Spanish Court’s Criminal Division (section three) of 3 December 2003.

73 Literally, the Division argued the following (Legal grounds two): In relation to Manuel Ballesteros: “*he cannot be freely brought to make a statement if details about a crime could be possibly contributed that everything is led to believe that there is a complete lack of knowledge of the situation or the perpetrator of the same*”; In relation to Antonio González Pacheco: “*It is absolutely necessary for there to be indications that someone knows something about the events in order for this person to act as a witness in the process (...), rather than the possibility that they may later become aware of them*”; In relation to José Luis Fernández Dopico: “*It doesn’t make sense for the heads of the State Security Forces to make a statement whenever a crime is committed in case they might possibly have information (and that they hide, in short) about the same*”.

pearance of *Naparra*⁷⁴. In conclusion, the request of the private prosecution in relation to conducting the four witness statements was dismissed.

6.5. Dismissal and provisional closure of the procedure

Shortly after the dismissal for the witness statements to be taken, the prosecution requested other investigation proceedings the statement in the capacity of the accused, Gilbert Perret, in a document dated 16 December 2003, therefore understanding that there was enough criminal evidence against him. The following is the evidence mentioned⁷⁵:

- Reports from the magazine “Cambio 16” involving the Perret brothers in the disappearance of *Naparra*.
- The judicial statements from the journalists who wrote these stories, Rafael Cid Estarellas and José Díaz Herrera, who ratified the result of their investigation.
- The coinciding attribution of blame to the Perret brothers by other specialists in the investigation of the patterns of State terrorism, Melchor Miralles and Ricardo Arqués, in their book “*Amedo: el Estado contra ETA*”. [*Amedo: the State against ETA*].

In response to this request, Judge Ismael Moreno issued the Ruling on 31 March 2004⁷⁶, dismissing the proposed Proceedings and decreed the temporary dismissal and closure of the Proceedings. The Prosecutor had previously made a similar statement in the report from 3 March 2004, opposed to the taking of Gilbert Perret’s statement as accused and interested in the provisional dismissal and the closure of the same.

For organisational purposes, the two issues being discussed should be looked at separately.

First of all, the proposed statement of Gilbert Perret as accused. In this regard, the examining magistrate in its Ruling dated 31 March, believes that the relevance and necessity of these proceedings was not sufficiently justified and that its conduct would only lead to an undue delay in the proceedings. The same doctrine of the Constitutional and Supreme Court is literally used in this line of reasoning on the content of the right of Article 24.2 EC - the right to use evidence relevant to the defence - already used in Ruling of 28 April 2003 to dismiss the witness statements requested by the private prosecution. Furthermore, and making a more specific reference to the requested proceedings, there is not believed to be any element or indication that could lead to Gilbert Perret being aware of the situation related to the disappearance and its perpetrators; as well as the fact that the case contains no elements that could infer any kind of participation of this person in the disappearance of *Naparra*⁷⁷. The Prosecutor said pretty much the same in this regard in his preliminary report. In any case, it is worth remembering that the Prosecutor’s Office, far from acting *ex officio*, tends to divert interest in solving the enforced disappearance exclusively to the private prosecution: “Given the lack of solid lines of investigations by either the Central Court or by the Prosecutor’s Office (...) the conduct of all the investigation proceedings requested by the private prosecution has been completed”.

The second controversial issue deals with the decision to declare a temporary dismissal and the closure of the case. In this regard, Judge Moreno⁷⁸, adopting the most detailed analysis from the Prosecutor’s Office

74 In this regard, the Court notes literally state in relation to José Antonio Sáenz de Santamaría, that “*the only thing that happens is that the public role held by the person whose statement is requested has been at the same time as the events,, but this does not indicate this person has any specific knowledge of a specific offence and determined as is pursued herein*”.

75 Ruling of 4 October 2004 of the Spanish Court’s Criminal Division (section three), which resolves the appeal 237/04, which refers to these indications (Legal grounds Two).

76 Ruling of the Criminal Investigation Court No. 2 assigned to the National Court of 31 March 2004.

77 *Ibid.*, legal reasoning Two and Three.

78 The Prosecutor’s Office’s report dated 3 March conducted an analysis of the proceedings, and the information available on the case up to that time and the ensuing conclusions in order to sustain the provisional dismissal and the closure of the proceedings. The following are some of the proceedings that have taken place referred to by the Prosecutor’s Office: Two reports from the General Commissariat of Information.; two reports from the Civil Guard’s General Directorate; a notification from the *DEIA* newspaper; the documents contained in folios 1,182 et seq., which we sense contain the reports from the “Cambio 16” magazine; a report on the Phoenix Program on DNA extracts from the parents of the disappeared person; the judicial pronouncements of Rafael Cid Estarellas and José Díaz Herrera that this

in relation to the status of the investigation, very succinctly decreed the provisional closure and dismissal of the case on the basis of two premises⁷⁹:

He first argues that the proceedings to date had failed to prove that the disappearance had been “*a result of certain criminal actions*”, on the one hand and that they could not lead to “*any type of linkage with any person*”. In other words, based on the information appearing in the case so far, there is not believed to be evidence of even the perpetration of the crime that had led to the initiation of criminal proceedings, nor the participation of any person.

Secondly, thinking ahead, no new information leading to the identification of the events as criminal acts and the identification of participants (as perpetrators, accomplices or accessories of the same) are understood to be expected to be obtained due to believing that “*neither the place, date, means or any other circumstance of the alleged disappearance, or connection of any person with the reality of the disappearance has been proven (...)*”. In summary, Judge Moreno ruled that there were no solid lines of investigation to be followed in the interests of clarifying the facts⁸⁰.

As a final step in the procedural process, given the previous dismissals, resolving appeal 237/04, the Criminal Division (section three) of the National Court issued Dismissal Ruling on 4 October 2004. Following the above structure, the arguments used by the court in relation to the two issues subject to appeal are detailed below.

On the one hand, the proposal for a statement from Gilbert Perret as accused, which the Court ruled on in legal reasoning two. The evidence on which the accusation has been made cannot be regarded as such to uphold a criminal charge. First of all, the reports and judicial statements by Rafael Cid Estarellas and José Díaz Herrera are not granted validity from a legal point of view, given that these “*(...) do not provide their authentic sources of what they know in order to verify its accuracy (...)*”, nor “*(...) provide the logical reasoning that they followed (...) to reach their conclusions, based on actual premises (...)*”. Secondly, in relation to the book by Melchor Miralles and Ricardo Arqués “*Amedo: el Estado contra ETA*” [*Amedo: the State against ETA*], the information linking Gilbert Perret to the disappearance of Naparra is understood to be no more than mere opinions, which are not supported by objective information that could lead to their accuracy, therefore making it impossible to support a criminal charge. The Court also added that Estarellas, Herrera or Arqués “*have never stated the grounds of their beliefs with regard to Perret’s involvement*” in the disappearance of Naparra. No mention of Melchor Miralles was made in this regard.

On the other hand, the decision to declare a temporary dismissal and closure of the case was analysed in legal reasoning three. Its understanding on this particular that, in response to what was said by the investigating judge in his Ruling of 31 March 2004 and the witness statements provided in appeal, there are no “*(...) elements usable in the investigation of the events (...)*” and “*(...) where, how and when José Miguel Echevarría disappeared have not been accredited, not even circumstantial, and much less so that he has been murdered, and there is no hint of anything about the participation of any person in the disappearance, nor of the objectives that would lines of research to be distinguished that could lead to the investigation of the events and the identification of the perpetrators*”. The Court therefore agreed to the dismissal of the appeal, a temporary dismissal and closure of the case.

report states “that no conclusion was reached that would allow those responsible to be individually pointed out”, with the same concluding on “the statement made by a protected witness that pointed to the military wing of ETA being responsible for the events”, and finally the letters rogatory to France which initiated the proceedings in France.

79 Ibid., legal reasoning Two.

80 Against aforementioned Ruling of 31 March 2004, the plaintiffs filed an amendment and subsidiary appeal on 8 April 2004, but this was dismissed by Ruling of 4 May 2004, with a very brief justification along the general lines of the amendment appeal - making reference to the reasons stated in the contested Ruling and considering that these have not been proven to be unfounded.

7. Reopening of the proceedings at the National Court and current status (2016-2019)

7.1. Reopening of proceedings

Twelve years following the closure of the summary proceedings and as a result of new information, Judge Ismael Moreno agreed to reopen the case through Ruling of the Criminal Investigation Court No. 2 of Madrid on 13 October 2016. According to the legal reasoning contained therein, the reopening requested by the private prosecution in the particularly in the document from 29 September 2016⁸¹ addressed to that same Court is based on “*new information that would allow the identification of the exact location in France where the body could be buried*” where the information is understood as “*relevant to clarify the facts*”⁸².

The Ruling in question included a report of from the Prosecutor’s Office dated 7 October 2016 in response to the transfer of the plaintiffs’ reopening letter to this organisation. It contains the new location indicated by the private accusation aimed to find *Naparra’s* body: “*a grove, located on the road linking Brocas and Labrit, in the vicinity of Mont De Marsan*”⁸³. This initial information about the possible location of *Naparra’s* body is more precise, making mention of “*a grove located at the exit of a bridge on the road linking Brocas and Labrit [D651 motorway] in a north-northwest direction 150 meters to the right*”⁸⁴, as indicated in a report by Dr. Etxeberria⁸⁵, dated 4 August 2016, and according to the information provided by a confidential source of journalist Iñaki Errazkin and also reflected in the proceedings reopening document⁸⁶. In December 2015, Errazkin had interviewed a Spanish national in Brazil, who was living in São Paulo, and who was aware of illegal actions carried out against terrorist organisations operating in the Basque Country and presumably linked to the so-called dirty war⁸⁷. This new information was supported with a recording made of the informant by journalist Errazkin and a handwritten document detailing the burial place⁸⁸. According to information obtained by the media, Ramón Francisco Arnau de la Nuez, aka “*spider*”, and former agent of CESID (Superior Centre of Defence Information;), was the person who provided the information to Iñaki Errazkin⁸⁹.

81 The information contained in the same were presented following the re-opening of the procedure at a press conference by Eneko Etxeberria (*Naparra’s* brother), Iñigo Iruin (the family’s lawyer) and coroner Francisco Etxeberria. EUROPA PRESS. “The family... *op. cit.*”

82 Ruling of the Criminal Investigation Court No. 2 assigned to the National Court of 13 October 2016, Legal Reasoning One.

83 The Prosecutor’s Office also recalls that, at the time, following the conduct of several proceedings such as the investigation carried out by the High Court of Bayonne or the statements as defendants of members of the BVE Ladislao Zabala and Ignacio María Iturbide, suspicion lay with a group of individuals led by the Perret brothers. See allegations Three and Four of the Prosecutor’s Office Report of 7 October 2016.

84 See third proceedings to be conducted (Letters Rogatory to the French Judicial Authorities) related to the search for the remains of *Naparra’s* body, in Ruling of the Criminal Investigation Court No. 2 assigned to the National Court of 13 October 2016, the operative provisions.

85 This is a report undertaken at the request of Eneko Etxeberria and through the mediation of Euskal Memoria Fundazioa. See ETXEBERRIA GABILONDO, F. “Informe relativo al posible lugar de enterramiento de José Miguel Etxeberria Álvarez, desaparecido en 1980” [Report concerning the possible burial place of José Miguel Etxeberria Álvarez, who disappeared in 1980], 4 August 2016, 12 pp.

86 Document for the reopening of proceedings (Preliminary proceedings Summary Procedure no. 245/99) before the Criminal Investigation Court No. 2 assigned to the National Court, 29 September 2016, Allegation Three.

87 According to Iñigo Iruin, the informant “*was linked with State terrorism activities conducted against ETA and other organisations in the late ’70s and early ’80s, or at least with the people who did the same*”. EFE. “Las autoridades francesas intentan localizar el cuerpo de *Naparra*”. [French authorities try to locate *Naparra’s* body.] *El Mundo*, 3 April 2017.

88 Document for the reopening of proceedings (Preliminary Proceedings-Summary Procedure no. 245/99) before the Criminal Investigation Court No. 2 assigned to the National Court, 29 September 2016, Allegation Three.

89 Iñaki Errazkin revealed the identity of the informant at the court, when a statement was taken from him as a witness on 26 October 2016 before the Criminal Investigation Court No. 2 assigned to the National Court. This would be subsequently attached to the investigation that would be initiated in France. See Report: Retranscription of Iñaki Errazkin’s statement. Translation of his statement before the Criminal Investigation Court No. 2 assigned to the National Court, dated 26/10/2016, 20 March 2017, Implementation International Letters Rogatory - Spain (Summary Proceedings no.: JICABDOY16000013), High Court of Mont-de-Marsan, pp. 44-48.

The report prepared by Dr. Etxeberria contains the result of an on-site inspection carried out on 30 July 2016⁹⁰ at the location indicated in the information from Errazkin's source and with the purpose of verifying the same. The report, which determines in its conclusions that there is full geographic correlation, foresees two possible burial location options as there turned out to be two stone bridges located between the towns of Brocas and Labrit⁹¹. According to Dr. Etxeberria's report, *"both locations have sandy soil and would be ideal for carrying out a clandestine burial. In fact, given that there is actually a burial place, the remains may be in good condition, making it possible to potentially carry out an analysis of them to allow them to be identified and to establish the cause of death"*⁹². Some time later, in a statement given in France, Dr. Etxeberria reiterated the failure to accurately determine the most appropriate option to perform the searches for *Naparra's* remains until any further information emerges⁹³.

Lawyer Iruin, on behalf of the family, requested a comprehensive series of actions from the National Court aimed at starting new search for *Naparra's* body. This firstly involved taking a sworn statement from journalist Errazkin to contribute to the information received from his source confidential and relevant documentation. Secondly, for evidence to be taken as a witness-expert from the medical specialist in legal and forensic medicine Dr. Etxeberria, who had already had the opportunity to then move to the place where *Naparra's* body was apparently buried. Third and finally, an urgent letter rogatory was sent to the French authorities in order for the Mont-de-Marsan Investigating Magistrate to channel the search tasks of *Naparra's remains* following the indications contained in Dr. Etxeberria's report⁹⁴.

The Ruling dated 13 October 2016, issued by Judge Ismael Moreno, supported the implementation of all the proceedings requested by the family, also requested by the Prosecutor's Office in his preliminary Report. Journalist Iñaki Errazkin gave a witness statement before the judge on 26 October 2016, as did Coroner Francisco Etxeberria, who presented a technical report in his capacity as expert. A letter rogatory was also requested before the French justice system to search for the remains at the location stated by the former CESID agent source, whereas the French authorities set 4 April 2017 as the date to start the excavation work. Just a couple of months prior to the date set, Ruling dated 1 February 2017 was issued stating that the complexity of the investigation while a period of 18 months (13.10.2016 - 13.04.2018) was set from the reopening of the proceedings until termination of the same.

7.2. Fruitless search of the Landes

Judge Solenne Motyl, vice-chair in charge of the investigation of Mont-de-Marsan High Court⁹⁵, was responsible for the execution of the letter rogatory sent to France in the Landes and that was recorded as received there by December 2016. On 30 March 2017, Judge Motyl appointed Anne Coulombeix⁹⁶ as expert to assist

90 Dr. Etxeberria was accompanied by Eneko Etxeberria, Iñaki Egaña (historian) and Iñaki Errazkin. For the Francisco Etxeberria's statement contained in the French investigation that would open later and that contains information about this particular, see: Statement report: Francisco Etxeberria Gabilondo, 26 January 2017, Implementation International Letters Rogatory - Spain (Summary Proceedings no.: JICABDOY16000013), High Court of Mont-de-Marsan, pp. 70-72.

91 Option A (Bridge 1) suggests a bridge extended with concrete *"to the Labrit-bound Brocas exit between km 53 and 54 that overpasses the western-bound stream (Ruisseau de Biensang)"*. Option B (Bridge 2), also on the Brocas-Labrit road, is used for the older road (hereinafter referred to as the "Navarre Road") that runs parallel to this and that also links both locations. This specific bridge is the *"closest to Labrit, between km 51 and 52 that overpasses a small western-bound stream (Ruisseau de la Bernède)"*. ETXEBERRIA GABILONDO, F. "Report concerning the possible burial place of José Miguel Etxeberria Álvarez, who disappeared in 1980", 4 August 2016, p.3.

92 Ibid., p.4.

93 Statement report: Francisco Etxeberria Gabilondo, 26 January 2017, Implementation International Letters Rogatory - Spain (Summary Proceedings no.: JICABDOY16000013), High Court of Mont-de-Marsan, p. 72.

94 Document for the reopening of proceedings (Preliminary Proceedings-Summary Procedure no. 245/99) before the Criminal Investigation Court No. 2 assigned to the National Court 29 September 2016, Allegation Six.

95 This led to the French State deciding to finally not refer the case to counter-terrorism courts based in Paris ARRETXE, J. "Francia iniciará la búsqueda de 'Naparra' entre enero y febrero". [France will start searching for 'Naparra' in January-February]. *Noticias de Navarra*, 27 December 2016.

96 Anne Coulombeix is the head of the Department of Anthropology-haemato-morphology of the French Police Force Criminal Research Institute (IRCGN) in France.

in the search for and the exhumation of *Naparra's* remains in the event that they were found. She was also assigned responsibility for the preparation of a detailed report to be delivered before 15 May 2017⁹⁷. The search work was assigned to a special search unit of the Police Force of Pau with lieutenant colonel Laurent Lesaffre -commander of the PAU Investigations Sections- under the command of the police operative.

During the early investigations into the exact location of the land to be excavated, the French police force presented two scenarios provided by Errazkin's informant-and also contained in Dr. Etxeberria's report as potentially suitable places that matched the information provided. However, there were also discrepancies. *"One of the locations is not accessible by road and in the case of the other one, the distance between the grove and bridges is much larger"*. But when it came to determining the place where the informant could be referring to, the state of the area at the time *Naparra's* disappearance was especially relevant. This was done by collecting photographs of from locals and impressions from both neighbours and the different owners. With regard to Option A, the following conclusion was drawn: *"(...) there was none [in the 1980s] in this woodland area anything except for a single forest composed of pine trees that were already pretty tall at the time, oaks and poplars"*. With regard to option B, the following conclusion was drawn: *"(...) the aerial [old protected land in the Landes] and the oak groves could be the same as they were in the '80s'*. In conclusion, Option A was ruled out as the investigations *"did not correspond at all with the description given by the informant"*⁹⁸.

At 11.20 a.m. on 4 April 2017, the technical operations involving the excavation at the location where *Naparra's* remains might be buried according to the revelations made by the former member CESID began. It concluded at 4.35 p.m. on the same day, without finding any body⁹⁹. Both the lawyer, Iruiñ Sanz, and Dr. Etxeberria, the latter at the request of the family, were present on the day that the excavation took place.

The report commissioned to expert Anne Coulombeix, dated 25 April 2017, states that a hydraulic excavator was used, which made it possible to excavate an estimated area of 400 m². It also stated that the area had undergone few changes judging by the aerial photographs over the area at the time of *Naparra's* disappearance. Looking beyond the detection of plant-based abnormalities as a result of the decomposition of larger roots, the following could be concluded: *"We can say without a shadow of a doubt that there was no body in the three areas excavated with the mechanical equipment"*¹⁰⁰. However, the current owner of the land stated on the same day that the excavation was taking place that his child found a Military style combat boot (size 45) between 15 and 20 years previously covered in grass about 400 meters from the Option A bridge. This shoe was immediately sent to French police and would be sent to the Spanish justice system for any checks that had to take place¹⁰¹.

According to Mont-de-Marsan Prosecutor's Office, Jean Philippe Récappé, the body could have been initially buried there and later moved; however, the reality was that no remains were found in the excavated area¹⁰².

97 Expert appointment Ruling, 27 March 2017, Implementation International Letters Rogatory - Spain (Summary Proceedings no.: JICABDOY16000013), High Court of Mont-de-Marsan, pp. 9-10.

98 All of this is explained by Michel Hugounenc, investigation director appointed by Colonel Lesaffre, in a synthesis report on the letter rogatory sent to France and completed following the excavation on the ground". See Synthesis Report (Letter Rogatory) 19 June 2017, Implementation International Letters Rogatory - Spain (Summary Proceedings no.: JICABDOY16000013), High Court of Mont-de-Marsan, pp. 39-41.

99 Record of transfer to the location, 4 April 2017, Implementation International Letters Rogatory - Spain (Summary Proceedings no.: JICABDOY16000013), High Court of Mont-de-Marsan, pp. 7-8.

According to the report issued subsequently by Anne Coulombeix, arrival at the indicated location took place at 10 a.m., with excavation work starting at 10.40 a.m., ending at 5 p.m. See Expert Report No. 4369/EX/ANH/90/17, Implementation International Letters Rogatory - Spain (Summary Proceedings no.: JICABDOY16000013), High Court of Mont-de-Marsan, p. 16.

100 Available in detail at Expert Report No. 4369/EX/ANH/90/17, Implementation International Letters Rogatory - Spain (Summary Proceedings no.: JICABDOY16000013), High Court of Mont-de-Marsan, pp. 13-29.

101 See Synthesis Report (Letter Rogatory) 19 June 2017, Implementation International Letters Rogatory - Spain (Summary Proceedings no.: JICABDOY16000013), High Court of Mont-de-Marsan, p. 41.

102 EFE. Termina si éxito la búsqueda del cuerpo de *Naparra* en La Landas francesas["Unsuccessful end of search for *Naparra's* body in the French Landes"] *EFE Agency*, 4 April 2017.

7.3. The case today

Eneko Etxeberria, *Naparra's* brother, reported on the status of the investigations in a letter published in the *GARA* newspaper on 12 June 2017 two months after the unsuccessful search in the Landes. It said that the judge had admitted new proceedings, “including the request for information that may lead to the location from the former agent of the National Police and the Civil Guard”. It also expressed the strong desire to “fight” so that “the search area was expanded other possible locations where the body could be buried could be taken into account contained in *Paco Etxeberria's* report”¹⁰³.

On 7 February 2018, at the request of the Prosecutor's Office, it was agreed to send the combat boot or military-type boot (size 45) to the Scientific General Police Headquarters for its consideration and thus be able to determine if there were any remains of the biological person who wore them (i.e., to try to identify their DNA). On 28 of February, the Scientific Police called the investigating judge by phone to say that more time would be required to carry out these checks given the level of deterioration of the boot. On 1 March 2018, Ismael Moreno decreed the provisional dismissal of proceedings and closed the case in order not to exceed the maximum investigation period. However, this closure included a significant provision for reopening that read as follows: “(...) until the time that the proceedings entrusted to the Scientific General Police Headquarters is completed, at which time the proceedings will be reopened”¹⁰⁴.

The procedural representation for *Naparra's* family members (Celestina Álvarez, Eneko Etxeberria and María Camino Etxeberria) filed an amendment appeal on 9 March 2018 against the previous decision in order to rescind the dismissal and closure decreed, set a new deadline for completion of the investigation, and ensure that the case continued its course through the handling of new proceedings. Three proceedings were of particular concern: (a) Determining the whereabouts of Ramón Francisco Arnau de la Nuez to provide judicial statement; (b) To expand the information relating to Ramón Francisco Arnau de la Nuez; and (c) Expansion of the International Letters Rogatory for the French authorities to undertake the search for the body in the area corresponding to “Option A”, dismissed by French authorities¹⁰⁵. On 16 March 2018, in relation to the resolution of the appeal, the Court received the report produced by the Scientific General Police Headquarters. The examination conducted on the combat boot or military-type boot (size 45) concluded that no nuclear DNA could be extracted. The Prosecutor's Office responded to the amendment appeal filed by ordering its dismissal and confirmation of the Ruling contested on 16 March 2018. And the grounds on which this is based are in complete accordance with the justification offered by the investigating judge through Ruling dated 22 March 2018 to dismiss the claim to conduct proceedings were requested.

In reference to the French authorities covering or extending the search for the body to the area corresponding to “Option A”, the investigating judge referred to what was already contained in the report sought after the unsuccessful search in the Landes. It particularly reaffirms that the state of the ruled-out area does not match the description given by the informer. With regard to the location and subsequent statement by Ramón Francisco Arnau de la Nuez, the Ruling stated that his whereabouts was unknown and that an official letter was already sent to the National Police and the Civil Guard to report on any type of information to be obtained, which the Criminal Investigation Court has no record of at this time. The Investigating Magistrate therefore concluded: “(...) there are no reasons for setting a new deadline for the completion of the investigation (...) since we cannot determine the deadlines of the investigation to an uncertain event and that is not foreseeable at the time, which is the time of the location of Ramón Francisco Arnau de la Nuez”¹⁰⁶. However, the investigating judge partially considered the appeal solely for removing the dismissal and reopening the activity in as much as it expressly indicated in Ruling of 1 March 2018 once the results of the proceedings conducted by the Forensics Unit were known¹⁰⁷.

103 ETXEBERRIA ÁLVAREZ, E. “¡Queremos saber la verdad!”. [We want to know the truth] *Noticias de Navarra*, 12 June 2017.

104 Ruling of the Criminal Investigation Court No. 2 assigned to the National Court of 01 March 2018, Legal Reasoning One.

105 However, Dr. Etxeberria states that it is precisely in the ruled-out area where the remains of the Pamplona refugee's remains were most likely to be found. “For reasons that we don't yet understand, they [the French authorities] have decided for the excavation to take place precisely in the location where he is least likely to be found. EFE. “The search for *Naparra's* body: ‘Hope and judiciousness’ in the family”. *Noticias de Navarra*, 15 June 2018.

106 Ruling of the Criminal Investigation Court No. 2 assigned to the National Court of 22 March 2018, Legal reasoning Four.

107 Ibid., legal reasoning Two.

On 11 April 2018, Journalist Iñaki Errazkin published a video on *YouTube* that revealed the identity of the source that obtained the information to locate the remains of *Naparra*, or Ramón Francisco Arnau de la Nuez. The former agent of CESID, appeared before the chamber dressed in a civil guard uniform, who in his brief speech assumed *Naparra's* body was located, indicating that *“the Spanish State will have to explain why CESID had knowledge of where this person was”*. He was identified in the same video as a *“former agent of CESID, under the alias Spider”*. Iñaki Errazkin’s text that accompanied the video uploaded to *YouTube* explains that the family asked the National Court not to close the case and to put pressure on the French Police Force to continue the search where coroner Francisco Etxeberria believed more likely a location to find José Miguel Etxeberria’s body but that the French Police Force ruled against exploring. The journalist also confirmed in this text that the former agent was seriously ill. This is the transcript of part of the video related to the *Naparra* case: *“(…) In relation to the latest disappearance in the Basque country, he wanted to state that the body is already located, the information is now available and we hope, we trust, and we want their remains to be discovered very shortly. At this time, it will be the Spanish State that will have to explain why CESID knew where this person was located (…)”*¹⁰⁸. According to the information published in the online newspaper NAIZ in relation to the video, the recording is prior to the excavations conducted in the Landes and indicates that the former agent’s location is unknown¹⁰⁹.

The family, unhappy at the way how the investigations had been carried out, appealed the Ruling dated 22 March 2018. The Prosecutor’s Office once again requested the dismissal of the appeal and the case was brought to the Second Section of the National Court’s Criminal Division. The legal reasoning used in the Spanish Court’s Ruling No. 254/18 dated 8 May 2018, primarily focused on one majorly important aspect. If we consider the proceedings concerned by the petitioners and bearing in mind that this was dismissed by the magistrate as relevant to the case, this would hugely dictate the outcome of the investigation phase. The petitioners therefore understand that the time remaining of the first extension is not enough for the proceedings whose conduct are requested to be implemented. This is exactly the reason why they are requesting a second extension to continue the investigation. Art. 324 of the Spanish Criminal Procedure Act requires for there to be *“reasons that justify this” in order for this exceptional time frame to be agreed FONT*. The Spanish Court judges believe that this can only be issued after an assessment of both what has already been conducted as well as what is anticipated for the future in relation to the success of the investigation. And this is the point where the judges understand that conducting the proceedings - which can only take place in exceptional time frame- do not allow for it to be ruled out that no positive outcome will be offered for the investigation. The extension to the investigation time frame is therefore justified¹¹⁰.

The petitioners also insisted that in the search conducted in April 2017 was supported by some photographs from 1987 that were provided by a neighbour and taken from the ground, instead of using aerial photographs from that time. In fact, the family provided a CD with aerial photographs of the area dating back to 1982, showing that there is also an oak forest and an access track that matches that described by the CESID agent in the area. The National Court believes that *“there is no clearly established record that these aspects were taken into account in the previous proceedings”* in the excavations and it therefore considers the new demand for France as *“appropriate”*¹¹¹.

With regard to the proceedings requested for the location of Ramón Francisco Arnau de la Nuez, the National Court understands that these do not have to be confined to his search. An expansion in this regard would perhaps allow *“(…) his personal, professional and working life circumstances, which if heard in a statement, would be useful for assessing his witness statement”*¹¹² to be known.

In view of the foregoing, the judges of the National Court allowed the appeal filed by the petitioners and requested the magistrate who issued the contested decision (Ruling 22 March 2018) to set a new closure date for the investigation phase *“with freedom of judgment”*.¹¹³

108 <https://www.youtube.com/watch?v=hIQXj6oSaK8> [last accessed: 28/11/2019].

109 NAIZ. “The ‘*Naparra*’ source, a former agent of CESID now at an unknown location,” *Naiz*, 12 April 2018.

110 Ruling of the Spanish Court no. 254/18, of 8 May 2018, Legal Reasoning One.

111 *Ibid.*, legal reasoning Two.

112 *Ibid.*, Legal Reasoning Three.

113 *Ibid.*, Legal Reasoning Four.

As a result of the admission of the family's appeal, Judge Moreno issued a letter rogatory to the French judicial authorities to undergo a new search for Etxeberria Álvarez's body in the area that was ruled out by the French Police, namely, the so-called zone A. The Police and the Guardia Civil were also ordered to issue a report with Arnau de la Nuez's personal and professional circumstances between 1980 and 1990 and requested the Social Security Authority to facilitate his working record. The investigation of the case was extended for another eighteen months by order of the judge¹¹⁴.

12 June 2019, 39 years after the kidnapping and disappearance of *Naparra*, his brother Eneko Etxeberria made mention of an unfathomable "temporary lull". The following terms of interest in particular were stated: "(...) we still have no response from the French authorities to the request from the Spanish justice system, unsure what reasons led to postponing this second excavation. We have no idea what the reason for this is"¹¹⁵.

8. Late and insufficient institutional recognition

Despite the fact that the Etxeberria-Álvarez family had requested on two occasions for José Miguel Etxeberria Álvarez "*Naparra*" to be recognised as a Victim of Terrorism, the Spanish state denied him this status. The response from the Ministry of the Interior to the family's request was that it had not been possible to prove that the events were the consequence of terrorist activity, and that this had already been resolved earlier in administrative and judicial channels.

The first institutional inspection came from the Basque Government in 2008, when the Basque Government's Victim of Terrorism Public Office included the case in the *Report on victims of terrorism carried out by uncontrolled extreme right-wing groups and the GAL*. This document points the finger of blame at the BVE as responsible for the murder, and states that the police action attributes blame for this to French mercenary Perret. The Report from the same year also published by the Directorate of Human Rights of the Basque Government included the case of the disappearance of this young man from Pamplona¹¹⁶.

Years later, *Naparra*'s family provided the Working Group on Enforced or Involuntary Disappearances of the Office of the United Nations High Commissioner for Human Rights all the data available from research carried out in relation to the French and Spanish courts. On 13 June 2014, this same organisation addressed to the Governments of Spain and France in order to undertake investigations to find out the whereabouts and fate that befell *Naparra*¹¹⁷.

In November 2019, the family received fresh news of the above-mentioned United Nations Working Group, after having once again tried, the Etxeberria case during the 119th session in Geneva, from 16 to 20 September 2019. The panel of experts stated in the letter sent to the family by this international body that the information provided by the Spanish Government was not considered sufficient to determine "the fate or whereabouts of Etxeberria Álvarez"¹¹⁸, ensuring that his case would continue to be considered by the Working Group at the following 120th session, to be held in February 2020, in Geneva.

114 NAIZ. "The National Court requests French authorities to carry out a new search for 'Naparra' in the Landes". *Naiz*, 24 May 2018.

115 ETXEBERRIA ÁLVAREZ, E. "Caso *Naparra*: un paréntesis temporal". ["*Naparra case*: a temporary lull] *Noticias de Navarra*, 12 June 2019.

116 LANDA GOROSTIZA, J.M. "Informe sobre víctimas de vulneraciones de derechos humanos derivadas de la violencia de motivación política", *Departamento de Justicia, Empleo y Seguridad Social del Gobierno Vasco*, 2008, pp. 61 and 147. ["Report on victims of human rights violations resulting from politically motivated violence" *The Basque Country's Department of Justice, Employment and Social Security*, 2008, pp. 61 and 147.]

117 Document for the reopening of proceedings (Preliminary Proceedings-Summary Procedure no. 245/99) before the Criminal Investigation Court No. 2 assigned to the National Court, 29 September 2016, Allegation Seven.

118 IMPLEMENTATION LETTER WGEID 119 SESSION. Mandate of the Working Group on Enforced or Involuntary Disappearances. The UN High Commissioner on Human Rights, 4 November 2019.



Legal analysis

1. Introduction and context of reference

In the light of the facts reported in the first block of this report, the main hypothesis around the disappearance of José Miguel Etxebarria Álvarez (*Naparra*, or *Bakunin*) on 11 June 1980 suggests his abduction and subsequent disappearance by the BVE, the extreme right-wing paramilitary organisation that would have acted with the support or acquiescence of the State. The disappearance, understood as the arrest, kidnapping, or deprivation of liberty by the State or groups acting with its authorisation, support or acquiescence, concealing the fate or whereabouts of the disappeared person and depriving him of legal protection¹¹⁹, is prohibited in absolute terms under international human rights law¹²⁰. This involves a practice which, in addition to being an affront to human dignity, constitutes a serious and flagrant violation of human rights recognised under international law¹²¹.

In the United Nations system, we must start off by making reference to the 1966 International Covenant on Civil and Political Rights, ratified by Spain in 1977, where member States undertook to guarantee an effective remedy against any infringement of a fundamental right¹²². More recently, and specifically related to the crime involving enforced disappearances, the International Convention for the Protection of All Persons from Enforced Disappearance of 2006, ratified by Spain in 2011¹²³, prohibits the practice of enforced disappearances in absolute terms, which constitutes a crime against humanity when conducted in a widespread or systematic manner¹²⁴. The Convention constitutes a basic point of reference when making a legal analysis of the disappearance, since it is the only legally binding instrument that Spain has signed and ratified on the matter; therefore, its provisions serve to interpret the scope of fundamental rights at stake and the domestic criminal proceedings on the matter. The Convention contains preventive duties to classify a crime of enforced disappearance¹²⁵ and the non-applicability of criminal action. International human rights law fundamentally recognises the right to truth and redress for victims of enforced disappearance, based on a broad definition of a victim, which covers anyone who has suffered harm as the direct result of the disappearance¹²⁶.

Unlike other cases involving enforced disappearances where the possibility of the application of the 1977 Amnesty Act was of legal interest¹²⁷, such as in the *Pertur*¹²⁸ or the *three Galicians*¹²⁹ case, the *Naparra* case

119 This is the generally accepted concept in international human rights law, contained in the International Convention for the protection of all people from enforced disappearance, drafted in New York on 20 December 2006 (Official State Gazette 18.02.2011, No. 42, p. 18254 et seq.), Article 2.

120 Ibid., Article 1.

121 Statement on the protection of all people against enforced disappearance. Adopted by the General Assembly in its resolution 47/133 dated 18 December 1992 [1/Res/47/133], Art. 1.

122 The International Covenant on Civil and Political Rights, drafted in New York on 19 December 1966 (Official State Gazette 30.04.1977, No. 103, p. 9337 et seq.), Art. 2.3.

123 International Convention for the protection of all people from enforced disappearance, drafted in New York on 20 December 2006 (Official State Gazette 18.02.2011, No. 42, p. 18254 et seq.)

124 Ibid., Article 1 and 5.

125 The criminal legislature introduced into the Criminal Code reform through Organic Law 1/2015, a type of enforced disappearance as a crime against humanity (provided that they are committed as part of a widespread or systematic attack directed against the civilian population or against a part of it) punishable from 12 to 15 years in prison (section 2.6 of Article 607 bis).

126 International Convention for the protection of all people from enforced disappearance, drafted in New York on 20 December 2006 (Official State Gazette 18.02.2011, No. 42, p. 18254 et seq.), Art. 24.

127 Law 46/1977, of 15 October, from Amnesty.

128 Please see, "CHAIR OF HUMAN RIGHTS AND PUBLIC AUTHORITIES (UPV/EHU)" on the same. "Report on the Pertur case: Updated status of the issue" *Secretary General of Human Rights, Coexistence and Cooperation of the Basque Government*, 2017, pp.32 -33. Available online: https://www.irekia.euskadi.eus/uploads/attachments/9576/Informe_Caso_Pertur.pdf?1495010623 [last accessed: 28/11/2019].

129 Please see in this regard, the CHAIR OF HUMAN RIGHTS AND PUBLIC AUTHORITIES (UPV/EHU), "Report on the disappearance of three young people from La Coruña on 24 March 1973", *Secretary General of Human Rights, Coexistence and Cooperation of the Basque Government*, 24 March 2018. Available online: http://katedraddhh.eus/documentos/pdf/informes/INFORME_Desaparicion_tres_jovenes_gallegos_1973_24-03-2018.pdf [último acceso: 28/11/2019].

clearly falls outside the temporal scope of application of the Amnesty Law since the criminal acts took place in 1980. It is also not necessary in this case to evaluate the hypothetical applicability of the statute of limitations¹³⁰, as in the case of *Naparra* this legal institution has not been applied *ex officio* or has been alleged by the Prosecutor's Office whenever there was the procedural opportunity to do so¹³¹. Furthermore, the presentation of the lawsuit and the subsequent opening of the judicial process at the National Court in 1999 would have interrupted the statute of limitations for the crime in any case.

With the degree of caution that is necessary given that it is a sub judice case, the legal analysis of the case must focus on the right to the truth and redress recognised to any victim of an enforced disappearance, and, more specifically, the duty of the State arising from the conduct of an effective investigation to solve the disappearance. Both international standards and the supervisory bodies from the United Nations system, such as the European Court of Human Rights within the framework of the Council of Europe, have developed certain minimum requirements on the matter, which constitute a legal status for the victims of enforced disappearances.

2. The duty to investigate enforced disappearances in international human rights law: United Nations standards

In 2014, the *Egiari Zor* foundation reported the disappearance to the Working Group on Enforced or Involuntary Disappearances of the United Nations (WGEID) based on a report prepared by *Behatokia* on the *Naparra* case. The Working Group began processing the case based on the report through civil proceedings, which led to the detailed examination of the matter at the 103rd session. The WGEID has the mandate to assist the families of missing persons to find out their whereabouts, serving as a channel of communication between the governments involved and families and civil society organisations. Following the adoption of the Declaration for the Protection of All Persons from Enforced Disappearances in 1992, the Working Group also had the role of supervising the progress of the States in meeting the duties arising from the Declaration, as well as assisting them for their effective implementation.

2.1. Recognition of victim status: criminal responsibility and redress

As already mentioned earlier, from the perspective of international law, apart from the disappeared person his/herself, any individual who has suffered direct harm as a result of the enforced disappearance is also the victim of an enforced disappearance¹³², who can include the relatives or friends of the disappeared person¹³³. As noted in the report concerning the *Pertur* case¹³⁴ the duty to investigate involving the States when there is evidence of a crime of disappearance, seeks not only to punish those responsible through the

130 The statute of limitations as a cause blocking admissibility and the punishability, from the perspective of the Supreme Court and the relevant international human rights standards in CHAIR OF HUMAN RIGHTS AND PUBLIC AUTHORITIES (UPV/EHU). "Report on the *Pertur* case... *op. cit.*, p. 32.

131 Please note that, since it is a matter of procedural public order, citation can be made at any time of MORALES PRATS, Fermín "Title VII, Chapter I: Of the cases that relieve criminal responsibility" in QUINTERO OLIVARES, Gonzalo, *Comments to the Spanish Criminal Code. Volume I*, Thomson Reuters Aranzadi, Navarra, 7th ed., 2016, p. 907.

132 International Convention for the protection of all people from enforced disappearance, drafted in New York on 20 December 2006 (Official State Gazette 18.02.2011, No. 42, p. 18254 et seq.), Art. 24.

133 See Amnesty International's report in this regard: *No to impunity for enforced disappearances. A list of requirements for effective implementation of the International Convention against Enforced Disappearances*, London, 2011, p. 50. Available online: <https://www.amnesty.org/download/Documents/32000/ior510062011es.pdf> [último acceso: 28/11/2019]

134 CHAIR OF HUMAN RIGHTS AND PUBLIC AUTHORITIES (UPV/EHU). "Report on the *Pertur* case... *op. cit.*, p. 31.

criminal process, but also apply the right to truth and redress for victims. In this regard, it is worth broaching the UN Basic Principles on the victims of gross violations of international human rights standards to remedy and redress¹³⁵, which makes a clear distinction between recognition of the victim status for the purposes of redress, as well as the result of the criminal proceedings in question. Thus, the recognition of victim status does not seem to be determined by the clarification of the person responsible of the violation - and even less on the existence of a conviction - within the framework of a criminal procedure¹³⁶.

2.2. The right to know the truth

Under the Convention, victims of enforced disappearance have the right to know the truth about the circumstances of the disappearance, evolution and results from the investigation, and the fate of the disappeared person¹³⁷. This right "to know" involves the duties by the State, which must take all appropriate measures for the search, locating and releasing disappeared persons and, in the event of death, for the search, respect and return of their remains¹³⁸. The right to the truth has an obvious individual dimension; however, it has another collective dimension that connects with the fight against impunity and the prevention of enforced disappearances¹³⁹. The principles of the struggle against impunity in the framework of the United Nations envisages this right as an essential State duty that requires an independent judicial investigation to clarify the facts, but this must also be fulfilled if appropriate through extra-judicial mechanisms such as a truth commission¹⁴⁰.

In line with the above, victims have the right to know the status and the results of the investigation process. The Convention also includes the right to know the whereabouts of the victim of enforced disappearance, as well as to recover their remains for burial in accordance with the beliefs of their families and relatives¹⁴¹. This duty also serves to clarify the facts and the eventual assignment of responsibilities¹⁴².

2.3. The right to obtain full redress

Both the 1992 Declaration and the Convention against Enforced Disappearance recognise the right to obtain the swift, complete and effective redress for victims of disappearances¹⁴³. The redress aims to eliminate or

135 Basic principles and guidelines on the right for redress for victims of gross violations of international human rights regulations and serious violations of international humanitarian law to remedy and redress, UN General Assembly Resolution of 16 December 2005 [A/RES/60/147].

136 Ibid., principle V, paragraph 9.

137 International convention against enforced disappearances, Art. 24.2 and Preamble: "Every victim of enforced disappearance has a right to know the truth about the circumstances of the disappearance, evolution and results from the investigation, and the fate of the disappeared person. Each member State shall take the appropriate measures in this regard".

138 Ibid.

139 See the updated set of principles for the protection and promotion of human rights through action to combat impunity [E/CN.4/2005/102/Add.1]

140 Ibid., principle V.

141 International convention against enforced disappearances, Art. 24.3: "Every State must take all appropriate measures for the search, locating and releasing disappeared persons and, in the event of death, for the search, respect and return of their remains".

142 See Amnesty International's report: *No to impunity for enforced disappearances...*, op. cit., p. 52 and jurisprudence of the IACHR cited in note 168.

143 Statement on the protection of all people from enforced disappearances, Art. 19: "Victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to proper compensation, including the means to ensure as complete a rehabilitation as possible. In the event that the victim dies as a result of his/her disappearance, his/her family shall also be entitled to compensation" and International Convention against enforced disappearances, Art. 24: "4. Member States shall ensure that their legal system guarantees that the victim of an enforced disappearance has the right to fast, fair and appropriate redress and compensation 5. The right to obtain redress referred to in paragraph 4 of this article covers all material and moral damages and, where appropriate, other forms of redress such as: (a) Reinstatement; (b) Readaptation; (c) Satisfaction, including restoration of dignity and reputation; (d) Guarantees of it not happening again.. 6. Without prejudice to the duty to continue the investigation to establish the fate of the disappeared person, each member State shall take the appropriate measures in relation to the legal situation of disappeared persons whose fate has not been solved and their relatives, in areas such as social protection, financial matters, family law and property rights".

mitigate the consequences of this unlawful act and includes both material and moral caused by the disappearance. The redress takes the form of the restitution (when it is possible to restore the victim to the situation prior to the violation), compensation, rehabilitation (including medical and psychological care as well as legal and social services) satisfaction and guarantees that it will not be repeated¹⁴⁴. In any case, redress has to be proportionate to the gravity of the violations and the harm suffered¹⁴⁵. In the event of seeking compensation, damages to be recouped are both material and moral, as well as for legal assistance or experts, medication and medical services and psychological and social services¹⁴⁶.

3. European standards around enforced disappearances and the State's duty to conduct an effective investigation

3.1. Duty to conduct an effective “procedural” investigation as a guarantee of respect for the right to life (Art. 2 ECHR)

Art. 2 enshrines the right to life of every person and the safeguarding of their legal protection. There is, however, an open list of cases appraised whereby inflicting death does not entail a violation of Art. 2 of the ECHR, which anticipates a first requirement in accordance with the duty to conduct an effective investigation that we develop in detail below. Art. 2.1 in particular exempts violations of the right to life enshrined in the ECHR taking place through the execution of a sentence involving the death penalty handed down by a court, according to the principle of legality. Art 2.2 also exempts anyone from a violation who acts in defence of any person from unlawful violence, stops a person in accordance with the Law or to prevents the escape of a prisoner or detainee legally, or takes legal action to suppress a rebellion or insurrection using only the force that is absolute necessary. For the present purposes, the supporting circumstance involving death of a person must be rigorously accredited and delimited¹⁴⁷, while this also allows find out any others that remain outside of this framework of activities or behaviours consistent with the ECHR.

Furthermore, a joint reading between Art. 2 and 1 of the ECHR, which requires member states to recognise, respect and guarantee the rights and freedoms of the ECHR to all people under its jurisdiction is imposing a positive duty for the State to carry out an effective official investigation whenever death occurs as a consequence of the use of force. So much so that the State's duty to protect life under Art. 2 of the ECHR (“substantive” dimension of the right to life) would be devoid of purpose in practice if no proper official investigation is carried out (“procedural” dimension of the right to life)¹⁴⁸. This duty is considered independently and unconnected with regards the right to life, so much so that an equally particular doctrine has been consolidated¹⁴⁹. The importance of an investigation of the characteristics detailed below is in ensuring the effective implementation of national legislation that would protect the right to life, as well as any cases involving State agents, assign proper responsibilities from the ensuing death¹⁵⁰. Furthermore, any shortcoming in the investigation that would undermine all of this obligatory reactive capacity runs the risk of violating this ECHR minimum standard¹⁵¹.

144 Basic Principles on the Right to Remedy and Redress (Van Boven-Bassiouni principles), the UN Commission on Human Rights, E/CN.4/RES/2005/35, 13 April 2005

145 Ibid., paragraph No. 15.

146 Ibid., paragraph No. 20.

147 ECHR, *Hugh Jordan v. United Kingdom*, 4 May 2001 (Section 102).

148 ECHR, *McCann and others v. United Kingdom*, 27 September 1995 (section 161); ECHR, *Kaya v. Turkey*, 19 February 1998 (section 86).

149 ECHR, *Varnava and others v. United Kingdom*, 18 September 2009 (section 138).

150 ECHR, *Hugh Jordan v. United Kingdom*, 4 May 2001 (Section 105).

151 ECHR, *Hugh Jordan v. United Kingdom*, 4 May 2001 (Section 107); ECHR, *McKerr v. United Kingdom*, 4 May 2001 (section 113);

Some of the things that an effective investigation revolves around¹⁵² is its ability to determine the cause of death, as well as an eventual identification and punishment of the person or people responsible. This is why there is reference made to the “proper” nature of the investigation as a prerequisite for its effectiveness¹⁵³. This is a duty of means, which is not linked to any result that satisfies the legitimate interests and expectations generated around it. It obliges the authorities to take all reasonable steps at their disposal to obtain and conduct the evidence relating to the events, which among other procedures whose conduct seems reasonable, include¹⁵⁴ Gilbert Perret’s statement (requested and denied in 2004) and the search¹⁵⁵ -which was inconclusive- for the remains of *Naparra* in Mont-de-Marsan. Pursuant to the above, the ECHR makes it clear that the requirements for investigation should be carried out with reasonable promptness, well aware of the fact of the difficulties or obstacles that could arise that could impede its development¹⁵⁶. In fact, the malpractice of the national authorities when failing to provide information about the progress of the investigation may have an effect on the Court being unable to position itself as to whether some measures adopted comply or not with this requirement¹⁵⁷.

As would seem logical to expect, the specific investigations to be conducted will vary depending on the circumstances of the case. However, from the very time of becoming aware of it, state authorities must act ex officio and without its conduct depending upon the initiative of family members to implement the judicial procedure¹⁵⁸. In the *Naparra* case, and since the closure of the proceedings initiated in 10 February 1982 by the Bayonne Examining Magistrates Court, it was not until 1999 that the family filed a lawsuit in order to avoid the statute of limitations for the crime as had happened in France seven years before due to no known significant judicial activity taking place in Spain.

All in all, these particular requirements arising from the duty of an effective investigation are not restricted to cases in where the perpetrators are state agents. In this regard, the cases *Yaşa v. Turkey*, *Salman v. Turkey* or *Toğcu v. Turkey* makes it clear that the duty is not limited to cases where a state agent is believed to be involved¹⁵⁹. In *Menson v. United Kingdom*, the ECHR clarifies that the absence of any direct responsibility of the State in the potential death of someone does not exclude the applicability of Article 2 of the ECHR. In short, that the duty for an effective official investigation should be carried out when there is reason to believe that a person has suffered injuries that put their lives at risk under suspicious circumstances. It also notes that all the basic procedural requirements already referred to apply with equal force in the course of an investigation into attacks that threaten the life of a person (life threatening), regardless of whether this involves death or not¹⁶⁰. An example of circumstances involving a danger to life around a disappearance is when a

ECHR, *Orhan v. Turkey*, 18 June 2002 (section 335); ECHR, *Aktas v. Turkey*, 23 April 2003 (section 300); ECHR, *Tahsin v. Turkey*, 8 April 2004 (section 223); ECHR, *Varnava and others v. Holland*, 15 May 2007 (section 324).

152 For example, an effective investigation can be considered as “necessary” for the people responsible for it, in the regard that an investigation is carried out by people independent and impartial in regard to those allegedly involved in the events. More specifically, this does not only involve an institutionally or hierarchically independent investigation but also for practical purposes. This is reinforced by the duty that the investigations and their results to be subject to sufficient public scrutiny where family members should have the opportunity to participate.

153 ECHR, *Ramsahai and others v. Holland*, 15 May 2007 (section 324).

154 See, by way of example related to the omission of a witness statement: ECHR, *Tanrikulu v. Turkey*, 8 July 1999 (section 109).

155 See, by way of example related to the omission in the collection of forensic evidence: ECHR, *Gül v. Turkey*, 14 December 2000 (section 89).

156 LASAGABASTER HERRARTE (dir.), *The European Convention on Human Rights. Systematic review (3rd Ed.)*, Civitas, Pamplona, 2015, p. 40. Among others, see ECHR, *Toğcu v. Turkey*, 31 May 2005 (section 111).

157 ECHR, *Vagapova y Zubirayev v. Russia*, 26 February 2009 (section 100).

158 RAINEY, WICKS & OVEY, *Jacobs, White & Ovey. The European Convention on Human Rights (6th Ed.)*, Oxford University Press, Oxford, 2014, p. 160; HARRIS, O’BOYLE, BATES & BUCKLEY, *Harris, O’Boyle, and Warbrick Law of the European Convention on Human Rights (3rd Ed.)*, Oxford University Press, p. 215; ECHR, *Ilhan v. Turkey*, 27 June 2000 (section 63); ECHR, *McKerr v. United Kingdom*, 4 May 2001 (section 111); ECHR, *Nachova and others v. Bulgaria*, 6 July 2005 (section 111); *Akpinar and Altun v. Turkey*, 27 February 2007 (section 35).

159 ECHR, *Yaşa v. Turkey*, 2 September 1998 (section 100); ECHR, *Salman v. Turkey*, 27 June 2000 (section 105); ECHR, *Toğcu v. Turkey*, 31 May 2005 (section 109).

160 ECHR, *Menson and others v. United Kingdom* (decision on admissibility of application No. 47916/99), 6 May 2003 (section 1). Special interest aroused by declaration of the ECHR on the *Toğcu v. Turkey* case: “The Court notes that there is no evidence that Ender Toğcu has been murdered. However, the Court considers that the duties [related to the “procedural” dimension of the right to life of Art. 2 of the ECHR] (...) also apply to cases where a person has disappeared under circumstances which may be considered dangerous to life” (own translation with highlight added) See ECHR, *Toğcu v. Turkey*, 31 May 2005 (section 112).

person in a war zone is arrested by unidentified State agents and where the detention is not recognised at a later date¹⁶¹. In this context, the fact that news of the disappeared person in the ensuing years would serve to strengthen the presumption that the disappearance occurred in circumstances involving a threat to life¹⁶².

In short, the official and effective duty to investigate arising from Art. 2 of the Convention can cover cases of any missing person whose fate is still unknown¹⁶³. In order to more accurately outline the state duty to carry out an investigation in this final line, we briefly discuss certain rulings of interest on this issue, i.e., on cases involving disappearances where the State has been found guilty of a violation of Article 2 in its procedural dimension.

In the landmark *Cyprus v. Turkey* (2001)¹⁶⁴ case, the Court pointed out that no proof was needed to demonstrate that a missing person had lost his/her life for there to be a duty to carry out an effective investigation that sheds light on the report of the events. On the contrary, it is feasible that the procedural duty to investigate has come about from a questionable statement that someone disappeared in a context that could be classified as dangerous for life. In this case, this context is tied in with a time (July and August of 1974) plagued with arrests by Turkish Cypriots or Turkish forces and where the Turkish military operations in Northern Cyprus was followed by arrests and large-scale massacres. At the very least, there were indicators of a climate of permanent risk and fear, as well as real dangers to which detainees were exposed due to their detention. The Court concluded that there had been a continuing violation of Art. 2 of the ECHR in relation to a number of missing Greek Cypriots. This is due to the fact that the national authorities had never launched any investigation around the statements of the relatives of disappeared people precisely about the disappearance of their loved ones after having being detained in circumstances where it was plausible for them to fear for their lives. The national authorities would not have conducted the expected effective investigation to ascertain the whereabouts and fate of the missing Greek Cypriots¹⁶⁵.

However, the *Cyprus v. Turkey* case is the culmination of one of the lawsuits filed by the Cypriot Government of Cyprus against Turkey under this context. In the case *Varnava and others v. Turkey* (2009)¹⁶⁶, the Great Chamber would later take up the issue of effective investigation in cases of disappearances. Among the issues of interest included in this judgment, at least two deserve to be brought to collation on an individual basis: 1) *The presumption of death*; and 2) *The nature and consequences associated with the procedural duty to investigate disappearances*.

First of all, the ECHR has responded to the allegations of the Turkish Government that the missing people were to be considered as presumably dead, where the duty to investigate the disappearances in circumstances of danger to their lives was also therefore faltering. The Court concluded that even where there is enough circumstantial evidence to support the idea that the disappeared person died during that summer of 1974 or after those events, this does not prevent the complainants from upholding their claim on the basis of the lack of an effective duty to investigate the events. Furthermore, the duty to investigate can hardly come to an end with the discovery of the body or with a presumption of death, since that would only partially explain the fate of the person who was missing. The consequence on this line of reasoning is clear and concise: *“The duty to respond for the disappearance and death, as well as to identify and prosecute anyone responsible (...) are usually maintained,”* no matter how much time passes without any new details transcend about the disappearance, and no matter how the fact of death can be potentially presumed in factual terms (sections 141-146).

Secondly, the Court has filled in the permanent nature of the phenomenon of disappearances and refers to its distinguishing characteristics: the situation of uncertainty, lack of accountability, lack of information, possible deliberate concealment, obfuscation by ignorance of what happened and prolonged grief suffered by relatives of the disappeared. For that reason, unlike what would happen in any other crime resulting in death, the procedural duty to investigate will endure as long as the circumstances of the disappearance are

161 ECHR, *Aslakhanova and others v Russia*, 18 December 2012 (section 101).

162 See ECHR, *Vagapova and Zubirayev v. Russia*, 26 February 2009 (section 86); ECHR, *Aslakhanova and others v Russia*, 18 December 2012 (section 101).

163 HARRIS, O'BOYLE, BATES & BUCKLEY, *Harris, O'Boyle, and Warbrick Law of the European Convention on Human Rights* (3rd Ed.), Oxford University Press, p. 214.

164 ECHR, *Cyprus v. Turkey*, 10 May 2001.

165 *Ibid.*, sections. 131-136.

166 ECHR, *Varnava and others v. Turkey*, 18 September 2009.

still unexplained. Hence, reference is made in *Cyprus v. Turkey* (2001) to a continuing violation of Art. 2 of the ECHR (sections 147-149). Since the investigations involving disappearances usually begin with little evidential material, the search for key evidence usually take quite some time. In this regard, the Strasbourg Court believes that an extension of the temporary time frame with regard to demanding accountability for failures or defects in the investigation conducted to be reasonable¹⁶⁷.

Finally, it should also be noted that in terms of the positive duty on the State to carry out an effective official investigation, Art. 5 on the right to freedom and security in its procedural law could also be violated if applicable. In *Varnava and others v. Turkey* (2009) the ECHR refers to this when alluding to the fact that, given the glaring evidence that there has been a violation of Art. 2 of the ECHR in its procedural dimension, this would reveal a continuing violation of Art. 5 of the ECHR¹⁶⁸. It is actually common practice for cases brought to the ECHR on Art. 2 and/or 3 of the ECHR to also end up resolving allegations relating to Art. 5 of the ECHR. This makes sense, since early intervention or judicial supervision on physical freedom and safety of the disappeared person can certainly help in the detection and prevention of a threat that could be fatal for their life or physical integrity, which is protected more directly through Arts. 2 and 3 of the ECHR¹⁶⁹.

Regardless of whether agents of the state or individuals are behind the disappearance, the State must carry out appropriate measures to provide sufficient protection from any interference that involves the violation of the rights and freedoms of Arts. 2 and 3 of the ECHR. This is provided in *Storck v Turkey* (2005), with the Court also mentioning that the meaning of Art. 5 of the ECHR must also be constructed in this direction already referred to Arts. 2 and 3 of the ECHR. In essence, a positive duty of prevention of the State that latches onto the protection of freedom of all citizens against deprivations of those held by the authorities themselves or that they should have heard about. Otherwise, it would be giving free rein to arbitrariness in detentions¹⁷⁰.

3.2. The duty of an effective investigation as a guarantee of the prohibition of torture or inhuman/degrading treatment or punishment (Art. 3 ECHR): consequences for the relatives of the victim

As was the case with the duty of the States to protect life under Art. 2 of the ECHR, and more specifically of the positive duty to carry out an effective investigation, Art. 3 of the ECHR same premises to build a “substantive” dimension of the prohibition of torture and inhuman or degrading treatment or punishment and concurrently, a “procedural” dimension for this absolute and non-derogable prohibition. The second one is the one that is once again becoming relevant for the purposes set out in the preparation of this report. All in all, the demands built around the effective official investigation in the case of Art. 2 of the ECHR will be equally valid for Art. 3 of the ECHR; therefore, without wanting to reiterate what was already described it is a good time to move to the highlights and more unique aspects of the protection afforded by Art. 3 of the ECHR in its procedural dimension in situations involving enforced disappearances. Moreover, the positive steps that must be adopted by the State to ensure that individuals do not suffer torture, or inhuman or degrading treatment or punishment are equally predictable for those acting as private agents¹⁷¹. Therefore, what is provided herein will not be exclusively confined to state agents that they may believe are involved in disappearances and that clearly occupy the vast majority of cases, but rather that spectrum will also extend to any citizen or group of citizens.

The most recurrent scenario for approaching the ECHR alleging a violation of Art. 3 of the ECHR in its procedural dimension, within a delimited framework such as that involving enforced disappearances, is related to

167 ECHR, *Aslakhanova and others v Russia*, 18 December 2012

168 ECHR, *Varnava and others v. United Kingdom*, 18 September 2009 (section 208). See also SCHABAS, *The European Convention on Human Rights. A commentary*, p. 229; RAINEY, WICKS & OVEY, *Jacobs, White & Ovey. The European Convention on Human Rights* (7th Ed.), Oxford University Press, Oxford, 2014, p. 244.

169 See ECHR, *Aksoy v Turkey*, 18 December 1996 (section 76); ECHR, *El-Masri v Former Yugoslav Republic of Macedonia*, 13 December 2012 (sections 231); ECHR, *Husayn (Abu Zubaydah) v Poland*, 24 July 2014 (section 522).

170 ECHR, *Storck v. Germany*, 16 September 2005 (sections 101-102).

171 See, for example, ECHR, *H.L.R. v France*, 29 April 1997 (section 40); ECHR, *A v United Kingdom*, 23 September 1998 (section 22); ECHR, *Z and others v. United Kingdom*, 10 May 2001 (section 73).

very particular subjective conditions that the complainant is in. It is generally clear that a relative of a disappeared person is able to test a plus of suffering directly related to reactions and attitudes displayed by the authorities involved in the investigation of the incident when it comes to their knowledge. Apparently, the first of the cases that now points to a line of development focused on the disappearances would be *Kurt v. Turkey* (1998)¹⁷². According to ECHR, the mother of the disappeared person is left to their fate with the prolonged grief and anguish of not having been able to get any information from the Turkish authorities about her son, all following the suspicion of detention by the security forces¹⁷³. It concludes by saying he is a victim of inhuman and degrading treatment in violation of Art. 3 of the ECHR.

However, it was not until the *Çakici v. Turkey* (1999) case that the ECHR set out some general principles that had simply not been reflected on in *Kurt v. Turkey*. First of all, the Court needed for there to be particular factors that contribute dimension and nature that exceeds mere emotional breakdown to the suffering of the family that will always be present for those closest exposed to this type of event in one form or another. It is somehow necessary to overcome the threshold of “normality” of suffering within an extreme situation for family members. And to assess that this standard has been achieved the ECHR recommends considering several items in a list that leaves it open. These are as follows: (a) Proximity in the family ties that bind the disappeared person with the relative, where the parent-child one is of particular relevance; (b) The particular circumstances surrounding the relationship between disappeared person and the relative; (c) The extent to which the relative witnessed the events of the disappearance; (d) The degree of family involvement at the time of trying to gather information from the disappeared person, as well as how the authorities responded to these requirements.

But while the plus of suffering is necessary, the focus of the essence of the violation of Art. 3 of the ECHR from a procedural perspective the focus cannot be away and home in on the actual disappearance. On the contrary, the source of suffering must be the reaction and attitude shown to the family by the national authorities when they became aware of the case¹⁷⁴. The state of uncertainty of the family members, closely linked the complete unawareness of what became of the disappeared person plays an important role¹⁷⁵. Thus, the ECHR does not assess disappearances that do not go back that long in time, although it will be more likely to do so the more elapsed until the disappeared person is found already dead, for example¹⁷⁶. Moreover, the Court has also emphasised the impact of malpractice in the investigation for the right to the truth about the disappeared person. And not only for the complainant or for the family of the disappeared, but also for other victims of similar events as well as for the general public¹⁷⁷. In fact, an effective official investigation around Art. 3 of the ECHR will require the victim being able in some way to participate effectively in the course of the investigation, as well as for the investigation to take place without any hierarchical or institutional interfer-

172 In this case, Ms Koçeri Kurt, mother of the disappeared and a Turkish national, lodged a lawsuit related with the disappearance of the latter. The disappearance allegedly involved soldiers and municipal police officers who acted within the framework of anti-terrorist operations in November 1993. The authorities, who were either evasive or shifted the blame on a possible kidnapping by the terrorist organization PKK (Kurdistan Workers Party), also attempted to hinder the filing of the lawsuit at all times. Once filed, the ECHR explained the substantive aspect of Art. 3 of the ECHR as regards the petitioner's son, as well as its procedural dimension with respect to the actual petitioner as a victim. With respect to the first point, at least, the Court ruled against the petitioner due to not having provided conclusive evidence to demonstrate that their son had suffered inhuman treatment. The possible violation of Art. 3 of the ECHR in its procedural dimension was not as successful, with the ECHR concluding that the State had indeed violated this Article.

173 ECHR, *Kurt v. Turkey*, 25 May 1998 (sections 130-134).

174 ECHR, *Çakici v. Turkey*, 8 July 1999 (section 98).

175 In fact, when someone is detained and subsequently ends up dead, despite the ensuing deep sorrow, this very fact also disintegrating the state of uncertainty of the family members, the reason why the ECHR dismissed the violation of Art. 3 of the ECHR. In turn, faced with the discovery that there has been a violation of both the substantive as well as the legal dimension of Art. 2 of the ECHR does not evaluate the violation of Art. 3 of the ECHR. See HARRIS, O'BOYLE, BATES & BUCKLEY, *Harris, O'Boyle, and Warbrick Law of the European Convention on Human Rights* (3rd Ed.), Oxford University Press, p. 256; SCHABAS, *The European Convention on Human Rights. A commentary*, p. 171 (see in particular the footnotes 54 and 55 for a list of judgments in this regard).

176 See HARRIS, O'BOYLE, BATES & BUCKLEY, *Harris, O'Boyle, and Warbrick Law of the European Convention on Human Rights* (3rd Ed.), Oxford University Press, pp. 256-257; SCHABAS, *The European Convention on Human Rights. A commentary*, p. 171 (see footnote 53 in particular for a list judgments in this regard).

177 RAINEY, WICKS & OVEY, *Jacobs, White & Ovey. The European Convention on Human Rights* (7th Ed.), Oxford University Press, Oxford, 2014, pp. 198-199 (see footnote 126 for a list of judgments in this regard).

ence in practical terms. The lack of information and due consideration given to the suffering of the victim are evidence of the inadequacy of the investigation into the disappearance¹⁷⁸.

3.2. The duty of interstate cooperation in cases of enforced disappearance

As has been established in the preceding section, the Strasbourg Court has unequivocally established that the European States have a duty to conduct an effective investigation of the alleged unlawful executions that have taken place on their territory, a procedural duty that mainly stems from the substantive duty to protect the right to life (Art. 2 ECHR). In this regard, as a general rule, the State is tentatively the party responsible for the investigation in whose territory the disappearance or the violation of the right to life takes place, under the jurisdictional link that must exist for the emergence of the duty to investigate (Art. 1 ECHR)¹⁷⁹.

However, in certain special circumstances, another State in whose territory the violation has not taken place also has the duty to perform an effective investigation. It should be emphasised for the present purposes that the Tribunal's Grand Chamber has recently acknowledged the fact that the authorities of a member State have initiated an investigation on a death that occurred outside its territory, under its domestic legislation as a "special circumstance" in the *Güzelyurtlu v. Turkey* [2019] case¹⁸⁰. In these cases, the duty to investigate is established between the State that has accepted the jurisdiction and the relatives of the victim behind the proceedings¹⁸¹. In application of the case-law of the European Court of Human Rights, it can therefore be said that, in the case *Naparra*, the procedural duty to investigate the disappearance arising from Article 2 of the Convention is the responsibility of both France and Spain.

In any case, a distinction must be made between the procedural duty to investigate, and the duty of cooperation between European states in cases such as the one in question. The duty of cooperation is a positive duty widely recognised in the jurisprudence of the European Court of Human Rights, which is part of the investigation procedural duty under Article 2 of the Convention¹⁸². This is a bi-directional duty in the sense that it includes both the duty to seek cooperation such as facilitating the same when required by another state¹⁸³. The State under whose jurisdiction the infringement has taken place- in this case, the enforced disappearance- must conduct an effective investigation to that effect, requiring any international cooperation necessary in the specific case. Therefore, the duty to require international assistance is one of the criteria to be taken into account in determining whether a State has complied with its duty to investigate with the proceedings required¹⁸⁴.

While everything in this case points to the fact that the disappearance occurred in France, there are a number of circumstances that give the case of a clear transnational component, given the strong evidence of the involvement of a paramilitary organisation (BVE) in the disappearance of *Naparra*. Therefore, rather than dismissing this unfathomable hypothesis, the French authorities should have carried out a thorough examination of the possibility of a Spanish paramilitary enforced disappearance, demanding the necessary cooperation from the Spanish authorities, especially when the investigations based on the "score settling" hypothesis had failed to throw any light on the circumstances involving his disappearance or on the identity of those responsible.

178 ECHR, *El-Masri v. Former Yugoslav Republic of Macedonia*, 13 December 2012 (sections 184, 185 and 192).

179 See, on the issue of jurisdictional connection, TALMON: "The Procedural Duty under Article 2 ECHR to Investigate and Cooperate with Investigations of Unlawful Killings in a Cross-Border Context" in Bonn Research Papers on Public International Law 13 (2018). For example: ECHR, *Rantsev v. Cyprus and Russia*, 7 January 2010, sections 243-244.

180 The Grand Chamber cites the examples of the existence of domestic regulations that recognize the universal jurisdiction for certain offences, or that establish the authority for the principle of active or passive personality: ECHR, *Güzelyurtlu v. Turkey*, 29 January 2019 section 188.

181 *Ibid.*

182 ECHR, *Güzelyurtlu v. Turkey*, 29 January 2019, section 221; *Huseynova v. Azerbaijan*, 13 April 2017, section 111.

183 *Ibid.*, section. 229.

184 *Ibid.*, section. 229.

III

Conclusions and recommendations

1. What happened. The account of the events with the necessary reservation given the uncertainties inherent in a still unsolved case does, however, lead to some clear and irrefutable details. Despite the fact that this type of report may not be able to aspire to constitute a factual investigation to provide the desired conviction, it is clear that the police investigation was very much lacking from the start, up to the point of being able to confirm how it was affected by its clear leaning towards the score settling hypothesis by the autonomous communities. This hypothesis that could be described as incomprehensibly bloody-mindedness, especially as there is no record that any serious investigation has taken place on the most feasible alternative hypothesis about who was responsible under the BVE. And all of this despite repeated claims from the paramilitary group and the stagnation of the investigations a few months following the events, all of which do nothing but acquire a particularly transcendent dimension, especially if placed in correlation with the duty of the state authorities to respond quickly and decisively when there are indications that an enforced disappearance has taken place. A laziness that remains, if possible, even more patent since it was found the collaboration of the Spanish authorities was not required to try to investigate and clarify the very serious events. Unfortunately, once these began to get involved from 1999, there still was no change toward the proactive attitude that was expected and hoped for, but, rather a passivity to the expectation of the initiatives of the private prosecution at best, and, at worst, an obstruction of the proposals for the conduct of proceedings with clear signs of turning their backs on the canon of interpretation of the European Court of Human Rights with regard to the duty to conclude an effective investigation as a basic procedural guarantee.

2. The current state of the disappearance. The events do not belong to the past, and the disappearance cannot be considered as current. The whereabouts of José Miguel Etxeberria, or *Naparra*, remain unknown today. And a result of this is the continued suffering of his absence that intensely affects his closest relatives, particularly his brother Eneko, following the deaths, first of his father, Patxi Etxeberria, in 2006, and more recently, his mother, Celes Álvarez. Both died following a steadfast and untiring determination to find their son José Miguel. Until the whereabouts of *Naparra* are found, in technical terms, the unlawful nature of the conduct continues to unfold and crime continues to take place. In short, having admitted the case as an enforced disappearance and thus as imprescriptible crime in the opinion of the United Nations, it can be quite categorically stated that the absence of investigations is not an analysis of the past but rather a claim of the present that directly commits to the competent authorities as well as to society as a whole.

The delay by French justice in extending the investigation that is still outstanding of Area A of the Landes therefore seems particularly incomprehensible and negligent despite the fact that coroner Francisco Etxeberria insisted that he believed that he was more likely to be buried there than at the location where a previous excavation had taken place in 2017. Given the real possibility of solving a disappearance following decades of constant obstacles and judicial struggles, is such a delay and the failure to push such specific proceedings acceptable and tolerable?

3. Institutional action. In the light of the above, any attempt to justify inaction leads directly to an added difficulty to realise the right to truth and justice that is unacceptable in legal as well as in human terms. And perhaps this can be viewed more clearly if we reflect on the facts from the present sensitivity with any situation of disappearance. It is not acceptable to be resigned to the fact that the disappearance occurred at a time when impunity seemed guaranteed. A special effort should be made by the authorities to disseminate the facts, including, always with a degree of caution and responsibility, any uncontrasted aspects but that could help to find new lines of investigation. The disappearance –the suffering of which is still fresh in many people’s minds– must also be kept alive in the social and political-institutional imagination, that rescuing it from the past, activates the awareness of its injustice as a renewed incentive in the pursuit of truth.

However, in contrast, *Naparra* has not even been recognized by the State as a victim of terrorism appealing to the lack of certainty about what happened, lack of awareness of the importance and priority of the major, real and measurable fact of the disappearance.

As indicated in previous reports on disappearances, thus beyond the real impetus of the legal route, perhaps it would be appropriate to institute a yearly date in the official calendar of the public authorities acting in the Basque Country claiming responsibility for the disappeared to remain as a reminder, memory and also recognition of the injustice of what happened. The fact that 24 March was subsequently declared “International Day for the right to the Truth in relation to Serious Violations of Human Rights and the Dignity of the Victims” through the Resolution approved by the UN General Assembly Resolution on 21 December 2010 could well

serve as annual date to remember those who have disappeared, and continue demanding efficient and effective efforts to at least find out their whereabouts.

4. Collaboration of the public. It would be great if this report could be of use for people still alive that may have information about these facts who could even anonymously reveal this in order to mitigate to the greatest degree possible part of the suffering that this still continues to generate. Therefore, and consistent with the proposal made earlier for other disappearances, a line of proactive institutional action should be implemented that gives up-to-date news of the events related to these disappearances and encourages public collaboration to allow new details that would allow the truth of what happened to be eventually revealed or, at least, where José Miguel Etxeberria's remains are located. The following email address is available for this purpose: desagertuak@euskadi.eus

5. Gogora. Finally, this report should be disseminated and deposited in Gogora as the Institute for Memory, Coexistence and Human Rights and to fulfil, together with other cases of missing persons (such as the Pertur report and the report on the disappearance of three young people from La Coruña, in 2017 and 2018 respectively) and be affiliated to a particular category and separated from information available to the public to allow stress the fact that these are unjust and deeply painful events that despite having taken place in the past, still constitute serious and ongoing human rights violations that are far from over.

List of documents consulted

1. Oral Proceedings no. 66/80 brought before the High Court of Bayonne (Pau Court of Appeal)

2. Preliminary Proceedings no. 245/1999 of the Criminal Investigation Court No. 2 assigned to the National Court
 - 2.1. Ruling of the Criminal Investigation Court No. 2 assigned to the National Court of 1 October 1999
 - 2.2. Providence of the Criminal Investigation Court No. 2 assigned to the National Court of 14 January 2001.
 - 2.3. Ruling of the Criminal Investigation Court No. 2 assigned to the National Court of 28 April 2003
 - 2.4. Ruling of the Criminal Investigation Court No. 2 assigned to the National Court of 30 May 2003
 - 2.5. Ruling of the Spanish Court's Criminal Chamber (Section 3), of 3 December 2003
 - 2.6. Ruling of the Spanish Court's Criminal Chamber (Section 3), of 4 October 2004
 - 2.7. Ruling of the Criminal Investigation Court No. 2 assigned to the National Court of 31 March 2004
 - 2.8. Ruling of the Criminal Investigation Court No. 2 assigned to the National Court of 13 October 2016
 - 2.9. Ruling of the Criminal Investigation Court No. 2 assigned to the National Court of 1 March 2018
 - 2.10. Ruling of the Criminal Investigation Court No. 2 assigned to the National Court of 22 March 2018
 - 2.11. Ruling of the Spanish Court no. 254/18, of 8 May 2018.