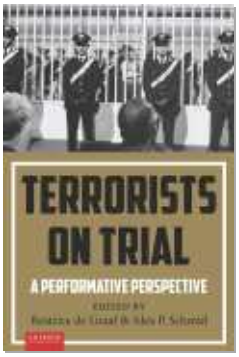
Terrorists on Trial

De Graaf, Beatrice, Schmid, Alex P.



Published by Leiden University Press

De Graaf, Beatrice and Alex P. Schmid.
Terrorists on Trial: A Performative Perspective.
first ed. Leiden University Press, 0.
Project MUSE.muse.jhu.edu/book/46327.

10. Supporting Prisoners or Supporting Terrorists: The 2008 Trial of Gestoras Pro Amnistía in Spain

Carolijn Terwindt

'This is a political trial. It is a disfraz jurídico (legal farce). It ...'
The defendant was interrupted by the judge:
'This is not what the right to a last word means.
You have no blanket permit to offend the court.
You cannot call me a disfraz jurídico.'
A woman in the audience commented softly:
'She cannot interrupt a last word!'
The defendant responded:
'I had no intention to offend.'
The judge:
'We have already heard this discourse, this history, it is already very clear'.[1]

10.1. Introduction

On 18 June 2008, these were the last words of the last defendant in a trial that was characterised by a battle between different narratives of justice and injustice and competing demands for respect and recognition. As in the quotation above, the narratives and their confrontation found expression in the interactions between the actors in the trial—the defendants, judge and public—who all 'perform' in a way that constitutes, confirms or rejects their specific role. Thus, the actors in the courtroom stage a 'show' that in its idealised form becomes a 'performance of justice', which Beatrice de Graaf, in her introduction to the present volume, describes as

> A show where the verdict educates the public about the importance of the rule of law in a democratic society, creates a collective memory and sets standards for future conduct by states and society. This type of show is run by the judge/jury, but the

> performative strategy is based on a (perceived) neutral application of the law, not on partisan politicisation of justice.[2]

From the words of the defendant above it is abundantly clear that in his perception he did not think he was being tried under a 'neutral application of the law'. In order to understand why the trial under study failed to become generally accepted as a 'performance of justice', this chapter argues that it can most fruitfully be understood as the staging of competing shows in the same venue at the same time. In her analysis of the dynamics in operation between the different actors and their audiences, the author applies the typology developed by De Graaf and demonstrates that while the trial defies easy characterisation, it is possible to discern elements of (1) a virtual show, (2) a show run by the defendants and their lawyers and (3) a media show (with sideshows).

The trial against the defendants of the Basque organisations Gestoras pro Amnistía and Askatasuna (in short, the 'Gestoras trial') is one of the 'macro-juicios' (macro-trials), called such given the large number of defendants. The macro-trials started in Spain at the end of the 1990s and prosecuted members of left-nationalist groups[3] as members of the terrorist organisation Euskadi Ta Askatasuna (ETA). Significant in these trials is the new conceptualisation of ETA as a broad 'entramado' (network) rather than, more narrowly, as the military wing alone. This innovative perspective and its usage in criminal proceedings will be explored in more detail below. The targets in the macro-trials were a Basque youth organisation, a certain newspaper, a number of bars, a language institution, and Gestoras pro Amnistía, an organisation engaged in prisoner support work. The prosecution claimed that these apparently socio-political bodies were actually part of the broader ETA 'network' and thus constituted subgroups in a terrorist organisation. The Gestoras trial was thus a terrorist trial in the sense that the defendants were charged with membership of a terrorist organisation, which they all denied.

The macrotrials against the alleged ETA network form an important transition in the Spanish repertoire of contentious terrorism trials.[4] The performance strategies in the trials against ETA defendants during the 1980s and 1990s had been very different from the interaction in the macro-trials. ETA defendants traditionally refused to defend themselves. While they rejected the jurisdiction of the Spanish state, they generally did not dispute the charges and often openly claimed their ETA militancy in the courtroom. The earlier trials had generally belonged to the category of the 'not-so-dramatic show' in De Graaf's typology.[5] Part of the reason for this is that during the 1980s the battle between ETA and the Spanish state tended to be viewed from

a military perspective.[6] It took place in the streets, not in the courtrooms. Illustrative of this war-oriented way of thinking were the confessions by former President Felipe González, who told a reporter from newspaper *El País* that in 1989 or 1990 he once had the opportunity to have the entire leadership of ETA killed during a meeting in France. At the time, he rejected the option, but in 2010 was still wondering whether that had been the right decision.[7]

Taking the Gestoras trial as illustrative of the new dynamics in the macrotrials, this chapter describes the battle between the different narratives and performative strategies employed by the prosecutors, the court, the defendants, the victims and sympathisers on both sides. Because Spanish-Basque society is so polarised, it is impossible to fit the trial into a single typological category as developed by De Graaf in her introduction to this volume. The show was run by both the defendants *and* the prosecutors, but each only for their own audience. They could not or did not reach out to the constituency of the other side. The trial thus only confirmed pre-existing divisions and pre-existing 'narratives of (in)justice'.[8] At the same time though, this trial, along with the other macrotrials, effectively established the notion that ETA is a network and that criminal responsibility lies upon the shoulders of all who are part of that network.

In the Gestoras trial, the accusation that the defendants were part of that network was based on their engagement in activities that they described as 'prisoner support'. The analysis presented here, therefore, explores competing narratives that defend and challenge this description of the activities of Gestoras pro Amnistía, as the trial called into question the distinction between legal support for prisoners and illegal support for (imprisoned) terrorists.

This chapter describes the Gestoras trial in four parts: before the trial, during the trial, outside the courtroom, and after the trial. But first the data that were used will be briefly described.

10.2. Data

The argument in this chapter relies on the author's fieldwork in the Basque Country and in Madrid, where she attended a large part of the seven-week proceedings in the Gestoras trial. The author also gained access to many court documents, the oral tapes of proceedings, court verdicts and other documentary materials. The author was further present at several activities of what she has called 'prisoner support mobilization',[9] both in Madrid and the Basque Country. In addition, the collected data included

in-depth interviews with several of the defendants, their supporters, representatives of organisations of victims of ETA and their families,[10] and the lawyer executing the popular accusation on behalf of these victim organisations (a Spanish legal procedure allowing citizens to act as prosecutors). Unfortunately, the state prosecutor of this particular trial refused to be interviewed,[11] but the author did interview the chief prosecutor of the Audiencia Nacional[12] as well as one of the investigative judges. Finally, the collected data included newspaper accounts across the political spectrum that covered this trial as well as reports written by organisations sympathising with the defendants or with victim organisations.

The research for this chapter was completed in 2008. ETA announced to lay down its arms in 2011.

10.3. Before the Trial

This section first describes some of the key features of the Spanish criminal justice system, specifically in relation to terrorism prosecutions. Then the 'ETA network' concept and the related macrotrials will be described in more detail. The section goes on to describe the place assigned to Gestoras pro Amnistía within the ETA network and its prisoner support activities. Lastly, the Gestoras trial and its chronology are presented.

10.3.1. The Spanish Criminal Justice System in Relation to Terrorism Offences

Terrorism proceedings in Spain should be understood within the context of a long battle by the state against various terrorist groups. Especially in the early 1980s, quite a few organisations were employing violence and threatening the young Spanish democracy. ETA was just one of them; others were the Comandos Autónomos (CCAA, perceived as a radical split from ETA), Terra Lliure (for the independence of Catalonia), the anti-Fascist GRAPO, MPAIAC (for the independence of the Canary Islands), and the right-wing groups Triple A and Batallón Vasco Español. Spanish laws against terrorism therefore have a long history. The period from 1975 to 1985 saw many legal reforms and attempts to bolster the judicial institutions so that they could deal effectively with the threat of continuing terrorist attacks. In 1995 a new penal code was written into which the special terrorism laws were integrated as separate offences. The code has been revised several times since.[13] The terrorism provisions have authorised solitary confinement and limiting or suspending some constitutional rights.[14] Membership

of a terrorist organisation is criminalised in articles 516 and 515 sub 2 of the penal code.

Until the reform of 1978, terrorism crimes fell under the jurisdiction of the military courts. Under the new laws, terrorist offences were to be tried by a new court, the Audiencia Nacional, which had been founded in 1977.[15] Critics pointed out that this court was an all too obvious successor to the 'Tribunal de Orden Publico' (Public Order Tribunal), a heavily criticised instrument used by the former dictator Franco to detain political opponents. The Audiencia Nacional was founded by executive decision, adding to its illegitimacy in the eyes of its critics.[16] Years of legal proceedings followed, until in 1987 the Spanish Constitutional Tribunal ruled that the European Commission of Human Rights had declared the Audiencia Nacional to be a normal court. That decision effectively ended the dispute in strictly legal terms, but to this day the court is criticised both within the Basque movement and outside the Basque Country.[17]

The jurisdiction of the Audiencia Nacional is restricted to certain areas, of which terrorism is only one (the other areas are money laundering, tax fraud, corruption and the drug trade). In the words of one of the investigative judges, it is not a special court—as its critics say—but a specialised court.[18] Proponents of the Audiencia Nacional argue that physical distance from the Basque Country—the court sits in Madrid—is needed to guarantee the safety and neutrality of judges. In 2003 a law was adopted that created an appeals chamber in the Audiencia Nacional. Previously, appeals were possible only in a limited review at the Tribunal Supremo, the highest Spanish court. In 2001, the United Nations Human Rights Committee ruled that this was not an adequate measure.[19] At the time of the Gestoras trial, however, the appeals chamber was still not operational, making the Tribunal Supremo the instance for appeal and the last domestic resort.

The Audiencia Nacional is thus a separate judicial organ, with its own judges and prosecutors. Operating as they do in a continental legal system, Spanish prosecutors work in cooperation with so-called instruction judges or investigative judges. In Spain, investigative judges occupy an especially important role in criminal proceedings, as they prepare a case and make the crucial decisions regarding who is charged with what. Only when the investigative phase is closed and the case goes to trial does the prosecutor take over the dossier.

In recent decades, there has been an important shift within the criminal justice system and its perceived capacity to deal with terrorism.[20] In the period immediately after the transition to democracy, the criminal justice system was deemed to be inappropriate to respond to terrorist offences. In 1979, the Attorney General wrote,

'Let's be honest: in the face of the terrorist phenomenon the normal operation of judging, applying a penalty and taking care of its execution, is like writing in the sea.'[21] Doubts about the ability of the criminal justice system to deal with terrorist offences have vanished over the years, and by 2007 the Attorney General asserted that judicial activity against terrorism was in 'good health' and that the work that had been done was 'firm, resounding, and according to strict fulfilment of the principle of legality'.[22] Indeed, the trial after the Al Qaeda-linked attack in March 2004 was showcased as an example for the international community in employing criminal justice in response to terrorism. The NGO Human Rights Watch asserted that 'the Spanish government sees itself as a leader in the effort to combine effective counter-terrorism measures with full respect for internationally recognised human rights'.[23]

10.3.2. The ETA Network and the Macro-trials

The simple question 'What is ETA?' proved to be far more complicated than I could imagine when I embarked on my fieldwork. Not only is the legal nature of the group in dispute—is it a *terrorist* organisation or an *armed* organisation?—but so is its membership. It is not at all clear who belongs to ETA and who does not. During the Gestoras trial even the prosecutor got confused. The charge brought against the defendants was membership of ETA, but during his argument he talked about the relationship *between* one of the defendants and ETA, as if ETA were actually external to the defendants. He corrected himself quickly.[24]

Another example serves to illustrate the discrepancies plaguing our understanding of ETA. During a trial regarding the legality of a Basque political party, the defence lawyer interrogated one of the police expert witnesses. The policeman claimed that in a public speech a mayor of that particular party had openly called for support for two ETA members who were detained and allegedly tortured. The defence lawyer asked, 'Did she use the word "ETA"?' The expert witness responded: 'she said "Basque political prisoners" which *everyone* understands to mean ETA prisoners'.[25] During the Gestoras trial this question and the competing answers—whether Basque political prisoners are the equivalent of ETA militants—became one of the core issues. Whereas the Gestoras defendants steadfastly referred to the collective they supported as 'Basque political prisoners', the verdict of the Audiencia Nacional talked about the 'mobilisation campaign in favour of the prisoner collective of E.T.A.'.[26]

In the macro-trials, the prosecutors' narrative was an important voice in this debate concerning the character of ETA and who belongs to it. The prosecutor's investigation and charges were based upon the premise that ETA consisted of more

than just 'gunmen' and that the socio-political and media activities of the defendants were therefore to be construed as 'functions' within the ETA network. Several victim organisations strongly supported and advocated this notion of the ETA network.[27] In order to understand these assumptions and situate the Gestoras trial in the context of the other macro-trials, it is important to describe in more detail the emergence of the notion that ETA is a network.

'If the environment didn't exist, terrorism would be much more marginal; it is the breeding ground', said the chief prosecutor of the Audiencia Nacional in the interview in 2008.[28] This is a common perception in Spanish society and it explains the law enforcement focus on the previously so-called '*entorno de* ETA' (ETA environment). Interestingly, the image of ETA (both the structure and the concept[29])—specifically in relation to its 'environment'—has changed significantly during recent decades, leading to a very different kind of criminal prosecution. In the 1980s and the beginning of the 1990s, the prosecutorial focus was on the ETA commandos, their direct support structure and the armed attacks they committed.[30] During the 1990s, the focus of criminal justice efforts has shifted from the commandos and their support structure to include what was called the ETA 'environment'. Since then, it has become the practice to accuse members of organisations in the Basque left-nationalist movement of 'membership of a terrorist organisation'.

By May 2008, 302 people had already been indicted in the macrotrials, many of whom had spent time in pre-trial detention.[31] The defendants were not suspected of membership of an ETA commando or direct involvement in armed attacks (e.g. providing logistical support, such as housing to fugitives or stealing a car used for a car bomb). Because of their activities in left-nationalist socio-political organisations, they were alleged to be part of the 'ETA network'. People who in the 1980s and 1990s would have been situated in the 'ETA environment'—loosely described by the Director of Public Prosecutions in 1991 as those 'political sectors with goals similar to the terrorist organisation ETA'[32]—were then, in the 2000s, prosecuted as 'members of ETA'.

Investigative judge Baltasar Garzón played an important role in this re-conceptualisation of ETA.[33] Garzón redefined the military wing as a political organisation, and in doing so considered that in turn the political wing formed part of the violent strategy of the military wing. He argued that 'a terrorist organisation was something more complex than a mere collection of persons that kills, plants bombs, kidnaps and engages in extortion to achieve its political objectives'.[34] During the macro-trials, prosecutors had to fight against the old image of terrorism that they themselves had helped to create. In the Gestoras trial the prosecutor repeated over and over again that

'a terrorist organisation is *not* just a group of gunmen'. He was trying to subvert the stubborn notion that terrorists, as a matter of course, were 'pistoleros' (gunmen).

In the indictments, socio-political organisations alleged to be part of the ETA network were linked to ETA by way of the 'funciones' (functions) they were said to fulfil within a broader strategy aimed at subverting the Spanish constitution. The macro-trials were directed against both individuals and their organisations, because an important goal was to suspend and outlaw these socio-political organisations in order to make it more difficult for the network to operate.[35]

To bolster the argument that organisations such as Gestoras pro Amnistía were in fact part of the ETA network, the prosecutor in all of the macro-trials sketched the history of ETA since the end of the Franco regime in 1975, when ETA decided to put into effect a process called 'desdoblamiento' (split identity). This process was a response to the fact that with the emergence of democratic structures, many cultural and political organisations that had been prohibited under the dictatorship could start to work above ground; only the military wing of ETA would stay underground. In order to maintain cohesion between the various organisations, ETA decided that its members would perform their illegal tasks within the underground armed organisation and simultaneously sit on the above-ground boards of various socio-political organisations.

Further, ETA developed a theory of different 'frentes' (fronts). The armed struggle was just one of the fronts in the fight for an independent Euskal Herria (the larger Basque Country, including Navarra and the French parts); other battlefields were the 'frente politico' (political front) and the 'frente de masas' (front of the masses). Gestoras pro Amnistía, as a popular grassroots organisation, belonged to the front of the masses. More specifically, Gestoras was said to be active within the 'frente de makos' or 'frente de cárceles' (prison front). The coordination between Gestoras and ETA allegedly took place in committees called ASK; these were dissolved in 1995, after which coordination was carried out without intermediaries. Underlying the ETA network was therefore the assumption of the complementarity of different forms of struggle: the institutional struggle within political parties, the struggle of the masses by means of multiple socio-political organisations and the armed struggle by (the military wing of) ETA.

10.3.3. Gestoras Pro Amnistía and Prisoner Support

Many of the details regarding the historical relations as well as the communication between the military wing of ETA and the socio-political organisations in the left-wing

nationalist movement had thus been given during each of the macrotrials and were essentially undisputed. As the Audiencia Nacional put it in its verdict of September 2008, and the defendants would probably have agreed, ETA and Gestoras pro Amnistía were struggling for the same political project, namely Euskal Herria.[36] The issues that remained contested concerned the nature and extent of the communication and coordination. The Gestoras defendants particularly criticised the leading role in the hierarchy allotted to the military wing of ETA, a role that would have denied autonomous decision-making and independent initiative to individual members of Gestoras. Whereas the defendants asserted that they chose to perform certain activities as part and parcel of their main task, which was to assist prisoners and their families, the prosecutor claimed that their activities were coordinated with ETA and in line with ETA's strategic goals and its armed struggle. In its verdict, the court explicitly addressed this tension between different perspectives. It found that what *seems* to be personal or legal assistance can be something else entirely if it fits into the logic of maintaining cohesion within the collective of ETA prisoners.[37] At issue therefore in the Gestoras trial was the question: when does support for prisoners turn into support for terrorists?

Gestoras pro Amnistía was founded in 1976 out of solidarity with the political prisoners of the Franco regime.[38] As its name implies, the main goal of Gestoras pro Amnistía was to bring about an amnesty for those prisoners. In 1977, the Spanish government indeed adopted a broad amnesty law (Law 46/1977) covering all political prisoners who were detained under the Franco regime, to promote 'the pacification of spirits, reconciliation and national concord'.[39] ETA prisoners and others, for example members of GRAPO, were recognised as 'political' prisoners and released. The amnesty did not put an end to Gestoras, which continued its solidarity with what it called 'personas represaliadas' (repressed persons), i.e. prisoners, refugees and deportees. Later, in a process named 'construcción nacional' (national construction), a merger was effectuated between Basque left-wing nationalist organisations in northern Spain and in southern France. Thus, in 2001 Gestoras pro Amnistía merged with Iparralde Koordinateka to become Askatasuna.

Gestoras/Askatasuna (*hereafter* Gestoras) has been engaged in prisoner support since its foundation. Many of its members dedicated a full-time working week to this commitment, paid for by the left-wing nationalist movement.[40] It monitored and reported incidents of repression, published lists of 'political prisoners' and organised ceremonies honouring ex-prisoners.[41] A lawyers' collective provided legal assistance. Prisoner support is given in many countries where people express concerns about state repression and politics justice. Because the Gestoras trial questioned the

distinction between the (legal) support for prisoners and the (illegal) support for terrorists, the prosecutorial narrative in this trial is relevant beyond the immediate case concerned.

For our analysis, four different kinds of prisoner support and supporters can be distinguished: (1) personal support, (2) innocence support, (3) liberal support and (4) political support. Family and friends often engage in 'personal support' intended to alleviate the suffering of the imprisoned person. This is the kind of support that is given regardless of the definition of the criminal facts, regardless of innocence or guilt, and regardless of the political cause. The defendant/prisoner is simply recognised as a human being worthy of human treatment.

A second form of support is extended only to those defendants or prisoners that the supporters think are innocent of the charges. These supporters stand behind a defendant because they believe his or her denial of the charges. A special strategy to persuade the public of the innocence of prisoners, employed also by Gestoras pro Amnistía, is to criticise the court's decisions as pre-determined and politically motivated or based on faulty evidence, such as confessions extracted under torture. Such criticisms do not necessarily address any defendant in particular. They rather disrupt the general belief (prevalent in liberal democracies) that there is a good reason for everyone in prison to be there. The message sent by Gestoras frequently encourages the larger public to identify with the prisoners, as anyone might be the next victim of the alleged politically motivated persecution.

'Liberal' support is given, for example, by human rights organisations who criticise torture, long preventive detention, disproportionate sentences or the lack of due process. Such groups draw a distinction between 'formal' support (for the legal case) and 'substantive' support (for the political cause). Liberal supporters limit their efforts to formal support, generally insisting on the right to a fair trial. They typically demand that the state should play according to its own rules.

Finally, defendants or prisoners can try to be recognised as 'political' by receiving support from a broader movement that agrees with their political claims.[42] 'Political' prisoners and their political supporters generally defy the state's legitimacy to condemn their actions. Legal scholars hold that the possibility of punishment involves a claim to legitimacy.[43] Real punishment presupposes an agreement between the parties. Similarly, anthropologist Max Gluckman once wrote that 'If the litigants have rules of rightdoing different from those of the judges, the judges can punish them, but not convict them.'[44] Self-identification as a 'political' prisoner may be a strategy to advance the collective political cause. Such a decision is not, however, taken lightly. It can be prejudicial to the individual criminal case. For example, if defendants commit

themselves to a solution in the political cause, they may decide to waive chances of individual leniency from judges.

Of course, while some supporters may limit their support to one of these kinds, the different forms of support can and do also often overlap and interact. Thus, Gestoras pro Amnistía is mainly a political support group, which also engages in the other forms of support. And as will be addressed below in the analysis of performative strategies, it also seeks different kinds of support from specific target audiences.

Support groups often come into existence in response to the practical needs of a given defendant or convict, such as money to pay for legal counsel. A support group may help with letter writing or visits to the jail, or gather reliable information about trial dates and the treatment of the prisoner. As a case drags on, and during the term of imprisonment, many moments lend themselves to public outcry and mass rally. Common activities include demonstrations in front of the prison or the courthouse, benefit concerts to raise money, ceremonies honouring prisoners and in some cases hunger strikes for better prison conditions. Indeed, scholars have recognised that prisoner support activity can become 'a social movement activity in its own right'[45] and can attract the involvement of moderate civil society representatives when the state is perceived to be 'overreacting'.[46] Criminal justice issues can even come to replace or overshadow the original political claims.[47] A successful prisoner solidarity effort can turn prisoners into a political issue. Indeed, the many activities of Gestoras pro Amnistía have contributed to public debate in Spain regarding the amnesty, reintegration and dispersion of Basque 'political' prisoners.

Political solidarity efforts aim to transform the intended effects of criminal prosecution: incapacitation, deterrence, rehabilitation, retaliation. Many prisoner support activities, for example, challenge the stigmatising function of criminal proceedings and the distance they create between the 'ordinary citizen' and convicts; insofar as criminal proceedings manifest the character of what Garfinkel called a 'status degradation ceremony',[48] well-designed activism can reduce that effect. Prisoner support may even result in the elevation of a 'political prisoner' into a hero. This can reverse the costs of repression into an asset.[49] This is not always the case though. There is always the danger of internal disagreement among 'political' prisoners and their solidarity groups or with the movement as such. Arguments about the means of struggle or the question whether or not to negotiate with the government can lead prisoners to cut ties with the movement as a whole or with their specific support group. Instances of hero formation and internal splits were also part of the dynamics of the 'Basque political prisoners'. As the official prisoner support group, Gestoras pro Amnistía has been deeply involved in these developments.

The prosecution's charge that Gestoras and the military wing of ETA formed a single organic whole was based on the alleged communication, cooperation and coordination between them, in combination with their historical relationship and shared support for armed struggle. The prosecutor relied on the non-juridical concept of 'functions' in order to link the defendants to armed attacks executed by ETA commandos. These functions of Gestoras would include: control over the collective of ETA prisoners; facilitating contact between ETA prisoners and the ETA leadership; collecting information vital for the security of ETA; identifying targets and legitimating their assassination; the publication of pamphlets; the de-legitimation of the Spanish state and the recruitment of militants. For example, Gestoras pro Amnistía launched a campaign called 'Alde Hemendik' (Get out of here), which called upon the Guardia Civil to leave the Basque Country. The prosecutor interpreted this campaign as one of the functions that Gestoras performed within the ETA network.

10.3.4. The Gestoras Proceedings

On 31 October 2001 twelve members of Gestoras pro Amnistía were detained at the instructions of judge Garzón. Later another defendant was arrested and extradited from France. The case is known as Sumario 33/01. On 19 December 2001, Garzón declared the organisation illegal, suspending its activities. On 27 December 2001, the European Council adopted its Common Position regarding terrorists, terrorist groups and measures such as the freezing of funds. Gestoras pro Amnistía, together with other alleged parts of the ETA network, were included on the list.[50] These thirteen defendants were held in pre-trial detention for four years until they were released after paying large amounts of bail. In 2003, five Askatasuna representatives who had continued the activities of so-called 'support to ETA' were detained.[51] They were also among the 27 defendants tried between April and June 2008 at the Audiencia Nacional.

Two of the defendants were active not in Gestoras pro Amnistía or Askatasuna but in Etxerat, an organisation of family members of prisoners (i.e. more in line with the category of 'personal' support). Etxerat organised and coordinated visits to far-away prisons.[52] Another defendant was the driver of the bus that took family members to dispersed prisoners. Notably, at the end of the trial the prosecutor dropped the charges against the two Etxerat defendants. He apparently did not consider this organisation and its type of support to be part of the ETA network.

This notwithstanding, their inclusion in the indictment led the defendants to claim that it meant a persecution of the entire Basque amnesty movement. Indeed, the defendants and their lawyers interpreted the dropping of the charges

as a subtle strategy to lend an air of fairness to a trial the verdict of which—in their view—had been written before the trial had even started.[53] In similar strategic reasoning, the defendants argued, the court would only acquit those few defendants who had not spent time in pre-trial detention. Acquitting defendants who had spent the full maximum four pre-trial years in jail would amount to an admission of the failure of the justice system to correctly decide on the need for such detention.[54]

On 17 September 2008, the judges of the Audiencia Nacional convicted 21 people for membership of a terrorist organisation, based on article 515.2 of the penal code. Gestoras pro Amnistía and Askatasuna were designated as illegal terrorist organisations and their dissolution was ordered. Two of the accused, Juan Mari Olano and Julen Zelarain, received the highest penalty, ten years, because they were regarded as leaders (envisaged in a separate sentencing provision in the penal code). The other 18 defendants were sentenced to eight years' imprisonment. On 13 October 2009 the Tribunal Supremo broadly confirmed the decision of the Audiencia Nacional. One other defendant was acquitted by the Tribunal Supremo.

The following analysis, while taking into account the entire proceedings, is focussed on the 2008 trial before the Audiencia Nacional. It turned into a battle between competing narratives of (in)justice. Prosecutors, defendants, judges and victims all employed performative strategies aimed at targeted audiences. Our discussion will first focus on the dynamics inside the courtroom as part of the official proceedings and then turn to performative strategies outside the courtroom.

10.4. During the Trial

The Gestoras trial took place not in the courtroom in the centre of Madrid normally used for sessions of the Audiencia Nacional, but in a larger building on the outskirts that was equipped to hold the large number of accused and where the necessary security measures were easier to effectuate. Indeed, those security measures communicated without words the message that the defendants in this trial were suspected of being related to a terrorist network. Everyone entering the building was screened for metal objects.[55]

In the following section the prosecutorial performative strategy during the trial will be analysed as a specific kind of 'virtual show'. In the succeeding passage, we will look at the way defendants and their lawyers tried to turn the show to their advantage in order to expose their grievances.

10.4.1. Virtual Show

Unlike previous trials against ETA members, the macro-trials were not triggered by specific violent events. The decisions to launch these prosecutions were pro-active. The lack of a specific attack for which the defendants were held responsible gave these trials the character of a 'virtual' show. In the introduction to this volume, Beatrice de Graaf describes such trials as 'a tool of risk management', in which 'crimes under consideration deal with conspiracies and preparations rather than actual attacks'. What turns the Gestoras trial into a virtual show is not that terrorist actions have not yet taken place. The virtual aspect lies rather in the fact that no specific terrorist action or event is attributed to any of the defendants. In the words of the Audiencia Nacional, their wrongdoing is a 'permanent crime'.[56] As 'membership' can be seen as a status crime, it remains unclear exactly what constitutes the individual criminal conduct. During the trial, the prosecutor had to counter this virtual aspect of the charge in order to enact a 'performance of justice'. Specifically, the performance strategy had to compensate for the absence of a 'smoking gun' as evidence, the absence of direct victims of a terrorist attack, and the fact that criminal liability was not based on any personal or direct involvement in a terrorist event.

Evidence

For several weeks the prosecutors presented evidence aimed at proving undisputed aspects of the charge. For example, even though the defendants did not deny their membership of Gestoras pro Amnistía, the prosecutor presented the confiscated agenda of one of the defendants to demonstrate his participation in Gestoras meetings. There was no disagreement about most of the activities organised by Gestoras, such as ceremonies honouring ex-prisoners.[57] At the core, the question was not what the defendants did or did not do, but whether their actions constituted a crime. Thus, the questions posed by the trial were whether those activities were coordinated with the military wing of ETA, whether they had the goal of furthering and supporting the armed struggle and, if so, whether this implied criminal liability for Gestoras members. Proof of such 'coordination' or entertaining the goal to 'support the armed struggle' does not come in the form of a smoking gun. Instead, the evidence consisted for a large part of the expert testimony of police officers about the history of ETA, making the courtroom appear to be a history class.[58] Another source of evidence consisted of public documents—their content undisputed by the defendants—like Gestoras pro Amnistía press releases.

Further, the prosecutorial narrative relied on documents found after raids on underground ETA offices and after the detention of high-level members of the military wing of ETA in 1993, 1999 and 2001. In the main, they dealt with internal relations and structures for communication. The apparent use of code words in these documents (for example, Gestoras was allegedly referred to as 'Adidas') was interpreted as an indication that the communication was criminal in nature. A further source of suspicion was that some documents found at the Gestoras office in Bilbo-Bilbao were marked 'read and burn', which the police experts considered to be a characteristic of ETA communications. While the documents and police evidence may have demonstrated that the military wing of ETA was secretive in its communication, they provided no evidence that the content of the communications concerned specific terrorist actions. Given, however, that the prosecutor only intended to prove that Gestoras formed part of the ETA network, that was not necessary.

The virtual character of the offence, as opposed to an actual terrorist attack, created insecurity in the Basque left-nationalist movement about what exactly constituted the criminal conduct. One interviewee expressed concern that Basques might be prosecuted because of 'who they talk to in a bar'.[59] In each of the macro-trials the defendants argued that they were working above ground: they assumed that what they were doing fell squarely within the boundaries of the law. The switch to prosecutions based on the concept of an ETA network was often claimed to have been necessitated precisely by this perceived abuse, by members of ETA and their sympathisers, of legal spaces offered by the Spanish democracy. For example, investigative judge Juan del Olmo, in his indictment of a Basque newspaper, clarified that the ETA network

> takes advantage of the democratic framework and the establishment in Spain of a democratic *Rechtsstaat*, with a foundation in a constitution and a rights-based legal order and protection of fundamental rights and liberties. This terrorist organisation has thus generated a plural structure, legal and alegal, in which it has embedded instruments that are indispensable and serviceable for the strengthening and support of its terrorist strategy.[60]

The distinction between legal and illegal had thus become blurred since judge Garzón introduced the concept 'alegal' which he used to denote the space between legality and illegality. For example, the fact that Gestoras pro Amnistía did not reject the armed struggle was not a crime in itself. It was, however, presented in the courtroom in order to support the argument that Gestoras formed

part of the ETA network.[61] Also, even though attending an honouring ceremony of an ex-prisoner is not a crime, the way in which the court construed it as evidence of ETA membership created insecurity among Basque left-wing nationalists.

Thus, the evidence for the prosecutorial narrative largely confirmed undisputed historic relations or public activities, which were interpreted as proof of membership of the ETA network.

Victim Organisations as Popular Accusers

The lack of a specific violent event also meant that the Gestoras trial did not involve direct victims. This was the case in all the macro-trials, where defendants were accused of ETA membership, not of a specific crime against identified victims. This stands in contrast to a trial such as that against two members of an armed ETA commando, during which a kidnapped businessman testified at length about his experiences throughout his captivity.[62]

This does not mean that victims of ETA did not play a role during the macro-trials. On the contrary, victim organisations were very actively involved. Representatives of one particular victim organisation, Asociación Dignidad y Justicia (Dignity and Justice), attended some days of the trial against the Gestoras defendants, one of them with the name of the organisation printed on his T-shirt, another accompanied by bodyguards because of death threats from ETA.[63]

The most important form of participation by victim organisations, however, was the employment of the legal instrument of 'acusación popular' (popular accusation). In Spain, victims of a crime have two formal ways in which they can assume a prosecutorial role in a criminal trial. A direct victim can claim the role of an 'acusador privado' (private accuser). Popular accusation can only be invoked by an organisation representing a class of victims. Popular accusation is the only form of victim involvement in those trials where there are no direct victims.[64]

Since the beginning of the 1990s, the Asociación de Víctimas del Terrorismo (Association of Victims of Terrorism; AVT) has employed the instrument of popular accusation in order to promote the interest of victims of ETA. A spokesperson told me that, due to the initial lack of government attention for victims of ETA in those early days, this was merely a way to ensure that the victim would be notified of the date of the trial.[65] Now the AVT and Dignity and Justice routinely participate in criminal trials as popular accusers. In all the macro-trials, the prosecutors of the Audiencia Nacional were joined by a lawyer representing the popular accusation.[66] Even though the prosecutorial performance lacked a direct victim testifying about

a concrete terrorist event, the victims and their families were visibly present in the courtroom.

Selection of the Defendants and Establishing Individual Liability

At the time of the trial, Gestoras pro Amnistía had been around for three decades. It was a grassroots organisation in which many people were active. Picture a context in which many Basque cafés sport pictures of 'Basque political prisoners' above the bar and the balconies in villages are decorated with flags demanding the return of dispersed prisoners to the Basque Country. This raised questions about the individual defendants and their relation to Gestoras. Why did the prosecution select these particular people? And what did the trial mean for the criminal liability of all those who were or still are a part of it, but were not indicted? One interviewee, for example, expressed his surprise that he had *not* been indicted, despite his long record of commitment as a Gestoras pro Amnistía lawyer.[67] Indeed, he was amazed that among the defendants were people who had only joined Gestoras or Askatasuna very recently and therefore had little to do with the early history of Gestoras. He wondered if younger members could be held responsible for relations that existed in the past.

Applying the concept of the network to ETA, in combination with the charge 'membership of a terrorist organisation', had an important consequence. Once the court considered it proven that Gestoras pro Amnistía was an organic part of ETA, it only had to be proven that a given defendant was indeed a member of Gestoras in order to get a criminal conviction. Since the defendants acknowledged their membership in their opening words, it followed as a matter of course that they would be found guilty.

For the defendants, this contradicted the imperative that each individual was to be judged for his or her own actions. Still, the prosecutor strategically discussed details that showed the activities of each defendant to indicate their membership of the ETA network, such as presence during a specific meeting of the left-wing nationalist movement or attendance at an honouring ceremony for ETA militants. It was also argued that the defendants had specific responsibilities, such as territorial coordination for a given province (Gipuzkoa, Bizkaia, Araba or Nafarroa) or for special functions or fields (law, finance, communication, international relations, relations with fugitives or prisoners).[68]

The Gestoras trial risked becoming a 'virtual show' as it was not the adjudication of criminal responsibility for a specific terrorist event. The prosecutorial performative strategy seemingly relied on the quantity of evidence it presented to compensate for

the fact that it mostly proved undisputed activities of Gestoras. In the absence of direct victims whose evidence could form part of the performance, the presence of victim organisations as popular accusers reminded the audience that many victims of ETA were interested in the outcome of the trial. Finally, the prosecutors paid attention to the particular roles and responsibilities of each of the defendants as they individualised the evidence showing the specific conduct warranting individual liability.

The defendants did not, however, view the trial as a 'performance of justice'. Together with their lawyers, they used the trial to justify and explain the work of Gestoras pro Amnistía. Doing so, they defied the roles ascribed to them as defendants on trial. Instead of defending themselves against the charges, they used the courtroom to communicate their grievances. Their performative strategies are explored in the next sections.

10.4.2. Defendants and Their Lawyers Running the Show

In response to what the defendants perceived as 'pure theory',[69] the defendants and their lawyers also tried to run the show. Claiming that the verdict was already written in advance, they explicitly rejected a juridical defence. Instead they chose to defend themselves 'politically', as they called it.[70] This section describes the performative strategies they employed to persuade their target audience of their narrative of (in)justice. The defendants did not bring any evidence to refute the charges. Instead, the defendants chose to use the speaking time allowed to them and their witnesses to express their grievances. The defendants subverted the proceedings and refused to play the role that they were allotted as 'defendants' in a criminal trial. They redefined the trial as a prosecution of the entire amnesty movement and used the courtroom and sideshows outside the courtroom to present their narrative of (in)justice. The sideshows are the topic of the next section. Here, the focus is on their performative strategy during the proceedings inside the courtroom.

The defendants coordinated their performance collectively. For example, during their evidence on the first day, each of the defendants took up a different aspect of state repression.[71] Significantly, the judge allowed the defendants to complete their speeches on this day, even though they did not respond to the charges or questions posed by the prosecutor and lawyer of the popular accusation. At the end of their speeches, most defendants said that they did 'not expect justice; the verdict and the punishment are already written. I will not defend myself legally, this trial is a farce and I will not participate in that. These are my last words.'[72] The defendants also posted online a declaration explaining their posture.[73]

The decision not to defend themselves legally was a departure from the performative strategy in earlier macro-trials. The defendants in those trials had taken the legal defence very seriously. This also meant that they accepted the Spanish criminal justice system. The Gestoras defendants decided to stick to their long-time criticism of the Audiencia Nacional and collectively rejected the jurisdiction of the court.[74] Their team of defence lawyers—from the Gestoras collective—supported that decision. In taking this stance, the Gestoras defendants came closer to the position usually taken by ETA militants who had always rejected any defence. After declaring 'I am an ETA militant and I do not recognise this court', ETA militants routinely asked their lawyers to be silent.[75] To avoid being associated with ETA just for this reason,[76] the Gestoras defendants explained their decision to their constituency in a publication in a Basque newspaper.[77] Gestoras's position did differ from the general attitude of ETA militants though, as these would not usually make the sustained effort to use their time in court for a 'political' defence. The Gestoras defendants deliberately staged a show to communicate their grievances. They chose not, however, to seek open confrontation with the judges or insult them: not out of respect or fear, but because the court was 'their playing field'.[78] One of the defendants pointed out, for example, that everything is filmed and the media can choose what they cut and what they show.[79]

The defendants staged a show by calling upon witnesses who represented their criticisms of the Spanish state, not witnesses who could disprove the charges. Thus, an alleged torture victim, Unai Romano, made a declaration[80] as did the relative of a judicially proven victim of torture by the Guardia Civil. Twelve other victims of state repression gave testimonies before the Audiencia Nacional. While the court allowed the witnesses time to speak, they were cut short and were asked to come to the point. In its verdict, the court rejected and discredited the witness testimonies presented by the defendants as 'biased'.[81]

The rejection of a juridical defence ignited a tense battle between defendants, their lawyers, the prosecutors and the judges. The defendants drew attention to the longstanding grievances of Gestoras pro Amnistía, such as the perceived illegitimacy of the Audiencia Nacional, the use of solitary confinement and the torture allegations. The presiding judge was not receptive to the complaints expressed by the defendants and their witnesses. Instead, she swiftly and snappily drew the boundaries of acceptable legal arguments and showed her authority over her courtroom. She also demanded from the defendants a respectful attitude towards the court, at one point telling a defendant to take his hands out of his pockets while he was speaking.[82] Thus, the trial turned into a competition for recognition and respect. This conflict was played out in minute detail, for example, as defendants with a perfect command of the

Spanish language insisted on making their declarations in Euskara, while at the same time publicly correcting the interpreter if they perceived a mistake in the Spanish translation.[83]

The judge thus excluded the grievances of the defendants from the courtroom. For example, she told a lawyer to refrain from using certain arguments:

> Ms. Attorney, [...] you can't say that there are convictions without evidence. [...] You can't be gratuitous. [...] You can't offend ... [...] I don't like to intervene in your remarks. Here we are not trying the Audiencia Nacional as a tribunal. That is not the trial.[84]

The attorney had to speak on the topic of the trial and the judge defined the boundaries of what belonged to that discussion and what did not. At a later point the judge warned: 'Don't talk about torture again, that is not what we are judging here.'[85]

Thus, the defendants and their lawyers tried to use the platform of the courtroom as a way to communicate their narrative of (in)justice. The defendants used their speaking time to explain and defend their activities as members of Gestoras pro Amnistía. Instead of denying the charges, they claimed pride in their work.[86] The judges were not receptive to this narrative. The performative strategy, however, aimed to reach a larger public through the media, a fact which is explored in more detail in the next section.

10.5. Outside the Courtroom

The media play an important role broadcasting the events in the courtroom to a larger public. But the actors involved in the proceedings also made additional efforts to bring their perspective to their target audiences in a variety of sideshows.

10.5.1. The Media Show

The media turned up in large numbers for the first day of the trial with at least eight cameras and twenty journalists.[87] Most of the press, however, only attended the first and last days of the hearings. The press in Spain has clear political affiliations which was evident in the reporting choices. Thus, the newspaper seen as closest to the left-wing nationalist movement (*Gara*) described in detail the evidence and grievances expressed by the defendants,[88] whereas other newspapers conveyed a different perspective. For example, *El País*, the newspaper most closely associated with

the Spanish socialists, argued that Gestoras had chosen 'victimismo' (victimhood) and that the Gestoras defendants had chosen to present themselves as victims. *El País* called their evidence propaganda without elaborating much on the content of the expressed grievances.[89] *El Mundo*, a right-wing newspaper, concluded that the defendants 'showed the same uniformity that they, according to the prosecutor, imposed on the ETA prisoners as the leaders of the prison front'.[90]

While the media were the most official and constant factor in bringing the trial into the public debate, the different trial actors also engaged in 'sideshows' to influence public opinion in the form of press releases, public talks, demonstrations and petitions. Victim organisations staged their performance mainly through participating as the popular accusation. In addition, they commented on the trial in press releases and publications.[91] Also ETA reached out to the media. In its communiqués, ETA warned the Spanish state to stop harassing the left-wing nationalist movement in criminal proceedings, particularly mentioning the imprisonment of members of the 'amnesty movement'.[92] Most active in the strategic organisation of sideshows were the defendants. What follows therefore focuses on the efforts of the defendants and their sympathisers to persuade their target audiences of the veracity and legitimacy of their narrative.

10.5.2. Sideshows

Defendant Madariaga, in his last word in the Gestoras trial, said that 'any injustice creates an antidote which is solidarity. Solidarity is real.'[93] Indeed, the sideshows were an expression of solidarity. For example, during the trial, on 17 May 2008, there was a demonstration in support of the defendants in the city centre of Bilbo-Bilbao in the Basque Country. During the march, Askatasuna stickers were distributed and many people on the march put the stickers on their chests. In front of the march demonstrators carried pictures of prisoners. A newspaper reported later that more than 16,000 people had attended the demonstration.[94] In the speech of one of the key Gestoras defendants during the march on 17 May, the message of their narrative was taken to the target audience. The speaker emphasised that the struggle should be continued. If the enemy was chasing them in this way, it showed that Gestoras was doing good work. He compared the Gestoras trial to the trial of Burgos, a well-known example of a Franco show trial in 1970 against alleged members of ETA. He further claimed that the only difference between the trials was that with Burgos it had been a military tribunal and now the judges were wearing robes. Those defendants were executed; he said, 'we will receive life imprisonment'.[95]

As to their motivation to attend the event, someone on the march said that even though this demonstration might not change anything, '*hay que ir*' (one had to go). His friend commented that a demonstration with so many people would at least be mentioned in the newspapers.[96] Media coverage of an event can thus spread the message of a sideshow. This demonstration was just one of the many sideshows that were organised by and for sympathisers of the defendants. On 28 June 2008, after the final trial hearings, there was another demonstration.

Such sideshows sometimes lead to a showdown between the different actors. As both Gestoras pro Amnistía and Askatasuna had been declared illegal by judge Garzón in the preliminary proceedings and their activities suspended, victim organisation Dignity and Justice demanded that a demonstration announced by Askatasuna for 14 September 2008 should be declared illegal.[97] The demonstration was indeed prohibited, which subsequently led to confrontations between demonstrators and the police and various detentions.[98]

These sideshows aimed to elicit support for the Gestoras defendants in particular and the collective of 'Basque political prisoners' in general. Their enactment and the vocabulary for their messages were often strategically adapted to the different target audiences in an effort to maximise support. Different kinds of support were sought and given, including liberal support demanding fair proceedings and political support recognising the defendants as political prisoners.

Typical liberal support was provided, for example, by the Association of European Democratic Lawyers. Just before the trial started, on 19 April 2008, this organisation sent a letter from Amsterdam expressing its concern regarding the macro-trials. It denounced the entrance of Spanish investigators into the offices of defence lawyers, thus violating the right to professional confidentiality, and the extensive use of pre-trial detention.[99] The Gestoras defendants also strategically reached out for liberal support by inviting Martin Scheinin, the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. He attended the trial for one day. Liberal support for defendants and prisoners is generally regarded as legitimate. A journalist of the newspaper *El País*, however, criticised international human rights organisations such as Amnesty International. According to him, their one-sided commitment to human rights is naïve and counterproductive when their informants are ETA militants. He called these human rights organisations 'Ambassadors of ETA'.[100]

While liberal support accepts the Spanish state and challenges a specific trial within the framework of the rule of law, 'political' support challenges the Spanish

state more fundamentally, rejecting its legitimacy. The Gestoras defendants frequently said that the court could 'judge' them, but not 'condemn' them for their activities and thus self-identified as political prisoners. Many sympathisers from the Basque Country and Madrid attended the trial in solidarity with the defendants, accepting this identification as 'political' prisoners.[101] As a sign of their political solidarity, an activist group in Madrid organised a dinner for the defendants after one of the trial days.[102] They also co-organised a forum in Madrid with different speakers, including one of the defendants.[103] The trial was further brought back home to the Basque Country where defendants visited different villages to provide their target audience with an update. In these talks, the defendants explained to the audience, for example, why they had chosen to reject a juridical defence.[104]

The Gestoras trial thus provided an occasion for the different media outlets to make public their competing interpretations of the proceedings. This media show was complemented with sideshows outside the courtroom, in which the defendants and their sympathisers drew on a broad repertoire of support mobilisation activities.

10.6. After the Trial

The trial against the defendants of Gestoras pro Amnistía lasted seven weeks. Three months after the trial, the Audiencia Nacional issued its verdict. It convicted most of the defendants of membership of a terrorist organisation. The terrorist organisation in this case was Gestoras pro Amnistía as part of the ETA network.

10.6.1. The Verdict

In its verdict, the court clearly aimed to enact a 'performance of justice'. Just like the prosecutor, it diligently countered the elements that had the potential to turn this trial into a virtual show. For example, even though the court pointed repeatedly to ideological similarities between documents from the military wing of ETA and documents found at the Gestoras headquarters,[105] at the same time, the court explicitly declared that it is not resemblance in ideas nor the aspiration of independence that turns the actions of defendants into a crime.[106] Instead, the court argued that the shared struggle was expressed in a 'shared operation', with a clear division of tasks linked to ETA.

The court further made it clear that it cared about individual responsibility. Just like the prosecutor had done during the trial, the court emphasised the personal

conduct that demonstrated membership of Gestoras pro Amnistía and support for the armed struggle. Proof of this was, for example, that some of the defendants had attended an honouring ceremony where two unknown people with their faces covered appeared on a stage and held a placard with the symbol of ETA.

To justify the selection of the defendants, the court drew a distinction between the leaders, who were indicted, and those who worked at the 'basis' in the larger movement for amnesty.[107] The court attributed to the leaders knowledge of the ETA network (but not of particular attacks) and thus *mens rea* (criminal intent) that those at the margins of the movement did not possess. In a clear example that mere membership of Gestoras did *not* automatically lead to criminal liability, the court argued that while the membership of Gestoras pro Amnistía of defendant Julen Arzuaga had been proven, there was no further evidence of his involvement 'in favour of ETA' apart from the 'exercise of his profession' as a lawyer. He was acquitted.[108] The court also recognised the distinction between individual criminal liability and membership liability when it adjudicated that recruitment for ETA was an individual crime and not a structural function of Gestoras pro Amnistía as an organisation.

In several instances the court thus specified particular reasons for accusing a defendant of criminal liability. At the same time, however, the court defended the logic that membership in Gestoras automatically created criminal liability. This was implied in its insistence that there was no need to go into detail regarding the ways in which specific defendants had participated in Gestoras and its criminal connections and activities as part of the ETA network.[109] Indeed, the court added that not punishing people only because proof of concrete action was lacking would amount to impunity, as then only those who engaged in the most visible activities would be punished.[110]

10.6.2. Supporting Prisoners or Supporting Terrorists?

At the core of the charge was the argument that as a prisoner support group Gestoras pro Amnistía fulfilled a function in ETA's strategy complementary to the armed struggle and in subordination to the military wing. The court's verdict decided how Gestoras's prisoner support activities contributed to the ETA network.

The charge raised the question which kinds of communication and coordination can be considered 'criminal' or constitutive of a terrorist organisation. It says a lot in this regard that no proof was established as to the most obvious forms of criminal cooperation. Unsubstantiated allegations of financial support were not even addressed in the final verdict, despite the importance of this claim in the dossier produced by

investigative judge Garzón that ETA financed Gestoras pro Amnistía at least until 1991.[111] The court further judged that the alleged structural recruitment of new ETA militants by Gestoras had not been demonstrated. The proven instances of such recruitment were not an integral task of Gestoras within the 'global strategy' of the organisation and should therefore be prosecuted as separate offences of 'individual conduct'.[112] Even the facilitation of communication between ETA and its prisoners could not be proven.[113] Lastly, the court judged that it could not be proven that Gestoras organised specific days of street violence in coordination with ETA.

Four alleged functions of Gestoras, however, were considered proven by the court: (1) maintaining cohesion in the prisoners' collective; (2) signalling potential targets to ETA; (3) awareness-raising and agitation within the Basque populace; (4) delegitimation of the Spanish state. These four functions were further deemed sufficient to consider Gestoras part of the ETA network. The argumentation of the court will be discussed in slightly more detail.

First, Gestoras worked to keep the collective of prisoners together and to dissuade prisoners from accepting offers of rehabilitation in exchange for repentance.[114] According to the court, if Gestoras pro Amnistía really cared about the well-being of the prisoners and their families they would not qualify such repentance as an 'abandoning of the interests of the collective'.[115] Gestoras thus played a role in the disciplining of the prisoners. Such control aimed to prevent 'individual ways out', meaning that prisoners put their own fate above that of the entire collective and the future of an independent Basque Country. As an example of other forms of control given by the court, prisoners were not allowed to give interviews without the prior permission of ETA and certainly not about political subjects. The ETA leadership further sometimes took the decision to expel a prisoner from the collective, for example, when a prisoner had chosen to accept an offer by the Spanish state. Gestoras, as the guardian of the prisoner collective, would then enforce those decisions.

A peculiar second task of Gestoras pro Amnistía was found to be the activity of 'señalamiento' (signalling): pointing to potential targets for ETA. In the prosecutorial narrative, the denunciation of perceived state repression thus obtained a different meaning. For example, one Gestoras campaign called attention to the so-called 'judicialisation of the repression', criticising judges for their rulings. In 2001, ETA killed judge José Lidón after Gestoras had expressed such criticism. The prosecutor claimed that Gestoras not only 'signalled' to ETA to kill the judge, but also 'prepared' the population by providing a justification.[116] The court did not accept that the judge was killed because of Gestoras's criticism. It did consider proven, however, that Gestoras had the task of signalling to ETA whom to attack.

Third, Gestoras was found to be responsible for awareness-raising. According to the prosecutor, as the 'prison front' Gestoras had an 'internal' and 'external' function. Internally, it was responsible for prisoners and their families. Externally, it had to persuade the Basque population that prisoners were 'Basque political prisoners' and that their repression was due only to their ideological convictions.[117] When ETA members perished, they were portrayed as 'patriots' who had fallen 'in defence of the rights of Euskal Herria'. The court declared this to be a 'distorting message' and part of the ETA strategy of 'awareness-raising'.[118] Thus, Gestoras was said to have a function in the maintenance of ETA: because ETA members were depicted as heroes, new militants were always ready to replace the captured or dead.

A final function attributed to Gestoras was the de-legitimation of the Spanish state. One of the major 'tools' for such discrediting was found to be the allegations of torture in solitary confinement.[119] The prosecutor argued that ETA's 'yellow manual' obliged its members to denounce torture.[120] The court held that Gestoras's reports on torture did not represent facts, but rather fitted with ETA's claim that prisons were centres of torture.[121] Thus, according to the court, Gestoras executed ETA's strategy to use torture allegations to discredit the Spanish state. In relation to Gestoras's critique on the Guardia Civil's presence in the Basque Country, the court rejected the possibility that Gestoras voiced the opinion of a significant part of the Basque population. Instead, it was said to be part of a strategy to portray the Spanish state as repressive.[122] Similarly, Gestoras's criticisms that the Audiencia Nacional was a 'foreign' and 'exceptional' court were interpreted as part of ETA's strategy. Evidence of this was found in a passage in a document seized from an underground ETA member in 1993. The document addressed 'Adidas', the supposed code name of Gestoras pro Amnistía: 'We believe that we need to revisit our focus in relation to the trials: the Basque citizen is judged in foreign courts. We think we need to revisit the profound significance of not recognising the court.'[123] According to the court, Gestoras criticised the state in order to uphold the perception that there was a need for armed struggle.[124] Thus, the court dismissed all criticisms expressed by the defendants and classified them as instruments in a larger strategy ordered by ETA.

Ultimately, the court was unsuccessful in establishing the Gestoras trial as a 'performance of justice'. The defendants did not feel recognised and they as well as many of their supporters did not perceive a neutral application of the law. Moreover, they maintained fundamental disagreement about the legal interpretation of Gestoras's prisoner support activities. Many of the abovementioned activities are typical of prisoner support groups elsewhere. This makes the battle between the narratives relevant beyond this single case.

10.6.3. The Aftermath

A year after the court's verdict, it was largely confirmed by the Tribunal Supremo. Those who were not already detained were arrested to serve their sentences. In the eyes of members of the left-wing nationalist movement, the trial and the convictions simply confirmed the existing injustice narrative and the perceived 'judicialisation of the repression'. Outside the left-nationalist movement, this trial was simply one more episode in the macro-trials.[125]

Legally, the trial confirmed that ETA is a network. It also contributed to viewing terrorism as something that involves more than just guns and bombs. During the Gestoras trial, the prosecutor built on what had been considered proven during the previous macro-trials. These trials thus helped to establish a new regime of truth. A representative of a victim organisation emphasised that this was their significance.[126] The trials expanded the reach of criminal law to include socio-political organisations from the left-nationalist movement. The prosecutor's office and representatives of victim organisations further viewed the macro-trials as an important instrument to destroy ETA.[127]

Indeed, three years after the Gestoras trial, ETA released a communiqué declaring the end of the armed struggle.[128] Pressure by older ETA members in the prisoner collective had been a major factor in bringing this about. The fate of 703 ETA-related prisoners has since become one of the main issues at the negotiation table.[129] Already during the previous negotiations in 2006, the government studied the options of bringing the prisoners closer to the Basque Country and even considered releasing some of the prisoners.[130] Victim associations, however, strongly oppose such lenient measures.[131] On 7 January 2012, a demonstration in the Basque Country in solidarity with the prisoners attracted 110,000 people.[132] Thus, the battle between the competing narratives of (in)justice continues.

10.7. Conclusion

The performative strategies during the Gestoras trial featured elements of three shows: a virtual show; a show run by the defendants and their lawyers; and a media show augmented by sideshows.

Firstly, the trial displayed elements of a 'virtual' show. The charge was membership of a terrorist organisation. There was no mention of individual involvement in a concrete terrorist attack. The tasks of the members of Gestoras pro Amnistía were

said to fit into a broader ETA strategy. The defendants were said to be subordinated to the military wing of ETA. Specific 'functions' of Gestoras—the signalling of potential targets, the disciplining of the prisoner collective, awareness-raising among the Basque population and the de-legitimation of the Spanish state—would promote ETA's maintenance and facilitate armed attacks.

The prosecutor's performative strategy aimed to compensate for the virtual character of the charges. Individualised evidence was brought to prove that the defendants were members of Gestoras, even though this was never disputed. Evidence was also brought in to prove Gestoras's functions. Thus, for many days, the audience was presented with evidence from police experts, telephone interceptions, documents seized from ETA militants or Gestoras offices, and press declarations. This evidence narrated the largely undisputed historic relations between ETA and Gestoras as well as public Gestoras activities. The trial thus raised two important questions: when does communication or coordination with members of a terrorist group become a criminal activity? And how would that be proven without de facto criminalising otherwise legal activities?

Secondly, the defendants attempted to run the show by rejecting a juridical defence. Instead, they used the podium to bring their grievances into the courtroom. For example, they called upon witnesses that emphasised the role of the Audiencia Nacional judges in facilitating torture by allowing for solitary confinement. This performative strategy turned the trial into a battle for mutual respect and recognition between the defendants and the judges.

Thirdly, the trial displayed elements of a media show. It offered different media outlets the opportunity to publish their narratives of the ETA network and the role of prisoner support. In addition, the trial event led to the enactment of sideshows. The defendants and their sympathisers drew upon a repertoire of prisoner support activities to persuade their target audiences of their narrative of (in)justice.

The Gestoras trial did not become a generally accepted 'performance of justice'. Instead, multiple and competing shows were staged in- and outside the courtroom. Because the Spanish-Basque society is so polarised, the show was run by both the defendants and the prosecutors (including the popular accusation), but each only for their own audience. During the sideshows, the defendants were mostly preaching to the choir, i.e. to their own constituency—a sector in society that 'fears the Spanish state more than it fears ETA'.[133] According to one of the defendants, the target audience was the 'Basque and international society'.[134] The prosecutors did not make any particular efforts either to reach out to the left-wing nationalist movement. Without outreach beyond their own constituencies, the trial confirmed pre-existing divisions

and pre-existing narratives of (in)justice. The judges allowed the defendants the opportunity to stage their show and express their grievances. At the same time, they did not accept the grievances as legitimate and dismissed their criticisms. Obviously, the defendants and also the victims of ETA have a particular constituency. However, it is the tragedy of the Spanish justice system that the judges were not able to reach out to all parts of the Spanish and Basque societies.

Notes

1 Field notes of author during observations at the Gestoras trial, Audiencia Nacional, Madrid (18 June 2008). All translations from Spanish to English by the author.

2 Beatrice de Graaf, 'Introduction: A Performative Perspective on Terrorism Trials' (Chapter 1 of this volume).

3 The left-nationalist movement (also referred to as the *izquierda abertzale*, leftist patriots in the Basque language, Euskara) or Basque National Liberation Movement shares the same goals as ETA.

4 For a more detailed description of this transition see; Carolijn Terwindt, *Ethnographies of Contentious Criminalization: Expansion, ambivalence, marginalization* (New York, 2012). Submitted in partial fulfilment of the Requirements for the degree of Doctor of the Science of Law at Columbia Law School Columbia University. Available at: http://hdl.handle.net/10022/AC:P:14864.

5 Indeed, trials against members of armed ETA commandos continued in that same manner also in the 2000s, as observed by the author during the two-hour-long trial against 'Lola' and 'Kantauri' (11th of June 2008, Audiencia Nacional, Madrid).

6 The state viewed ETA as an opponent in a war (Fiscalía General del Estado [Office of the Director of Public Prosecutions], 'Memoria Annual'. 1979, p. 65, on file with author). Criminal prosecutions during the 1990s revealed that the Spanish government was deeply involved in the so-called 'Dirty War' between 1983 and 1987. In this period, the paramilitary group 'GAL' (*Grupos Antiterroristas de Liberación* or Anti-terrorist Groups of Liberation) killed 27 people (Calleja, José, and Ignacio Sanchez-Cuenca, *La derrota de ETA; de la primera a la última víctima* (Madrid: Adhara Publicaciones, 2006), p. 97). The judicial investigations revealed that government officials hired mercenaries in order to kill ETA militants who had sought refuge in France. See Paddy Woodworth, *Dirty War, Clean Hands: ETA, the GAL and Spanish democracy* (New Haven and London: Yale University Press, 2002).

7 Juan José Millás, 'Entrevista: Felipe González: "Tuve que decidir si se volaba a la cúpula

de ETA. Dije no. Y no sé si hice lo correcto"', *El País*, (7 November 2010), http://www.elpais.com/articulo/reportajes/Tuve/decidir/volaba/cupula/ETA/Dije/hice/correcto/elpepusocdmg/20101107elpdmgrep_2/Tes. Retrieved 11 September 2011.

8 The concept 'narratives of (in)justice' is a key element of the performative perspective which is adopted in this volume. According to De Graaf this perspective means that 'trials are viewed as a stage of *lawfare* where the different actors adopt and act out strategies with the aim of convincing their target audience(s) in and outside the courtroom of the validity of their narrative of (in)justice'. In narratives of (in)justice actors share their specific account of justice while denouncing perceived injustices.

9 Carolijn Eva Terwindt, *Ethnographies of Contentious Criminalization: Expansion, Ambivalence, Marginalization*. Colombia University Academic Commons (2012), http://hdl.handle.net/10022/AC:P:14864. Retrieved 11 September 2011.

10 This chapter refers to these organisations simply as 'victim organisations'. While there are also organisations within the Basque Left Nationalist Movement that claim victimhood, the organisations representing victims of ETA and their families were most successful in having their account of victimhood recognised in the courtroom.

11 Ostensibly because he feared the author was somehow affiliated with the defendants. 'Did you come with *them*?' he asked while moving his head in the direction of the defendants, as the author approached him to request an interview on the last day of the trial.

12 The Audiencia Nacional is the specialised court in Madrid which has exclusive jurisdiction over terrorism charges.

13 For an in-depth discussion of the legal reform and the provisions on terrorism see Mariángeles Catalina Benavente and Teresa Manso Porto, 'Combating the terrorism of ETA with the penal model', *Crime, Law and Social Change*, 62:3 (2013), pp. 269–288.

14 Article 55:2 of the constitution allows for the suspension of rights with respect to length of detention, protection of home privacy and secrecy of communication 'as regards specific persons in connection with investigations of the activities of armed bands or terrorist groups'.

15 Decreto Ley 1/1977 (4 January 1977).

16 Manuel J. Pérez Lorenzo, *Los Pecados de la Audiencia Nacional* (Barcelona: Arcopress, 2005).

17 For example, the Spanish lawyer Lorenzo disputes the interpretation of the Constitutional Tribunal. See Lorenzo, *Los Pecados de la Audiencia Nacional*, p. 38.

18 Interview with an investigative judge at the Audiencia Nacional, (Madrid, 12 May 2008).

19 Human Rights Watch, 'Setting an Example? Counter-terrorism measures in Spain', *Human Right Watch Reports*, 17:1 (2005), p. 17, http://www.hrw.org/reports/2005/spain0105/spain0105.pdf. Retrieved 9 September 2011.

20 For more information about the Audiencia Nacional and the Spanish approach to terrorism see Antonio Vercher Noguera, *Antiterrorismo en el Ulster y en el Pais Vasco* (Barcelona: PPU, 1991); Esteban Mestre Delgado, *Delincuencia terrorista y Audiencia Nacional* (Madrid: Ministerio de Justicia Centro de Publicaciones, 1987); Juan Moral de la Rosa, *Aspectos penales y criminológicos del terrorismo* (Madrid: Centro de Estudios Financieros, 2005); and Juan Carlos Moreno Campo, *Represión del terrorismo, una visión jurisprudencial* (Sedaví: Editorial General de Derecho, S.L., 1997).

21 Fiscalía General del Estado (Office of the Director of Public Prosecutions) 'Memoria Annual' (1979), p. 66, on file with author.

22 Fiscalía General del Estado (Office of the Director of Public Prosecutions), 'Memoria Annual' (2007), p. 161, on file with author.

23 Human Rights Watch, 'Setting an Example?', p. 2.

24 Field notes, Gestoras trial, Audiencia Nacional (June 2008).

25 Field notes, illegalisation ANV/PCTV, Tribunal Supremo, Sala 61, (Madrid, 19 June 2008).

26 Verdict Audiencia Nacional, Madrid, Chamber Section 4a (15 September 2008), p. 64, see also p. 80. Part of the 'Basque political prisoner collective' are also those convicted of collaboration with ETA, youth convicted of acts of street violence (*Kale Borroka*) and prisoners accused in one of the macro-trials.

27 For example, the director of Dignity and Justice wrote about the ETA network, D. Portero, *La Trama Civil de ETA. El fin está muy cerca* (Barcelona: Arcopress, 2007).

28 Interview with the Chief Prosecutor of the Audiencia Nacional, Madrid (May 2008).

29 Douglass and Zulaika distinguished between ETA as a concept and ETA as a structure. Joseba Zulaika and William A. Douglas, *Terror and Taboo: The Follies, Fables, and Faces of Terrorism* (New York: Routledge, 1996).

30 The list of crimes committed by ETA in 1992 in the Memoria Annual contains only armed attacks. Fiscalía General del Estado (Office of the Director of Public Prosecutions), 'Memoria Annual' (1993), p. 252. The chief prosecutor confirmed that in the 1980s the 'vision regarding terrorism was much more limited' (Interview S-21).

31 Asociación Dignidad y Justicia, 'Total de implicados' (no date), http://www.macrojuicio.com/implicados.asp. Retrieved 9 September 2011.

32 Fiscalía General del Estado (Office of the Director of Public Prosecutions), 'Memoria Annual' (1991), p. 197, on file with author.

33 Baltasar Garzón, *La lucha contra el terrorismo y sus límites* (Madrid: Adhara Publicaciones, 2005); Baltasar Garzón, *Un mundo sin miedo*, 2nd ed. (Barcelona: De Bolsillo, 2006).

34 Ibid., p. 297.

35 Personal conversation with the director of victim organisation Dignidad y Justicia (Madrid, April 2008).

36 Verdict Audiencia Nacional 15 September 2008. Euskal Herria is how left-nationalists call the Basque Country, which includes the Basque autonomous community, Navarra, and the Basque provinces in France.

37 Ibid., p. 47.

38 In 1976 it was called the Comisión pro Amnistía and in 1979 Gestoras pro Amnistía was formed. Interviews with a lawyer with Gestoras pro Amnistía and the Basque human rights organisation Behatokia, defendant in the Case Gestoras pro Amnistía, Bilbo-Bilbao (January and April 2008).

39 Fiscalía General del Estado (Office of the Director of Public Prosecutions). 'Memoria Annual' (1978), p. 114, on file with author.

40 Interviews with a lawyer with Gestoras pro Amnistía and the Basque human rights organisation Behatokia, defendant in the Case Gestoras pro Amnistía, Bilbo-Bilbao (January and April 2008).

41 Gestoras also published various pamphlets, such as Gestoras pro Amnistía, and Koordinaketa, 'Amnistía ta Askatasuna. Amnistie et liberté', Hernani, Basque Country, and EPPK (no date) 'PRES.O.S. Basque Political Prisoners Situation and Prospects'.

42 Of course, the definition of who counts as a 'political' prisoner is fundamentally contested. Political prisoners are generally contrasted to 'common' prisoners often referred to by Basque left-nationalist activists as 'social' prisoners.

43 Louk Hulsman, *Afscheid van het strafrecht. Een pleidooi voor zelfregulering* (Houten: Het Wereldvenster, 1986); G.P. Fletcher, *The Grammar of Criminal Law* (Oxford: Oxford University Press, 2007).

44 Gluckman, in: A. Norrie, *Crime, Reason and History: A critical introduction to criminal law*. 2nd ed. (London: Butterworths, 1993), p. 59.

45 G. Zwerman and P. Steinhoff, 'When Activists Ask for Trouble: State-dissident interactions and the New Left cycle of resistance in the United States and Japan', in: C. Davenport, C.H. Johnston, C. Mueller (eds), *Repression and Mobilization* (Minneapolis and London: University of Minnesota Press, 2005), p. 96.

46 D. della Porta and H. Reiter, *Policing Protest: The control of mass demonstrations in Western democracies* (Minneapolis and London: University of Minnesota Press, 1998), p. 18.

47 Armory Starr, Luis A. Fernandez, Randall Amster, Lesley J. Wood and Manuel J. Caro, 'The Impacts of State Surveillance on Political Assembly and Association: A socio-legal analysis', *Qualitative Sociology*, 31 (2008), pp. 251–270, there p. 265.

48 René van Swaaningen, 'Kritische criminologie', in: E. Lissenberg, S.V. Ruller and R. van Swaaningen (eds), *Tegen de regels III. Een inleiding in de criminologie* (Nijmegen, Ars Aequi Libri, 1999), p. 204; G.B. Vold, T.J. Bernard (et al.), *Theoretical Criminology* (New York: Oxford University Press, 1998), p. 213.

49 K.D. Opp, and W. Roehl, 'Repression, Micromobilization, and Political Protest', *Social Forces*, 69:2 (1990), pp. 521–547.

50 Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism, Official Journal L 344, 28/12/2001 P. 0093–0096, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001E0931:EN:HTML. Retrieved 2 January 2012.

51 Europa Press, 'Detenidas cinco personas en el País Vasco vinculadas a la reorganización de Gestoras', *El Mundo* (5 February 2003), http://www.elmundo.es/elmundo/2003/02/05/espana/1044433135.html. Retrieved 29 September 2013.

52 After the suspicion was raised in 1989 that ETA kept organising meetings and planning attacks in the prisons, the Spanish state started the 'dispersion policy'. This policy entails that ETA prisoners are kept separate in jails all over Spain (and France). In addition, ETA prisoners frequently have to change prison after several years. It has been claimed as necessary to split 'hardliners' and 'soft liners'. It is criticised by the left-nationalist movement and families of prisoners.

53 Field notes (June 2008).

54 Personal conversation (Madrid, 29 April 2008).

55 Field notes (Madrid, April-June 2008).

56 Verdict Audiencia Nacional, Madrid, Chamber Section 4a (15 September 2008), p. 23.

57 Some alleged Gestoras activities were disputed. There was, for example, disagreement about whether it was a structural function of Gestoras to recruit new members for ETA's military commandos. In its verdict, the court did not consider this to be proven.

58 One of the defendants commented after the evidence of the police expert about the history of ETA that 90 per cent of what he had declared had been true. Personal conversation, Audiencia Nacional (Madrid, 13 May 2008).

59 Interview with author, Bilbo-Bilbao (June 2008). Many interviewees from the left-nationalist movement mentioned this as an important aspect of the macro-trials. In Basque society, it is not an academic question to ask under what conditions contacts with a member of ETA turn criminal. This question is on the mind of friends and family members of ETA members, but also of people who are not so intimately connected to ETA, voicing their concern that they may be prosecuted. Arguing the absurdity of simply criminalising contact with ETA, left-nationalists pointed out that the Spanish government also had entered into contact with ETA militants for negotiations, indicating that the mere evidence of contact cannot be sufficient to prove 'criminal' cooperation.

60 Auto de procedimiento, Case Egunkaria, Sumario 44/2004, instruction judge J. del Olmo Gálvez, Juzgado Central de Instrucción Nº 6, Audiencia Nacional, Madrid, Auto de procesamiento (4 November 2004), p. 3, on file with author.

61 Verdict Audiencia Nacional, Madrid, Chamber Section 4a (15 September 2008), p. 33.

62 Observations of author during the trial against ETA militants known as "Lola" and "Kantauri", Audiencia Nacional (Madrid, 11 June 2008).

63 Field notes (Madrid April 2008).

64 The legal figure of the popular accusation obviously raises the question of representation. Who does the Asociación de Víctimas del Terrorismo (AVT) represent? How much support do they have among all victims of ETA? How is the 'class of victims' defined? Surprisingly, these issues were hardly debated.

65 Interview with the spokesperson of victim organisation Asociación de Víctimas del Terrorismo, Madrid (May 2008).

66 In the macro-trial against a Basque newspaper, the surreal situation arose that the state prosecutor withdrew his case after examination of the evidence while Dignity and Justice continued alone to pursue its popular accusation. This is quite extraordinary and the right to continue the popular accusation without the backing of a state prosecutor was questioned by left-wing nationalists. On 15 April 2010, while most of the macro-trials ended in (partial) convictions, the Audiencia Nacional acquitted all the defendants in this trial against the newspaper.

67 Interview with the lawyer of the Basque lawyer's collective in the case 18/98, Jarrai/Haika/Segi and many others, Hernani (February 2008).

68 Auto de procedimiento, Case Gestoras pro Amnistía Sumario 33/2001, Juzgado central de instrucción No. 5 (29 October 2002).

69 Conversation with defendants during the Gestoras trial, field notes (Madrid, June 2008).

70 Interview with a lawyer with Gestoras pro Amnistía and the Basque human rights organisation Behatokia, defendant in the Case Gestoras pro Amnistía (Bilbo-Bilbao, April 2008).

71 This performance strategy was explained by one of the defendants during a public talk in the village Amurrio on 12 June 2008.

72 Field notes (28 April 2008): these were the words of one of the defendants.

73 On the website www.askatu.org. Altuna, Manex, 'Los procesados afirman que la AN carece de legitimidad para juzgarles', *Gara* (22 April 2008), http://www.gara.net/paperezkoa/20080422/74079/es/Los-procesados-afirman-que-AN-carece-legitimidad-para-juzgarles. Retrieved 3 January 2012.

74 Interview with a lawyer with Gestoras pro Amnistía and the Basque human rights organisation Behatokia, defendant in the Case Gestoras pro Amnistía, Bilbo-Bilbao (Jan/April 2008) and interview with another defendant in the trial Gestoras pro Amnistía and a previous prisoner because of a Kale Borroka conviction (Bilbo-Bilbao, May/ Jun 2008).

75 Field notes of author during the trial against 'Lola' and 'Kantauri' (11 June 2008), Audiencia Nacional, Madrid. Lola declared 'as you know, I am a Catalan, I am from ETA, I do not recognise this tribunal, I will not answer any question'. (She had belonged to the Barcelona commando and spoke in Catalan, but her words were translated by an interpreter). Kantauri stated that he had three things to say: '(1) I was declared a militant of ETA; (2) I will not participate in this theatre; (3) I ask my lawyer not to do my defence'. While he refused to answer any questions, when the police came to take him away, he voluntarily put his hands behind his back, to enable them to put on the handcuffs. This indicates a subtle difference between a selective refusal to cooperate in the trial as a 'performance of justice' versus a more generalised refusal to cooperate. A journalist covering this trial commented to the author that the trial was quite representative of other ETA trials. He added that sometimes they shouted 'Gora ETA' (Long live ETA) or 'lucha armada' (armed struggle).

76 Conversation with a defendant during the Gestoras trial, field notes (Madrid, April 2008).

77 Julen Arzuaga, 'Torres más altas', *Gara* (6 April 2008), available at: http://www.gara.net/paperezkoa/20080406/71266/es/Torres-mas-altas. Accessed 9 January 2012.

78 A more visible disturbance of the trial proceedings (e.g. throwing chairs) had been a topic of discussion in the group of defendants, but this was rejected. An alternative option that was considered was to maintain total silence and to refrain from the political defence. Conversation with a defendant during the Gestoras trial, field notes (Madrid, 29 April 2008).

79 This was explained by one of the defendants during a public talk in the village Amurrio on 12 June 2008.

80 For his evidence see TAT, *Torture in the Basque Country* (Torturaren: Aurkako Taldea, 2002).

81 Verdict Audiencia Nacional, Madrid, Chamber Section 4a (15 September 2008), p. 48.

82 Field notes, Gestoras trial (Madrid, June 2008).

83 Ibid.

84 Ibid.

85 Ibid.

86 This was explained by one of the defendants during a public talk in the village Amurrio on 12 June 2008.

87 Field notes (Madrid, April 2008).

88 Manex Altuna, 'Los procesados afirman que la AN carece de legitimidad para juzgarles', *Gara* (22 April 2008), http://www.gara.net/paperezkoa/20080422/74079/es/Los-procesados-afirman-que-AN-carece-legitimidad-para-juzgarles. Retrieved 3 January 2012.

89 José Yoldi, 'Gestoras opta por el victimismo: Los 27 procesados del aparato de presos de ETA renuncian a su defensa', *El País* (22 April 2008).

90 'Los 27 acusados de Gestoras renuncian a casi todas las pruebas propuestas por su defensa', *El Mundo* (22 April 2008).

91 For example, victim organisation AVT published a picture of a trial hearing of the Gestoras trial in its magazine, *El Mirador*, 2:3 (July 2008), p. 5.

92 See for example, "ETA no se cruzará de brazos ante el ataque terrorista a Euskal Herria", *Gara* (6 November 2008), http://www.gara.net/paperezkoa/20081106/105173/es/ETA-no-cruzara-brazos-ante-ataque-terrorista-Euskal-Herria. Retrieved 2 January 2012.

93 Field notes Audiencia Nacional, (18 June 2008).

94 Newspaper *Gara* (18 May 2008).

95 Field notes (Bilbo-Bilbao, 17 May 2008).

96 Personal conversations during the march. (Bilbo-Bilbao, 17 May 2008).

97 'Dignidad y Justicia pide se prohíba manifestación de Askatasuna en Donostia', EFE (3 September 2008), http://www.macrojuicio.com/index_noticia.asp?id=2121. Retrieved 10 January 2012.

98 'La Ertzaintza aplica mano dura frente a los proetarras', *El País* (15 September 2008), http://www.macrojuicio.com/index_noticia.asp?id=2156. Retrieved 10 January 2012.

99 Letter on file with author.

100 José Luis Barbería, 'Las "embajadas" de ETA', *El País* (1 June 2008), http://www.elpais.com/articulo/reportajes/embajadas/ETA/elpepusocdmg/20080601elpdmgrep_1/Tes. Retrieved 13 January 2011.

101 Personal conversations with people who attended the trial in support of the defendants.

102 Madrid (17 June 2008).

103 This event took place in the Club de Amigos de la UNESCO de Madrid (CAUM) on 9 June 2008.

104 The author attended one such event in the village of Amurrio on 12 June 2008. A small village of 10,000 people, only 10–15 people attended the event. Later more people joined; they had just arrived from Madrid, where the mayor of Amurrio had faced prosecution because of his involvement in the organisation of an honouring ceremony in his village for an ex-prisoner.

105 Verdict Audiencia Nacional, Madrid, Chamber Section 4a (15 September 2008), pp. 34, 55.

106 Ibid., p. 70.

107 Ibid.

108 Ibid., p. 22.

109 The court referred, for example, to a verdict from the Tribunal Supremo on 17 June 2002 in which membership of a terrorist organisation was further discussed (p. 69). The court argued that the defendants were akin to an ideologue of a terrorist organisation. See also p. 68 from the verdict and p. 82.

110 Verdict Audiencia Nacional, Madrid, Chamber Section 4a (15 September 2008), p. 69.

111 Auto de procedimiento, Case Gestoras pro Amnistía Sumario 33/2001, *Juzgado central de instrucción*, No. 5 (29 October 2002), p. 5. Instruction judges produce 'autos de procedimiento' which are the dossiers or judicial orders declaring the investigative phase of the process closed.

112 Verdict Audiencia Nacional, Madrid, Chamber Section 4a (15 September 2008), p. 54.

113 Ibid., p. 70.

114 Inspired by similar practices in Italy, in 1980 the Spanish government launched a project to motivate ETA prisoners to accept the rules for an 'arrepentido' (repenting prisoner). Even though in the beginning various prisoners did accept the proposal, ETA reacted harshly against some of the people who accepted such a deal with the state. For example, ETA assassinated the very well-known former ETA member 'Yoyes' in broad daylight in her own village, while she was tending her daughter. The anti-ETA organisation Basta Ya pointed out that between 1989 and 1995 the dispersion policy (and thus decreased cohesion within the collective) led 112 ETA prisoners to take advantage of the reinsertion-policy; 'La Dispersión de los Presos de ETA', *Basta Ya* (no date), p. 2, http://www.bastaya.org/actualidad/Violencia/InformeTorturas/Ladispersiondelospresosdeeta.pdf. Retrieved 11 September 2011.

115 Verdict Audiencia Nacional, Madrid, Chamber Section 4a (15 September 2008), p. 50.

116 In the case against Basque journalist Pepe Rei this phenomenon of 'signalling' was also discussed (Sumario 18/98). There, the judge ruled that 'signalling is not a juridical-penal entity' and 'alone it is not penally relevant' ('[E]l señalamiento no es una entidad jurídica-penal ...] por sí sólo no es penalmente relevante'), *Euskal Herria Watch* (2008), pp. 2–3. Signalling is thus not a criminal offence in itself. However, it played a role in describing the so-called 'organic relations' between Gestoras and ETA.

117 Verdict Audiencia Nacional, Madrid, Chamber Section 4a (15 September 2008), pp. 47–48.

118 Ibid., p. 86.

119 See also Carolijn Terwindt, 'Were They Tortured or Did They Make That Up? Ethnographic reflections on torture allegations in the Basque Country in Spain', *Oñati Socio-Legal Series*, 1:2 (2011).

120 Field notes, Gestoras trial (June 2008).

121 Verdict Audiencia Nacional, Madrid, Chamber Section 4a (15 September 2008), p. 50.

122 The criticism of Gestoras in this regard is part of a campaign called 'Alde Hemendik', which can be translated as 'Get out of here'. See also: Ibid., p. 60.

123 'Creemos que hay necesidad de retomar el concepto enfoque a lo que se refiere a los juicios: al ciudadano vasco lo juzgan los tribunales extranjeros. Pensamos que tenemos

la necesidad de retomar el profundo significado de no reconocer al tribunal.' (Anexo 13, tomo 34), in: ibid., p. 61.

124 Ibid., p. 49.

125 The media had covered more closely the case known as 'Sumario 18/98' which had lasted sixteen months, leading to the conviction of 47 defendants (Case Sumario 18/98, Audiencia Nacional, Madrid, 19 December 2007) and the case against the Basque newspaper *Egunkaria* (which ended in acquittals).

126 Personal conversation during the trial (28 April 2008).

127 Daniel Portero, *La Trama Civil de* ETA. *El fin está muy cerca* (Arcopress, 2008); personal conversation with the Director of victim organisation Dignidad y Justicia (Madrid, April 2008); Memoria elevada al gobierno de s.m. (Madrid: Ministerio de Justicia, 2010). p. 262, https://www.fiscal.es/fiscal/PA_WebApp_SGNTJ_NFIS/descarga/MEMFIS10.pdf?idFile=7124a2c1-d69e-44d1-8e96-1b05037f6f9f. Retrieved 1 September 2011.

128 'Basque group Eta says armed campaign is over', BBC *News* (20 October 2011), http://www.bbc.co.uk/news/world-europe-15393014. Retrieved 2 January 2012.

129 Mónica Ceberio Belaza, 'Las 700 "consecuencias del conflicto"', *El País* (20 October 2011), available at: http://politica.elpais.com/politica/2011/10/20/actualidad/1319144401_806536.html. Retrieved 2 January 2012.

130 Luis R. Aizpeolea, 'El futuro de los presos: "No es posible un indulto a todos los presos"', *El País* (4 December 2011), http://politica.elpais.com/politica/2011/12/04/actualidad/1323024854_010561.html. Retrieved 2 January 2012.

131 Mónica Ceberio Belaza, 'Las 700 "consecuencias del conflicto"', *El País* (20 October 2011), http://politica.elpais.com/politica/2011/10/20/actualidad/1319144401_806536.html. Retrieved 2 January 2012.

132 'Apuntes de una movilización nueva para un nuevo tiempo', *Gara* (9 January 2012), http://www.gara.net/paperezkoa/20120109/314235/es/Apuntes-una-movilizacion-nueva-para-nuevo-tiempo. Retrieved 12 January 2012.

133 These were the words of a sympathiser attending the Gestoras trial, field notes (17 June 2008).

134 Julen Arzuaga, 'Torres más altas', *Gara* (6 April 2008), http://gara.naiz.eus/paperezkoa/20080406/71266/es/Torres-mas-altas. Retrieved 9 January 2012.