

The following is a literal translation of part of the declaration made by the detainee Martxelo Otamendi before the Spanish National High Court Judge Juan Del Olmo in the early hours of the morning of 25 February, 2003, after having been held incommunicado for five days at the headquarters of the Spanish Civil Guard. The rest of Martxelo Otamendi's declaration has no connection with the filing of his complaint of torture and has therefore not been included in this document

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Public Prosecutor: I want you to explain about what I asked you earlier on ...the, the ...

Otamendi Well, the statement I made... the thing is we are getting on to another matter, the statement I made the other day in the offices of the law courts, which was on Saturday afternoon.

Public Prosecutor: That's where we are now.

Otamendi Sorry, in, you know, the Civil Guard headquarters, I was forced to make it [the statement] by the Civil Guard, it was because they had subjected me to the plastic bag twice and I had been drilled by them. I had to learn it word for word after ... about 15 to 20 times what I had to say to the lawyer, before the lawyer, what do you call him, the duty lawyer?

Judge Del Olmo: Uh-huh.

Otamendi And that's the difference. So, I'm prepared to give your Honour answers to all those questions, if you ask me them again, but in some cases I shall invoke professional secrecy.

Public Prosecutor: But there are some paragraphs... Do you remember what was in the statement?

Otamendi Yes, yes, I do. Yes, more or less, if not, I could ...?

Public Prosecutor: Are there any questions that are not true?

Otamendi No, no, no, all the questions are true, because they were all rehearsed with the Civil Guard officers, in other words the Civil Guard officers forced me to say such and such in answer to this question, and such and such in answer to that question.

Public Prosecutor: Uh-huh.

Otamendi Even in the case of ...?

Public Prosecutor: Are they, or are they not true?

Otamendi: The questions yes, yes, well, it's true that they asked me these questions.

Public Prosecutor: And what about your reply?

Otamendi: I can't go into assessing whether the replies are true, because I wasn't given the chance. I asked to invoke professional secrecy but I'm not going to repeat the answer the Civil Guard officers gave about professional secrecy, the current legislation, the [Spanish] Constitution, the Spanish National High Court, the judges.

Public Prosecutor: of the statement?

Otamendi: Yes, of course.

Public Prosecutor: For (...) in which ...

Otamendi: No, yes, yes, I don't have any problem saying, I don't have any problem if he ...if your Honour or you consider it appropriate for me to answer all the questions again and regarding those which I think it is possible to violate... well, violate sounds bad, but it could prejudice my right to invoke professional secrecy, so that is how I'm going to respond.

Public Prosecutor: Your right to silence, simply.

Otamendi: No...

Public Prosecutor: Your right to silence.

Otamendi: In the Civil Guard buildings I didn't..., I didn't have the right to silence, let alone the right to invoke professional secrecy. I didn't have it.

Public Prosecutor: (...)?

Otamendi: I'm not going to repeat to you what was said about ..., when I talked about rights, what the Civil Guard officers said about the National High Court, the judges, the magistrates, the Constitution, excuse me, the ...

Public Prosecutor: OK.

Otamendi: Out of respect, I'm saying this out of respect for the institution where we are, aren't I?

Public Prosecutor: So, Iñaki Altuba, who is he?

Otamendi: No, you see ... I'm invoking professional secrecy, in other words, if you ask me how these communiqués got to Egunkaria ... I shall invoke professional secrecy. As far as I'm concerned that statement is not valid, because it was taken after two sessions with the plastic bag. (...) something (...) also... later at the end, or before the end I wish to speak to you about what I've been through because of all this.

Judge Del Olmo: So, in connection with the statement of the Civil Guard you do not confirm or reaffirm it.

Otamendi: No, not at all. Apart from that, even when they told me that the duty lawyer was going to take a statement, by then what I had been subjected to had already taken place.
Er...they told me: the duty lawyer, ok, yes, but do I get to speak to the duty lawyer? I don't know why, but it was probably because I had no idea about these things, I thought I'd get the chance to speak to him beforehand to prepare the statement or... well, they told me that wasn't possible, they took me up to a, a room, at the back was a duty lawyer who I couldn't see and they told me I wasn't allowed to see him in the interests of protecting the lawyer in the struggle against terrorism, or something like that, so that I would not identify him or, ... in other words, I did not see the duty lawyer at any time, but I did hear a voice behind me when they said his ... his professional registration number, he said that it was him. They showed me his professional registration card with ... they covered the lawyer's photo with a finger and that was the situation, the scenario in which I made the statement the other day.

In other words I never got the chance to speak to the duty lawyer. The truth is I wasn't very keen on doing so because after what I'd been through, I swear that... no more... and then I asked them to shoot me quickly, because I couldn't stand it any more in that hell, but I never saw the duty lawyer. There was a man's voice

who said he was lawyer number ...which corresponded to his registration card.

Judge Del Olmo: Uh-huh.

Otamendi: I was shown an identification card covered with, covered with a finger ... that's the situation in which I declared that, that In which I signed and declared that, that I made that statement. On Saturday at ... the thing is it was already very late, I overheard them say that it was 3 o'clock in the morning. After having endured, believe me, the worst experience in my life.

Judge Del Olmo: Do you have anything further to say?

Otamendi: I'm just about to finish.

Judge Del Olmo: (...)

Otamendi: So, if there is any other question in this statement which you want me to confirm or not ...

Public Prosecutor: (...) that explanation now.

Otamendi: Yes.

Public Prosecutor: (...) You, are you in a condition to declare...

Otamendi: Now I am, of course, I'm absolutely free to do so.

Public Prosecutor: (...) under pressure...

Otamendi: None whatsoever.

Public Prosecutor: Oh, sure.

Otamendi: Absolutely free.

Public Prosecutor: Oh, sure.

Otamendi: Absolutely free.

Public Prosecutor: And are ... ?

Otamendi: Yes, of course, the (...) absolute freedom, yes. None of this has anything to do with what I've been through.

Public Prosecutor: How many shareholders does Egunkaria have? Who is ...?

Otamendi: Shareholders?

Public Prosecutor: Yes.

Otamendi: Egunkaria has lots of shareholders. I'm not the one who knows much about that. I just deal with the newspaper side, the newspaper side, you see, not the external running of it, but the

product; everything relating to financial matters, I don't (...) so much, I concentrate more on what

But, from what I know. (...) I'm a shareholder, there could be about 800 of us, or more than 800, it's the stand... standard project that is conceived in the Basque Country in which people contribute money.

Public Prosecutor: Over 800 shareholders?

Otamendi: Yeah, I reckon we could number about (...). These products are very popular projects and if people contribute 25,000 pesetas they are given a share. The people are not the standard shareholders like those of Yahoo who invest money in Yahoo to get a return on their money after three years. In other words, they are shareholders without any profit motive in mind.

There are lots of these kinds of shareholders in the Ikastolas [Basque-medium schools], Basque classes, publications, in all the social or association movements that exist in the Basque Country, the people contribute money, 10,000 duros as it was called in the old days or 50,000 pesetas in the old money and they forget about it, they are not interested in the management side.

I'm a member of a popular club in the Basque Country known as the "txokos" which may well have a million and a half, about 1,200,000 pesetas in Egunkaria, and no member has ever shown up at the meeting of shareholders.

Public Prosecutor: Who represents [them]...?

Otamendi: ... the meeting of shareholders.

Public Prosecutor: ... those people in the meeting? Not ...?

Otamendi: Only the ones who attend. Not the rest. In the shareholders' meeting? The people who have money? No, I've got about 70,000 pesetas and I represent myself. (...) and my club...

Public Prosecutor: And what about the rest? Who represents all the other people?

.../

... would Counsel like to ask any questions?

Counsel: By your leave, your Honour, no.

Judge Del Olmo: Do you wish to add anything, Mr. ...

Otamendi: Yes, I do.

Judge Del Olmo: ...Otamendi?

Otamendi: I'd like to add a couple of things. One relating to the conditions in which I signed that statement. Going back to, going back to that... I have been subjected to the most degrading treatment, absolutely degrading, in the building of the Civil Guard.

I don't know where I've been, because at no time have we been... when we went in and came out blindfolded and the other things we did inside there, it was always with a blindfold on, always, blindfolded and looking at the floor, in other words, I don't know where I've been and I couldn't say at any moment except my ... I haven't slept. They didn't let me sleep for two days, the first two days they made me stand, either they were interrogating me or making me stand.

I've done endless exercises and push-ups such that I've never done in my life before, and the fact is I've done quite a lot of sport in my time. Never in my life have I done so many push-ups. I've been insulted, vilified, er... well, any adjective you care to name. I've been forced to take my clothes off and crawl.

Er... People in the Basque Country know about my homosexuality, it is known in the Basque Country. Even the Civil Guards knew about it, I've been outraged, held up to ridicule, er... they asked me to do some positions similar to those for having sex, I mean, "How did you use to do it? Like this? Well, get into that position, because we know you like it that way" ...and those questions that verge on, that verge on, no, that go beyond homophobia.

Er... I had been stripped and they held an object to my temple, I was being held with my eyes closed, so I can't say whether it was

a pistol, but then it made a noise very similar to one. To those of us who've never touched a pistol we can assume that the noise coming from an unloaded pistol makes a click or... like you see in the films.

I touched a pistol. They made me touch a pistol. I repeat that I can't confirm that the object on the left was a pistol, because I didn't see it.

And I've been subjected to the pressures of 3 or 4 people shouting at the same time and hitting the door, the table, etc...

I had the plastic bag put on my head twice. I swear that learning to ... I didn't accept... I begged them to kill me, because I couldn't stand any more. The first time I was dying, in other words, I was becoming unconscious. I was (...) the first time they put the bag on my head, the first session. They only put the bag on my head twice, you know, only twice, I don't know if that's any consolation.

That is what I wanted to say about the way I was treated. I don't know if this can be treated as my formal complaint or whether this explanation is enough to be regarded as a complaint, or whether I have to do it separately, or whether I should speak to my lawyer about lodging a formal complaint.

The statement that... I beg your pardon.

Judge Del Olmo:

OK, go on...

Otamendi:

That statement that you have in front of you was specially rehearsed with members of the Civil Guard so that it would be dictated like that in the presence of the duty lawyer who, as I said before, I could not see or speak to.

Er... I didn't ask to speak in front of him, because the thing is, I had asked the officers before if I could speak to him and they told me, "look, the things are done here, and if not, we will go back to the session before."

So I want to express part of my... my disquiet, because if in 2003 they treat someone like that in police premises. It's something that doesn't bear thinking about, isn't it? So I want to ask that...., I

don't know, that it be withdrawn. I don't know how I have to go about this, whether I have to speak to my lawyer to start the process for getting the statement withdrawn, because at no time has my right to silence been respected, let alone the right (...). When I mentioned the right that we media professionals have to invoke professional secrecy... that was, it was... you see, the more... more [I mentioned] rights, the more it seemed to provoke them. So I stopped doing that.

They even had me two hours in my cell ... if you like, I'll demonstrate the position.

Judge Del Olmo: Just describe it for now.

Otamendi: Yes, with my head down, my head down and the top part of my body bent double, in other words, as if I was permanently touching my toes, with backache, my lower back aching unbearably and my head in a dreadful state with the blood having run to my head.

I swear, something dreadful, an experience which I have never, ever been through. I had never been arrested before and well, more than anything with having the transparent plastic bag put on my head twice.

Perhaps I've forget the odd detail (...). But mainly it was this (...) the pistol to my temples.

Er... I had a visit from the court-appointed doctor, the court-appointed doctor on the Thursday, and I told him I was okay and not... that I had been treated correctly, and that nothing had happened. Then on the Friday I said that I had had a dreadful day on the Thursday and that they hadn't let me sleep, in other words, they didn't give me anywhere to sleep, you see there were two of us detained in the cell and one slept while the other stood, and that was me. What (...) it wouldn't have mattered if they had let me sit, but I had to stand.

I told the court-appointed doctor about this. I told the doctor what they had been doing to me... they hadn't yet started with the countless push-ups that exhausted me, that they made me, me, me

do... I've done quite a bit of sport, but with the breathing, I suffocated when I breathed in. When they saw I was in a bad way they let me rest a bit, because I was able to do the push-ups again. I told the court-appointed doctor about this on the Friday.

On the Saturday another court-appointed doctor showed up. I told him that the Friday had been much harder and told him, please to speak to the judge and get me out of here, to take me to a cell, I don't want to declare, I will go to a cell in the Spanish National High Court and wait for however long it takes to declare, that I can't go on here and if not I'll smash my head against the first pillar I find because I just can't go on like this, I told him.

Half an hour after I had left the office, the place where I had been with the court-appointed doctor, half an hour later, three or four Civil Guards came into my cell, dragged me out, took me to a place quite near the cell, it wasn't very far away, they pushed me to the floor and said that if I complained to the doctor again, they would shoot me right there.

It isn't for me to blame the doctor, I'll say it 100 times over if I have to, I don't hold the doctor to blame at all, because... (...) the Civil Guard must have the means to know what is being said in those rooms, but it's really sad that the only straw that a detainee subjected to this process can grasp at and trust is the court-appointed doctor and if, if the message with the doctor is not armour-plated, well the thing is... come Sunday they subjected me to the plastic bag, and the doctor asked, "How are you?" "I'm perfectly okay and..." in other words, I couldn't tell him any more, I wasn't going to tell the doctor that they had subjected me to the plastic bag if, after having told him on the Saturday morning that on the Friday they had made me do push-ups, insults and threats, this happens. So, what I'm trying to say is that this is what happened to me.

It was half an hour after leaving the doctor's office on the Saturday, and it's not the doctor's fault, because I am sure that the doctor is a professional and has nothing to do with this. The Civil

Guard knew what I had said to the doctor and came to threaten me and told me they would shoot me if I made a... a complaint to the doctor again.

I want this to be recorded too.

Judge Del Olmo: It's being noted in your declaration.

Otamendi: Well, sorry, that's what it was.

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