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Interview with José Luis González Cussac, Full Professor of Criminal Law and Director of the Chair "Law of Victims and Terrorism" (University of Valencia)

The Role of Spanish Intelligence Services in the Fight Against Terrorism

1. **In your chapter "*Servicios de inteligencia y contraterrorismo*" *(González Cussac, 2018, p. 35-39*), you describe intelligence services as an essential actor in the fight against terrorism. How would you define today the exact role of the Spanish intelligence services within the national security framework against international terrorism? What laws and regulations govern their activities?**

I believe that the counterterrorism activity carried out by the National Intelligence Centre (CNI) remains essential to anticipate and prevent terrorist actions. It is undoubtedly still one of its top priorities. The creation, in 2014, of the Intelligence Center for Counter-Terrorism and Organized Crime (CITCO), in which the CNI works alongside other specialized police bodies and agencies, has been a major step forward in coordinating and sharing information, analyses, and operations—both at strategic and tactical levels. Its main function is to produce and coordinate national strategies.

As for legislation, the CNI continues to be primarily regulated by Law 11/2002 of May 6, which governs the National Intelligence Centre, and by Organic Law 2/2002 of May 6, which regulates prior judicial control of the CNI. Other relevant regulations include Royal Decree 436/2002 of May 10, establishing the CNI's organizational structure; Royal Decree 593/2002, developing its budgetary regime; Royal Decree-Law 421/2004 of March 12, regulating the National Cryptologic Center; and Law 36/2015 on National Security. Unfortunately, the outdated Law 9/1968 on Official Secrets — amended by Law 48/1978 — is still in force. It does not even provide for automatic declassification after a certain period of time, allowing only for declassification by explicit act.

2. **You quote Ulrich Beck, who writes: "We live, think, and act with ancient concepts that nevertheless continue to govern our thought and our actions; our worldview is based on distinctions between war and peace, army and police, war and crime, internal and external security — distinctions that are now obsolete." This observation reflects the crisis of conceptual frameworks inherited from the 20th century in the face of globalized terrorism. Do you agree with Beck's idea that we still think about security using an outdated language? And in your opinion, how can the Spanish intelligence services adapt to this new reality, where the boundaries between war, criminal law, and intelligence are increasingly blurred?** *(González Cussac, 2018, p. 35; citing Ulrich Beck, Sobre el terrorismo y la guerra, 2003)*

I completely agree with Beck. The same idea was brilliantly expressed by one of the greatest scientists in history, Edward Osborne Wilson, who remarked in Harvard Magazine (2009): "*We have Paleolithic emotions, medieval institutions, and god-like technology — and that is terrifically dangerous*." Indeed, we must be aware that the digital era is profoundly changing everything—both the threats, such as terrorism, and the responses to them. Intelligence services, if they are to remain at the forefront of our security, must undergo a deep transformation to adapt to the digital age.

Our societies must also make an effort to adapt legislation—especially that concerning fundamental rights and public freedoms—to the digital era. This is our greatest challenge and need, in every dimension.

3. **You explain that September 11, 2001 marked a rupture: the distinctions between internal and external security ceased to make sense. How did this transformation manifest itself in Spain in terms of structure and coordination between intelligence services, police forces, and judicial authorities?** *(González Cussac, 2018, p. 36-44)*

It should be noted that Spain has a long history of terrorism dating back to the Franco dictatorship. Certain far-right and far-left groups were also active during the democratic transition (1975–1982) but gradually disappeared or lost strength. However, a radical sector of the Basque nationalist left, supported by the silence of other nationalist forces, maintained ETA terrorism until 2011/2018. Consequently, our intelligence and police services, as well as our legislation and justice system, had already developed consolidated counterterrorism strategies and practices.

However, the March 11, 2004 attacks in Madrid, which caused 198 deaths, were a major shock. They prompted new legislative reforms and strengthened cooperation. The creation of CITCO in 2014 — an evolution of an earlier post-2004 body — clearly reflects this major transformation in Spain's intelligence and security apparatus, as well as in its legislation. This adaptation to the jihadist threat was essential, and similar processes occurred in most European and Western countries.

4. **Spain transitioned from facing domestic terrorism to confronting a global jihadist threat. What institutional lessons do you draw from this evolution in Spain's management of counterterrorism intelligence?** *(González Cussac, 2018, p. 36-38)*

Insist that the Spanish response was perhaps quicker because of its preparation for terrorism in the previous stage (the 'third wave' according to RAPOPORT's classification), so although it took us time to adapt to the new challenge of this type of terrorism (the 'fourth wave'), we already had experience and practices in place. In other words, by not starting from scratch, we were able to deal with it more quickly. This new terrorism operated in multiple territories, with different timings, organisations and languages. It also had an unknown scale of targets, entities and means of attack, and made powerful use of media messaging and propaganda. These variations led to significant changes in equipment, agent profiles and, above all, greater external and shared intelligence.

5. **You warn against the 'merging of functions' between intelligence and the police, which can lead to a weakening of procedural guarantees. How can the functional separation between prevention and repression be preserved without compromising the effectiveness of cooperation between the CNI, the Civil Guard and the National Police?** *(González Cussac, 2018, p. 46-51)*

Based on judicial oversight in cases involving activities that affect fundamental rights, I believe that intelligence services can have a more flexible legal framework for collecting data and information. This is because their objective is not to uncover or prosecute crimes, but rather to produce intelligence through open sources and also from closed sources. Their function is to develop intelligence to reduce uncertainty in government decision-making in foreign relations and in the face of threats, risks and challenges to national security. On the contrary, it is the responsibility of the police to prevent and prosecute crimes in accordance with strict procedural and constitutional rules, because in doing so they seek to prove the commission of criminal acts that may warrant severe punishment.

Coordination must be carried out in the face of hybrid threats and crimes, such as terrorism, transnational organised crime and cybersecurity. Information fusion centres must be set up. However, in my opinion, the services should address these phenomena as soon as they manifest themselves at a very early stage, leaving the police to intervene when they constitute punishable preparatory acts. However, the effectiveness and resources available to the intelligence services seem to lead governments to overload them with more functions than they should perhaps have in this area.

6. **Secrecy is an inherent part of intelligence activities, but it often conflicts with the principle of democratic transparency. What control mechanisms do you consider appropriate to reconcile the confidentiality necessary for effective surveillance with respect for the rule of law and institutional accountability?** *(González Cussac, 2018, p. 50-52)*

Deepen the three classic controls: judicial, governmental and, above all, parliamentary. Move from formal proclamation and recognition to greater real exercise. And I believe it is necessary to move forward in declassifying information with access for researchers, journalists and citizens. Consequently, it seems sensible to simultaneously curb the current trend towards over-classification of information. In this way, I believe it is also beneficial for the services themselves, both because their functions become more legitimate and because of the reduction in the bureaucracy inherent in the processes of classifying confidential information.

7. **You emphasise that the circulation of information between European states and services represents one of the most sensitive challenges in contemporary counterterrorism. Should we move towards unified European regulations on the collection, exchange and use of intelligence information?** *(González Cussac, 2018, p. 52-55)*

At present, Article 4 of the Treaty on European Union excludes national security and defence from European competences. In other words, this matter remains within the remit of the Member States. Although, obviously, they must comply with Community law in their actions. That said, if we Europeans want to continue to preserve our way of life, we must move towards common defence and security policies. To this end, we should at least set up bodies or mechanisms for sharing intelligence. We have certainly already made significant progress. One example is the EU Intelligence and Situation Centre (INTCEN), which is responsible for compiling and analysing the “syntheses” provided by the Member States. The European Union Military Staff also has a specific division, the EUMS-INT.

They are coordinated through the Single Intelligence Analysis Capability (SIAC). The so-called 'Threat Analysis' was developed here and laid the foundations for the 'Strategic Compass'. In addition, on the technical side, the EU has direct access to images, graphics and analysis from the EU Satellite Centre (SATCEN) in Spain. These resources are shared with national intelligence communities. Furthermore, the European Intelligence College (ICE), based in Paris, aims to develop a common intelligence culture among European countries, bringing together agencies and academic experts.

8. **Preventive criminal justice, as developed by Prof. Emiliano Borja Jiménez, is based on the early detection of 'weak signals': online behaviour, radical discourse or social interactions. This model, inspired by a logic of global security, shifts the centre of gravity of criminal law from guilt to risk, punishing potentially dangerous behaviour in the name of prevention. However, this anticipation, combined with increasingly broad surveillance powers, can lead to a 'permanent exception'. From a legal and moral point of view, where should the line be drawn between legitimate prevention and intrusion into private life, in order to safeguard proportionality and fundamental principles? And has Spain managed to maintain a lasting balance between the effectiveness of intelligence and the protection of rights and freedoms?** *(Borja Jiménez Emiliano, "Justicia penal preventiva y Derecho penal de la globalización", 2018, p. 160-168)*

I would distinguish between two types of anticipatory activities that interfere with fundamental rights. The first is carried out exclusively for intelligence purposes and may have a more flexible legal regime, although always under judicial control. The second type, carried out during criminal proceedings and under criminal law, is practised by the police under the direction of the public prosecutor's office or the judiciary, with the aim of finding evidence to convict a citizen. Here, anticipation also seeks to prevent crimes that have already begun and consequently carries with it the possibility of criminal conviction, which determines not only the impact but also the deprivation of fundamental rights. Spanish legislation and practice, even more so than that of the rest of the European Union, has moved since the 2015 reform of the Criminal Code towards a significant advance in the line of criminal intervention. In this regard, it has the highest number of arrests and convictions for this type of crime (indoctrination, propaganda, glorification or other preparatory acts of terrorism). Hence the great debate in Spain over this reform and its application. In any case, in my opinion, a clear distinction should be made between surveillance for the purpose of gathering intelligence and, quite differently, surveillance in

advance for the purpose of punishing at a stage that is so far removed from danger and damage to legally protected assets.

9. **The development of cyber espionage and the use of algorithmic analysis tools open up new possibilities in the fight against radicalisation, but they also pose obvious risks. How can we prevent these technologies from becoming instruments of mass surveillance? Do you think it is necessary to establish an ethics code for artificial intelligence applied to the field of security? What measures are being discussed in Spain in this regard?** *(González Cussac, 2018, p. 55-57)*

There are already some very interesting studies and reports from the European Parliament itself warning that we have not updated the system of fundamental rights to the digital age. In other words, today both our political rights and our procedural rights are highly vulnerable due to the use of new technologies, whether by state actors, corporations or criminal groups. This presents us Europeans with a major challenge, even though we continue to be the global benchmark for setting rules for these changes. Not only are ethical rules lacking, but so are legal regulations governing these technologies from all legal perspectives. We Europeans have a millennia-old culture based on rules. All human activity is susceptible to regulation. And in this challenge, we are quite alone, because the other great superpowers or global powers do not share this tradition or have other interests.

Undoubtedly, the use of new technologies by hostile actors also poses an existential threat to our countries and therefore also requires the development of digital tools to neutralise them. This is precisely where the idea of 'European digital sovereignty' arises.

10. **The 2015 criminal law reform introduced provisions on individual and digital terrorism. What has been the impact of this reform on the functions of the Spanish intelligence services? Has it expanded their scope of action into the civil or digital sphere?** *(Colomer Bea David, "La incriminación del terrorismo a partir de 2015", 2015, p. 135-150)*

As I have pointed out, in Spain, the intelligence services, which we could describe as strategic, namely the National Intelligence Centre (CNI), do not prosecute crimes and therefore that reform did not essentially affect them. However, it did have a significant impact on the police services and the criminal justice process. As I mentioned earlier, there is a great deal of debate on this issue. This is because the police services, supported by the public prosecutor's office and the judiciary, were able to anticipate their surveillance

and prosecution of preparatory acts and other behaviour peripheral to acts of terrorism. And, of course, it is enabling arrests and convictions for digital propaganda, advocacy and indoctrination.

11. **You mention that European intelligence services have very heterogeneous levels of control. What elements of the Spanish model — structure, oversight, or coordination with the judiciary — could serve as an example for other European Union Member States?** *(González Cussac, 2018, p. 52-55)*

In Spain, our 1978 Constitution requires that any interference with or access to closed-channel communications must be authorised in advance by the judicial authorities (Article 18). This naturally also applies to the Spanish intelligence service (CNI), although, as we have seen, it does not have police functions and therefore does not prosecute crimes, but only gathers intelligence information. The same applies to entering the homes of individuals or legal entities. Thus, although the Spanish intelligence services do not prosecute crimes but only obtain information for intelligence purposes, they must request prior judicial authorisation to intercept communications or enter a home. I believe that this provides a high degree of legal certainty for both citizens and public authorities.

12. **In 2023, he took over as director of the Chair in Victims' Rights and Terrorism at the University of Valencia, created in conjunction with the Regional Ministry of Justice, Home Affairs and Public Administration. This is a pioneering initiative in Spain, focusing on the rights of victims of political violence, the preservation of memory and the education of students in democratic values. What are the scientific, educational and social objectives of this chair? And how does this work — which places the voice of victims at the centre of academic discourse — fit in with the institutional dimension of intelligence and criminal justice, fundamental pillars of Spanish anti-terrorism policy?** *(González Cussac, 2018, p. 54-56)*

This is indeed a pioneering initiative in Spain. We have three main objectives in creating it. First, to continue studying the phenomenon of terrorism and the legal and jurisprudential responses to it, analysing its evolution. The second objective is to tackle extremism, both by advancing in the development of radical factors, environments and profiles in order to anticipate them, and by analysing activities aimed at creating public awareness of enlightened and democratic values. The third objective focuses on improving and

updating the effective recognition of the rights and benefits of victims of any kind of terrorism. Over the last three years, we have worked with professionals from the fields of intelligence, security, education, social services, academia, the judiciary, the public prosecutor's office and the legal profession, secondary school and university students, and, of course, victims' associations. We have also worked with the various competent public administrations. The results have been several congresses, seminars, conferences, reports and even a draft bill to update the Victims' Rights Act. We have also encouraged publications and numerous specific student projects supervised by teachers. We hope to be able to renew it and continue working along these three lines.

13. **Finally, you conclude that the 'democratisation of intelligence' is the great challenge of the 21st century. What would this democratisation consist of: greater institutional control, greater transparency, or a cultural change within the intelligence agencies themselves? What reforms — institutional, ethical, or legislative — do you consider essential to consolidate effective, transparent intelligence that respects the values of the rule of law?** *(González Cussac, 2018, p. 56-57)*

In my opinion, we should move forward on these four main fronts.

- Effective judicial oversight of any activity that affects the essential content of fundamental rights.

- Secondly, there is widespread academic agreement on the advisability of expanding and strengthening parliamentary oversight of intelligence activities. This should be consolidated as a routine oversight activity and not only in difficult cases that come to public attention.

- The third action revolves around secrecy. We would have to curb the tendency to "over-classify" so much information and also do so for shorter periods of time. And of course, once the information has been declassified, facilitate access for researchers, journalists and citizens.

- Finally, it remains essential to promote a greater civic culture of intelligence and security, so that citizens participate more in these decisions, and do so with a minimum of rigorous knowledge about this complex subject. This objective should be projected more intensely on political leaders, the media and academics: the three traditional pillars of the 'culture of intelligence'.

We must all be aware of the real threats that lurk around us and the difficulty intelligence services face in anticipating and neutralising them. These are essential and vital organisations which, together with others, enable us to continue living in prosperous, free and democratic societies. And that this involves conflicts, sacrifices and costs.

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Sources :

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