

SPAIN: THE “LEGAL” WHITEWASHING OF CRIMES AGAINST HUMANITY: Trials of Judge Garzón Called Scandalous by Rights Groups

By [Global Research](#)

Theme: [Law and Justice](#)

Global Research, January 27, 2012
IPS 27 January 2012

MADRID, Jan 24, 2012 (IPS) – Another trial opened Tuesday with Spain’s best-known judge, Baltasar Garzón, in the dock for attempting to investigate crimes against humanity committed during the 36-year dictatorship of Francisco Franco.

This is the second and most important of the trio of lawsuits against him.

Garzón is again before the Supreme Court in Madrid only five days after his last appearance. The verdict is still pending in the earlier trial, for alleged illegal telephone tapping of conversations between detainees and defence lawyers in the “Gürtel” affair, one of the biggest corruption scandals in the history of Spain’s democracy.

The new case has wide implications because Garzón’s action in authorising the investigations was founded on the application of international law to the crimes of the 1936-1939 Civil War and the 1939-1975 Franco dictatorship.

Garzón in fact pioneered the principle of international jurisdiction in cases of crimes against humanity when he issued an international warrant for the arrest in London in 1998 of former Chilean dictator Augusto Pinochet (1915-2006).

Francisca “Paquita” Sauquillo, a distinguished anti-Franco activist for rights and freedoms since the 1960s, told IPS Monday that “Garzón must be absolved because he has not committed any crime and because he is a leading example of the correct application of the laws in Spain.”

Both the Gürtel affair and the present lawsuit, known as the “Historic Memory” case, are extraordinary in that the Supreme Court is prosecuting Garzón against the wishes of the Public Prosecutor’s Office, which has called for dismissal of the charges in both cases for lack of evidence of any crime.

But the Supreme Court, which is empowered to prosecute judges in active service, chose to pursue these suits that were brought by private persons through prevarication, that is, the rendering of a knowingly unjust ruling.

In the present Historic Memory case, the plaintiffs are two Francoist organisations which are requesting that Garzón be barred from the judge’s bench for 20 years.

The Gürtel case (so called after the German word for “belt”, in Spanish “correa”, the

surname of the chief accused) was adjourned pending verdict on Jan. 19. The plaintiffs in the case are lawyers for Francisco Correa, the ringleader of the scam, and others accused of bribing senior politicians in the ruling conservative People's Party,

Paradoxically, those accused of bribery and corruption have not yet been brought to trial.

Joan Garcés, a renowned jurist and a close personal aide to former Chilean socialist president Salvador Allende (1970-1973), told IPS that the trial of Garzón for alleged abuse of power over the investigation of crimes of the Franco era is "wrong".

He said "the testimony of internationally recognised jurists should be admitted (in the trial) because Garzón has been one of the strongest promoters of international law," but this testimony has already been refused by the court.

The charge of prevarication (criminal malfeasance) is leveled against Garzón because he opened an investigation into his court's competence to rule on the forced disappearance of 114,266 people between July 1936, when a military coup against the legitimate government started the Spanish Civil War, and December 1951.

Garzón is accused of not applying the 1977 Amnesty Law, which it was ostensibly the duty of his office to comply with.

He is further charged with having declared himself competent to investigate the disappearances of persons during the Civil War and the Franco era. Tens of thousands of the slain lie buried in shallow graves and ditches in Spain, without their families ever being able to recover their bodies.

Juan Ignacio Cortés, spokesman for the Spanish chapter of Amnesty International, told IPS it is "scandalous for a judge to be put on trial for defending justice, truth and reparations for the victims, and their relatives, of a massive violation of human rights."

Earlier, Amnesty issued a communiqué saying it was of no importance whether or not Garzón had infringed national legislation, because it is the 1977 Amnesty Law that is at fault for preventing prosecutions for crimes defined by international law.

Amnesty also complained that maintaining the 1977 law "incurs non- fulfilment of obligations contracted by Spain by virtue of international law".

Therefore, in Amnesty's view, investigating human rights violations can never be regarded as a crime, even if doing so entails setting aside an amnesty law or other norms stipulating the prescription of such crimes.

At the root of the legal actions against Garzón is his decision five years ago to authorise the exhumation of 19 mass graves, one of which was presumed to contain the remains of poet Federico García Lorca (1898-1936), and to charge 35 high-ranking officials in the Franco regime with responsibility for the atrocities.

The Supreme Court criminal chamber ruled in November 2008 that Garzón did not have jurisdiction over the matter. In May 2009 the Supreme Court accepted a suit against Garzón by a Francoist group, and a year later decided to try the case.

Consequently, Garzón was suspended from his position as a member of the National Court, Spain's high court where major cases are heard.

Enrique Borcel, head of the Hispanic-Argentine Observatory in Madrid (OHA), a cultural and human rights NGO, told IPS that the trial of Garzón seeks to cover up the events of history, so that the whole truth about the crimes committed by dictatorships – in Spain or elsewhere – never comes to light, “because the actions and example of this judge attract attention from all over the world.”

Borcel was kidnapped and tortured in 1967 by agents of the Argentine military dictatorship of that time, and bargained for his freedom by selling his property and offices so as to pay “a ransom”, after which he emigrated to Spain where he has lived ever since.

The human rights activist emphasised the worldwide scope of the role played by Garzón in the fulfilment of United Nations treaties and international laws on human rights.

For example, he said, it was thanks to Garzón that investigations were opened in Spain into what happened to the thousands of firing squad execution victims who were buried in unmarked graves during the Franco era, and that in Argentina 43 members of the armed forces and one civilian were prosecuted for alleged repressive actions during the 1976-1983 dictatorship, after Garzón issued international arrest warrants.

Meanwhile, Cortés stressed that the right course of action is the opposite of what the Supreme Court is doing: it ought to support and promote the quest for justice, and support those who are victimised for defending human rights. This, he said, is an obligation under international law “which the Spanish state must uphold”.

Amnesty, Human Rights Watch, the International Commission of Jurists and the Association for the Recovery of Historic Memory (a Spanish NGO working to find and identify those disappeared by the Franco regime) made a joint statement Monday in support of Garzón, reviving the phrase “Garzón is innocent, whatever the Supreme Court says!” coined by anti-corruption prosecutor Carlos Jiménez Villarejo in 2010.

Reed Brody, counsel for Human Rights Watch, said, “What bitter irony that Garzón is being prosecuted for trying to apply at home the same principles he so successfully promoted internationally.

“Thirty-six years after Franco's death, Spain is finally prosecuting someone in connection with the crimes of his dictatorship – the judge who sought to investigate those crimes,” he complained.

After this second trial, Garzón faces yet a third lawsuit before the Supreme Court, in which he will be accused of illegally receiving funds from the Santander Bank as payment for delivering some seminars at a university in the United States, which later allegedly influenced him to take a judicial decision in favour of Santander Bank president, Emilio Botín.

Strong as support for Garzón may be within Spain and beyond its borders, the judge's enemies appear to have achieved their purpose, as it seems highly unlikely the 56-year-old Garzón will be able to return to his High Court position, from which he opened so many doors for international human rights law.

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