



Date : Monday 20 February 2012

OPEN LETTER TO THE GOVERNMENT AND THE JUDICIARY OF SPAIN

More than 80 human rights NGOs from Europe, America, Oceania, Africa and Asia will contact this week the Spanish embassies in their respective countries in order to denounce the undue sentence of the judge Baltasar Garzón and the serious violation of the independence of the judiciary brought about by three criminal proceedings implemented against him. They will also hand over a letter (below) urging the Spanish government and the judiciary to guarantee the independence and impartiality of justice.

<http://www.fidh.org/OPEN-LETTER-TO-THE-GOVERNMENT-AND>

FIDH - Worldwide Human Rights Movement

We, the undersigned Human Rights NGOs from different countries, would like to express our deep concern regarding the criminalisation of Judge Baltasar Garzón.

On 9 February 2012, Judge Baltasar Garzón Real was condemned by the Second Chamber of the Supreme Court of Spain, in a sole instance (this being contrary to the European Convention for Human Rights). He was suspended from working as a judge for 11 years, thereby definitively losing his judicial functions. Proceedings were instigated against Judge Garzón because of the investigation he led into the political corruption case known as "Gurtel", which involved members of the Partido Popular. Garzón was charged with illegally wiretapping phone conversations of detainees who apparently kept on infringing the law while in prison, with the help of their lawyers. As human rights organisations we consider respect for the confidentiality of lawyer-client relations as fundamental in a society governed by the rule of law. We note, however, that in similar cases, other judges were never subject to judicial or even criminal proceedings, and are normally treated with internal procedures. The Prosecutor had requested the acquittal of Garzón. The Supreme Court rejected the proofs requested by the defence counsel and also denied the recusal of magistrates that would not provide independence and impartiality during the trial.

Judge Garzón has also recently been tried as a result of his investigation into the crimes of the Franco dictatorship. These proceedings were initiated through a judicial complaint filed by an extreme right group, and right now are awaiting sentencing. In this case, the Prosecutor also requested his acquittal. Judge Garzón was tried precisely because he acted in accordance with the obligations of Spain under international human rights law and his duty to protect the victims of crimes against humanity. In this case, Judge Garzón was charged with the crime of forfeit, for having accepted and assumed it was his legal duty to investigate the truth about the crimes against humanity committed during the Franco dictatorship, in particular in ordering to exhume mass graves where the remains of 114,266 unidentified victims of enforced disappearances, torture and extrajudicial killings are buried.

In another case, Judge Garzón was prosecuted because of the classes he taught at the University of New York. However, on 13 February 2012, the Justice dismissed the case for prescription.

We consider that the temporal coincidence of these three different trials, as well as the origin of the complaints, are evidence of judicial harassment aimed against Judge Garzón. The sentence recently imposed upon him, and the other ongoing proceedings negatively affect the credibility of the Spanish judiciary, which once deserved the recognition of broad sectors of the international community for its rigor and commitment to universal jurisdiction causes and to combat organised crime. This commitment has symbolised in Garzón's work, and for which he has risked his life.

For that reason, we share the concern of a group of United Nations experts, led by the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, and the five independent experts of the U.N. Working Group on Enforced or Involuntary Disappearances: "it is regrettable that Judge Garzón could be punished for opening an investigation which is in line with Spain's obligations to investigate human rights violations in accordance with international law principles".

"Supposed errors in judicial decisions should not be a reason for the removal of a judge and, even less, for a criminal proceeding to be launched," Ms. Knaul said, adding that "autonomy in the interpretation of the law is a fundamental element in the role of a judge and for progress in human rights."

The Special Rapporteur also stated that "reconciliation between the State and the victims of enforced disappearances cannot happen without the clarification of each individual case, and an amnesty law should not allow

an end to a State's obligation to investigate, prosecute and punish those responsible for disappearances."

For all those reasons, it is unacceptable and regrettable that in a democracy such as the Spanish one, the independence of justice could be weakened in such a manner, criminalizing a judge who used his independence, among others, to implement the International Law of Human Rights in its courts decisions.

As Human Rights organisations we also would like to express our recognition to Judge Baltasar Garzón Real for his independent and rigorous actions, in line with international obligations of States on Human Rights, and extend our thanks for his contributing to strengthening the right of victims to truth, justice and reparation in our countries. He deserves worldwide recognition.

For all those reasons we urge you to warranty judicial independence and impartiality, and we announce and reiterate our support to Baltasar Garzón Real in the proceedings that will help him restore his good name and his status as a Judge.

International organisations

Observatory for the Protection of Human Rights Defenders, joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT)

Comité de América Latina y el Caribe para la Defensa de los Derechos de las Mujeres (CLADEM)

Conectas - Direitos Humanos

FIAN International

Fundación Diáspora Solidaria

Afghanistan

Armanshahr/OPEN ASIA

Argentina

Asociación de Abogados de Buenos Aires

Asociación Americana de Juristas

Centro de Estudios Legales y Sociales (CELS)

Comisión Provincial por la Memoria

Comité de Acción Jurídica (CAJ)

Bolivia

Asamblea Permanente de Derechos Humanos de Bolivia (APDHB)

Oficina Jurídica para la Mujer de Cochabamba

Cambodia

Ligue Cambodgienne pour la Promotion et la Défense des Droits de l'Homme (LICADHO)

Chile

Corporación de Promoción y Defensa de los Derechos del Pueblo (CODEPU)

Observatorio Ciudadano (OC)

Colombia

Colectivo de Abogados José Alvear Restrepo (CCAJAR)

Comisión Intereclesial de Justicia y Paz

Corporación REINICIAR

Grupo Interdisciplinario por los Derechos Humanos (GIDH)

Cuba

Comisión Cubana de Derechos Humanos y Reconciliación Nacional (CDHRN)

Ecuador

Comisión Ecuémica de Derechos Humanos (CEDHU)

Fundación Regional de Asesoría en Derechos Humanos (INREDH)

Egypt

Egyptian Organization for Human Rights (EOHR)

France

Agir Ensemble pour les Droits de l'Homme (AEDH)

Comité d'Aide Aux Réfugiés (CAAR)

Fédération Nationale des Déportés et Internés, Résistants et Patriotes (FNDIRP)

France Terre d'Asile

Germany

Nürnberger Menschenrechtszentrum (NMRZ)

Guatemala

Asociación de Mujeres de Guatemala (AMG)

Centro para la Acción legal en Derechos Humanos (CALDH)

Fundación Myrna Mack

Instituto para la Atención y Protección Integral de la Víctima Social (IPAVSO)

Haiti

Centre Oecuménique des Droits Humains (CEDH)

Holland

Humanist Institute for Development Cooperation (HIVOS)

Honduras

Centro de Investigación y Promoción de los Derechos Humanos (CIPRODEH)

Indonesia

Commission for the Disappeared and Victims of Violence (KontraS)

Iran

Iranian League for the Defence of Human Rights (LDDHI)

Italy

Unione forense per la tutela dei diritti umani

Latvia

Latvian Human Rights Committee

Mexico

Asociación para la Defensa de los Derechos Humanos y Equidad de Género (ASDDHEG)

Asociación de Derechos Humanos del Estado de México (ADHEM)

Asociación de Familiares de Detenidos Desaparecidos y Víctimas de Violaciones de Derechos Humanos en México (AFADEM FEDEFAM)

Asociación Nacional de Abogados Democráticos (ANAD)

Centro de Derechos Humanos Coordinadora 28 de Mayo A.C

Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C.

Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH)

Fundación Diego Lucero A.C.

Liga Mexicana por la Defensa de los Derechos Humanos A.C. (LIMEDDH)

Observatorio Nacional de Prisiones México (ONP México)

Red de Alerta Temprana

Red Universitaria de Monitores de Derechos Humanos (RUMODH)

Nicaragua

Centro Nicaragüense de Derechos Humanos (CENIDH)

Paraguay

ÁGORA / Espacio Civil

Fundación "Celestina Pérez de Almada" Museo de las Memorias: dictadura y derechos humanos

Peru

Asociación Pro-Derechos Humanos (APRODEH)

Centro de Atención Psicosocial (CAPS)

Centro de Desarrollo Étnico (CEDET)

Centro para el Desarrollo Humano - Apurímac (CDH)

Centro de Políticas Públicas y Derechos Humanos - Perú Equidad

Comisión de Derechos Humanos (COMISEDH)

Comisión de Justicia Social (CJS)

Instituto Bartolomé de las Casas

Instituto Peruano de Educación en Derechos Humanos y la Paz (IPEDEHP)

Instituto Promoviendo Desarrollo Social (IPRODES)

Paz y Esperanza

The Philippines

Alliance of Human Rights Advocates (PAHRA)

Spain

Asociación Cultura Iberoamericana Andrés Bello (ACIAB)

Asociación Pro-Derechos Humanos de España (APDHE)

Comité de Apoyo al Tibet (CAT)

Fundación IEPALA

PLATAFORMA DE MUJERES 2000

Switzerland

Ligue suisse des droits de l'Homme - Geneva

Taiwan

Taiwan Association for Human Rights

Thailand

Union for Civil Liberty

Turkey

Human Rights Association (IHD)

United States

Center for Constitutional Rights (CCR)

Center for Justice and Accountability

Human Rights Litigation and Advocacy Clinic, University of Minnesota

Quaker Initiative to End Torture (QUIT)

Uruguay

Articulación Feminista Marcosur

Cotidiano Mujer