

Judges and the Rule of Law: the prosecution of Judge Garzón in Spain

Recommendations:

Lawyers Rights Watch Canada (LRWC), the Asian Legal Resource Centre (ALRC)¹ and the International Association of Democratic Lawyers (IADL) call on the Human Rights Council to fulfill its duty to promote and protect the rule of law and fundamental rights and freedoms in Spain and around the world by recommending and monitoring:

1. Guarantees of absolute immunity for judges from criminal and civil proceedings arising from actions taken as part of their judicial function to assess the relevant facts and interpret and apply the applicable domestic and international laws.
2. The Reinstatement of Judge Baltasar Garzón (Garzón) to the bench of the *Audiencia Nacional* pending the outcome of the proceedings taken against him.
3. More effective and timely protection for judges facing threats to their professional and personal security as a result of controversial decisions, compliant with International law involving state actors.

LRWC, ALRC and IADL conclude that the suspension of, and proceedings against Garzón are unsupported by law and are illegitimate based on a review and analysis of:

- International law binding on Spain mandates the resolution of the enforced disappearances, (disappearances) extra-judicial executions (executions) and acts of torture constituting crimes against humanity through effective investigations.
- International standards safeguarding judicial independence and the paramount duty of judges to maintain the rule of law and ensuring accountability for gross human rights violations.

The prohibition of disappearances, executions and acts of torture, whether committed on a widespread or systematic basis or on an individual basis are recognized as international crimes by conventional and customary international law. The *erga omnes* duty to enforce these international crimes requires states to adopt measures necessary to effectively prevent, investigate, prosecute and punish such crimes. Because these duties—arising from international law—are owed to all humankind, they cannot be displaced by domestic laws. Therefore, Spain's Amnesty Law of 1977 (AL/77) and prescription periods cannot be applied to bar investigations of and remedies for such crimes.

LRWC, ALRC and IADL conclude that the prosecution also appears intended to achieve the extra-legal purposes of:

- shielding perpetrators of international crimes from accountability,
- deterring judges from accepting complaints to open criminal prosecutions involving state authorities.

The prosecution of a judge for investigating international crimes renders nugatory the international framework to fight impunity for the most grave human rights violations, as it prevents the judicial system from its primary duties, makes a mockery of international law, denies remedies and violates the right of victims and society to know the truth.

¹ Asociación Española para el Derecho Humano a la Paz (AEDIDH) and el Grupo de Trabajo sobre Justicia Internacional y Derechos Humanos endorse this statement.

Background

- On 16 October 2008 Judge Garzón of Spain's *Audiencia Nacional*, in response to a complaint filed by victims associations, opened an investigation into disappearances, executions, torture and arbitrary detentions (constituting crimes against humanity) allegedly committed during the Spanish Civil War and by the Franco regime.
- On October 21st, the Public Prosecutor sought to terminate the investigation relying on Spain's 1977 amnesty law (AL/77), statutory limitations and the rule against retroactive criminal laws. In December 2008, the Criminal Chamber of the National Court allowed the application, "without prejudice to the competence that could correspond to other judicial bodies."
- On 18 November 2008, Judge Garzón sent the case to the territorial courts where mass graves had been identified to continue the investigations
- On January 26, 2009, a right wing association filed a criminal complaint before the Supreme Court accusing Garzón of "*prevaricación*" (malfeasance) for instituting the investigation brought by the victims, which was admitted by the Supreme Court in May 2009.
- In February 2010 the Supreme Court rejected an application to stay the proceedings on the grounds that Garzón had "deliberately chosen to ignore or circumvent" AL/77 and the limitations of the Criminal Code.
- On May 11, 2010, the opening of the trial phase was ordered and on May 15, 2010, Garzón was suspended.

Impotence of Amnesty Laws

International courts, regional tribunals and UN committees and special procedures agree that amnesty laws contravene state duties to prevent, prosecute and punish serious human rights violations constituting international crimes and promote impunity and therefore cannot displace the imperative duty of states to investigate and remedy human rights violations such as disappearances, executions and torture.

The Human Rights Committee (Committee) has affirmed that, "...amnesties for serious violations of human rights are incompatible with the [International Covenant on Civil and Political Rights] Covenant."² It is noteworthy that Spain has not adopted the Committee's recommendations to repeal the AL/77 and ensure that Franco era human rights crimes were properly investigated and remedied.

The Committee has consistently concluded that amnesty laws:

- a) are "incompatible with the duty of the State party to investigate human rights violations, to guarantee freedom from such violations within its jurisdiction and to ensure that similar violations do not occur in the future"³,
- b) lead to a form of impunity incompatible with the International Covenant on Civil and Political Rights (ICCPR),⁴
- c) "...infringe[s] the right to an effective remedy."⁵

The Committee consistently reached these conclusions in cases involving the amnesty laws of Uruguay,⁶ Argentina⁷, Peru⁸, Chile⁹, Senegal¹⁰, Niger¹¹, and France¹² and regarding individual communications.¹³

² CCPR/C/ESP/CO/5, 5 January 2009, Concluding Observations of the Human Rights Committee on Spain, at para. 9 citing general comment No. 20(1992) re: ICCPR article 7.

³ Report of the Human Rights Committee, 21 October 1999, A/54/40 at para. 203, regarding Chile.

⁴ *Concluding observations on the second periodic report of the Congo : Congo. 03/27/2000. CCPR/C/79/Add.118. (Concluding Observations/Comments)* at para. 12.

⁵ *Concluding observations of the Human Rights Committee : El Salvador. 07/22/2003. CCPR/CO/78/SLV. (Concluding Observations/Comments)* at para. 6.

⁶ CCPR/C/79/Add.90, par. 1, April 8, 1999

The Committee against Torture (CAT) agrees that amnesty laws that preclude investigations and prosecutions are incompatible with State parties obligations¹⁴ and recommended that Spain “should ensure that acts of torture [including]...disappearances, are not offences subject to amnesty”.¹⁵

The Working Group on Enforced or Involuntary Disappearances (WGEID) has recommended that amnesty laws (even if endorsed by a referendum) be annulled to ensure the right to justice and truth.¹⁶ The Special Rapporteur on Torture has said “legal provisions granting exemptions from criminal responsibility for torturers, such as amnesties, indemnity laws etc., should be abrogated.”¹⁷

The International Committee of the Red Cross (ICRC) has also concluded that amnesties are incompatible with state duties to investigate and prosecute war crimes.¹⁸

Both the International Criminal Tribunal for the Former Yugoslavia (ICTY)¹⁹ and the Special Court for Sierra Leone²⁰ have ruled that amnesties cannot be allowed for crimes against humanity and war crimes as to do so would render the international prohibitions nugatory.

The Inter-American Court (IACtHR) and Inter-American Commission of Human Rights (IACHR) have consistently ruled that amnesty laws violate the obligation to investigate and remedy serious human rights violations and are therefore illegal in cases involving the applicability of amnesty law of Brazil,²¹ Peru,²² Chile,²³ Guatemala²⁴ and El Salvador²⁵ and other states. Rulings of the European Court of Human Rights

⁷ CCPR/C/79/Add.46, par. 20, April 5, 1995 and CCPR/CO/70/ARG, par 9, November 3, 2000.

⁸ CCPR/C/79/Add.67, par. 9, November 8, 1996.

⁹ CCPR/C/79/Add. 104, par. 7, March 30, 1999.

¹⁰ CCPR/C/79/Add.10, par. 5, December 28, 1992.

¹¹ CCPR/C/79/Add.17, par.7, April 29, 1993.

¹² CCPR/C/79/Add.80, par. 12, May 1997.

¹³ CCPR/C/51/D/322/1988, August 9, 1994.

¹⁴ For example, in the cases of Peru, Kyrzyzstan, Azerbaijan, in Report of the Committee Against Torture General, Supplement No. 44 A/55/44, 2000.

¹⁵ CAT/C/ESP/CO/5, par. 21.

¹⁶ Report of the Working Group on Enforced or Involuntary Disappearance Addendum MISSION TO ARGENTINA, 5 January 2009, A/HRC/10/9/Add.1. See also, mission to El Salvador, A/HRC/7/2/Add.2, October 26, 2007.

¹⁷ Report of the Special Rapporteur on Torture to the Commission on Human Rights, U.N. Doc. E/CN.4/2001/66.

¹⁸ Comment to rule 159 in relation to rule 158, at ICRC, *Customary International Humanitarian Law. Volume I: Rules*.

¹⁹ *Prosecutor v. Anto Furundzija*, ICTY, 10 December 1998 (n° IT-95-17/1-T), para. 155. Also in *Prosecutor v. Delacic et al* (16 November 1998, case n° TI-96-21-T, para. 454) and *Prosecutor v. Kunarac* (22 February 2001, case n° TI 96-23-T et TI-96-23/1, para. 466).

²⁰ *Prosecutor vs. Moinina Mofana and Kondewa*, Appeal Chambre, Special Court for Sierra Leone, SCLS-04-14-T-128-7363, Decision on amnesty provided by the Lomé Accord, 25 May 2004.

²¹ *Lund y otros (“Guerilla do Araguaia”) vs. Brasil* IACrHR, judgment (preliminary objections, merits, reparations y costs), 24 November 2010, para. 170-176.

²² See *Barrios Altos vs. Peru* IACtHR, judgement, 26 September 2006, para. 120-124 and *La Cantuta vs. Peru* IACtHR, judgement (merits, reparations and costs), 29 November 2006, par. 225-226.

²³ *Almonacid Arellano y otros vs. Chile*, IACtHR, judgement (merits), 14 March 2001, para. 41.

²⁴ *Caso de la Masacre de las Dos Erres vs. Guatemala*, IACrHR, 24 November 2009, para. 129.

²⁵ *Las Hojas Masacre (El Salvador)*, IAComHR, El Salvador Report – State’s responsibility for 1983 Las Hajas massacre, [1993] 14 HRLJ, No- 5-6, 167, Report No. 26/92, 24 September 1992, para. 169.

(ECtHR)²⁶ that for the purposes of an “effective remedy” the granting of an amnesty should not be permissible as it would render the imperative norms that prohibit international crimes meaningless.

In accordance with these interpretations, domestic courts have also ruled that amnesty laws violate domestic and international law.²⁷ Spanish courts have consistently affirmed that the amnesties granted in other countries and which have the purpose of exonerating perpetrators of crimes under International law from criminal responsibility are not binding on Spanish courts.²⁸

Imprescriptibility

Generally statutes of limitation do not apply to gross violations of human rights constituting crimes under international law.²⁹

This principle of imprescriptibility for disappearances, executions and acts of torture derives from the imperative nature of the norms prohibiting such crimes and as such has been confirmed by all the jurisprudence. The Committee recommended that Spain “guarantee recognition by the domestic courts of the non-applicability of a statute of limitations to crimes against humanity”³⁰ and proclaimed, in the case of Argentina, that gross violations “during military rule should be prosecutable for as long as necessary, with applicability as far back in time as necessary to bring their perpetrators to justice”³¹.

CAT recommended generally that “action to punish human rights violations not be subject to statutes of limitations”³² and has recommended the repeal of limitations with respect to torture.³³ In the case of Spain, CAT insisted “the prosecution of acts of torture should not be constrained by the principle of

²⁶ See *Ould Dah v. France*, ECtHR, 17 March 2009, Application no. 13113/03, para. 16-17 and *Abdülsamet Yaman v. Turkey* ECtHR, Judgement of 2 November 2004, Application no. 32446/96, para. 55.

²⁷ See *Nibia Sabalsagaray Curutchet*, Suprema Corte de Justicia de Uruguay, Sentencia no. 365/09, resolución de 19 de octubre de 2009; *Claudio Abdón Lecaros Carrasco*, Corte Suprema de Justicia de Chile, Rol no. 47.205, Recurso No. 3302/2009, Sentencia de Reemplazo de 18 de mayo de 2010; *Menéndez et. al (Brandalís)*, Sentencia del Tribunal Federal Oral n° 1, 40/M/2008, de 24 de julio de 2008; and, *Accomarca*, Tribunal Constitucional de la República del Perú: Exp. N° 00218-2009-PHC/TC Lima, 11 de noviembre de 2010.

²⁸ Juzgado Central de Instrucción n° 5 (Audiencia Nacional): Auto de 25 de marzo de 1998, confirmando la jurisdicción española, FJ° 15 (*caso militares argentinos*) y auto de procesamiento de *Miguel Cavallo* de 1 de septiembre de 2000; Juzgado Central de Instrucción n° 6: Auto de 20 de septiembre de 1998 (manteniendo la competencia de la jurisdicción española), (*caso Pinochet*); Sala de lo Penal de la Audiencia Nacional: Auto de 4 de noviembre de 1998 (*Plan Cóndor - caso Adolfo Scilingo*) y 5 de noviembre de 1998 (*caso Pinochet*).

²⁹ See: *Rome Statute of the International Criminal Court* defines widespread disappearances, torture and killings (executions) as international crimes “...not...subject to any statute of limitations” (art. 29) and reminds the duty of every state party to exercise its criminal jurisdiction over those responsible for international crimes.” (Art. 17.1.a); *The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* prohibit statutes of limitation from application to such crimes (Art. 6) and require that domestic laws provide at least the same protection for victims as required by international law (para. 2(d);

1968 UN Convention on the Non-Applicability of Statutory Limitations; 1974 *European Convention on the Non-Applicability of Statutory Limitations*; 1994 Inter-American Convention on the Forced Disappearance of Persons (art. 7) and 2006 International Convention for the Protection of All Persons from Enforced Disappearance (arts. 5 and 8).

³⁰ CCPR/C/ESP/CO/5, 5 January 2009, Concluding Observations of the Human Rights Committee on Spain, at para. 9.

³¹ *Concluding observations of the Human Rights Committee: Argentina*. 11/03/2000, CCPR/CO/70/ARG.CCPR/CO/70/ARG, para 9.

³² CAT/C/CR/29/2, para. 6(c), December 23, 2002.

³³ Concluding Observations on Turkey, CAT/C/CR/30/5, para. 7(c), 27 May 2003, and Concluding Observations on Slovenia, CAT/C/CR/30/4, para. 6(b), 27 May 2003,

legality or the statute of limitation”³⁴.

The ICRC has concluded that statutes of limitation are not applicable to war crimes.³⁵

The ICTY affirmed that the gravity of crimes at issue precludes application of limitations.³⁶

The IACtHR has held that prescription and other measures intended to prevent investigation and accountability for serious human rights violations such as torture, executions and disappearance are prohibited.³⁷

The ECtHR,³⁸ the European Commission on Human Rights (EComHR)³⁹ and the domestic courts of Argentina,⁴⁰ Chile,⁴¹ Uruguay⁴² and Peru⁴³ have affirmed that statutory limitations do not apply to the most serious crimes (including war crimes and crimes against humanity) and therefore cannot be interpreted to restrict investigation or remedies.

Additionally, jurisprudence predating the *International Convention for the Protection of All Persons from Enforced Disappearance* (Convention) agrees that unresolved disappearances are continuing crimes and consequently any limitation does not begin until the prohibited situation has ceased and the fate and whereabouts of the victims is known and the remains recovered.⁴⁴

With respect to the issue of retroactivity, widespread disappearances and executions have been recognized as crimes against humanity since the Hague Convention of 1899, codifying the customary laws of armed conflict. Both the EComHR and the ECtHR have emphasized “the rule that there can be no time-bar...laid down by the Charter of the Nuremberg Tribunal” and therefore retroactivity does not arise.⁴⁵ In addition, the ECtHR has noted that the Nuremberg principles just reiterated the definition of war crimes

³⁴ CAT/C/ESP/CO/5, para. 22.

³⁵ Customary International Humanitarian Law, Vol 1: Rules, ICRC, Rule 160.

³⁶ See *Prosecutor v. Anto Furundzija*, ICTY, 10 December 1998 (n° IT-95-17/1-T, and *Prosecutor v. Mrdja*, ICTY, Case No. IT-02-59-S (Trial Chamber), March 31, 2004, para. 104.

³⁷ See, *Chumbipuma Aguirre et al. (Barrios Altos) v. Peru*, *La Cantuta v. Peru*, *Almonacid Arellano et al. v. Chile*, supra footnote 21; *Trujillo Oroza v. Bolivia*, IACtHR, (Reparations), 27 February 2002, Series C No. 92 (2002), para. 106; *El Caracazo v. Venezuela*, IACtHR, (Reparations), 29 August 2002, Series C No. 95 (2002), para. 119; *Myrna Mack Chang v. Guatemala*, IACtHR, 25 November 2003, Series C No. 101 (2003), para. 276; *Goiburú et al. v. Paraguay*³⁷ IACtHR, (Merits, Reparations and Costs), 22 September 2006, Series C No. 153, para. 45.

³⁸ See *Cyprus v. Turkey* ECtHR, 10 May 2001, Application No. 25781/94, para. 145; *Papon v. France* ECtHR, 25 July 2002, Application. No. 54210/00; and *Kolk and Kislyiy v. Estonia* ECtHR, Application Nos. 23052/04 and 24018/04, 17 January 2006.

³⁹ *Touvier v. France, Decision on Admissibility*, EComHR, Application No. 29420/95, 13 January 1997.

⁴⁰ *Arancibia Clavel*, Corte Suprema de Justicia de la Nación, 24 August 2004, causa No. 259.A.533.XXXVIII.

⁴¹ *Miguel Ángel Sandoval*, Corte Suprema de Chile, 17 November 2004, rol n° 517-2004, para. 29, 35-8.

⁴² *Quiternos*, Sentence of Judge Eduardo Cavalli, 18 October 2002.

⁴³ Sentencia del Tribunal Constitucional de la República del Perú: Exp. N° 00218-2009-PHC/TC, Lima, 11 November 2010 (*Accomarca* Case).

⁴⁴ See: *Tiu Cojín v. Guatemala*, IACtHR, 26 November 2008, para. 84; *Radilla Pacheco v. Mexico*, IACtHR, 23 November 2009, para. 22-24; Corte Constitucional de Colombia, sentencia C-580/02, 3 de julio de 2002, expediente L.A.T.-218; *Miguel Ángel Sandoval*, Corte Suprema de Chile, 17 November 2004, rol n° 517-2004; and, WGEID, *Compilation of General Comments on the Declaration on the Protection of All Persons from Enforced Disappearance*, para. 26.

⁴⁵ See. *X v. Germany*, EComHR, Application No. 6946/75 (6 July 1976), and *Touvier v. France* ECtHR, Application No. 29420/95, 13 January 1997.

and thus “domestic courts could rely on international law as a basis ... without infringing the principles of *nullum crimen*”⁴⁶

In Spain, the *Audiencia Nacional* ruled in *SS Totenkopf-Sturmban*, that the legality principle applicable to international crimes such as crimes against humanity is not domestic, but rather international,⁴⁷ and thus Spain’s Criminal Code applied retroactively to conducts considered criminal under international law.⁴⁸

Violation of Judicial Independence

The rule of law, recognized as essential to peace and justice,⁴⁹ “...requires laws which define limits on state power and a system of courts independent of every other institution of the state to interpret and apply those laws.”⁵⁰ An independent, impartial and competent judiciary is the key component of the rule of law and the foundation upon which all rights depend.⁵¹ Fundamental to maintenance of the rule of law is the duty of all states to guarantee, observe and respect the independence of judges to render decisions on all issues of a judicial nature.⁵² Judicial investigation of disappearances, executions and torture is mandated by all applicable international instruments. Therefore, a judge must open an investigation when—as in this case—there are reasonable grounds to believe that widespread and systematic disappearances, executions or torture occurred and are unresolved.⁵³ Judges have a crucial role in ensuring justice through restricting state arbitrariness and interpreting domestic law in accordance with emerging principles of customary international law. Internationally accepted principles mandate that disputes with the correctness of a judge’s decision can only be dealt with by appeal and not by punitive measures directed

⁴⁶ See *Kononov v. Latvia*, ECtHR, App. No. 36376/04, judgment of the Grand Chamber, 17 May 2010.

⁴⁷ “Nothing in this article shall prejudice the trial and punishment of any person for any act of omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.” *International Covenant on Civil and Political Rights*, Art. 15.2.

⁴⁸ JUZGADO CENTRAL DE INSTRUCCIÓN nº2 (Audiencia Nacional), Diligencias Previas 211/09L, auto de 17 de julio de 2008.

⁴⁹ “Whereas, it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,” Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3rd Sess, Supp. No. 13, UN Doc. A/810 (1948) 71, Preamble.

⁵⁰ P. Sieghart, *International Human Rights Law*, cited in Lord Elwyn-Jones, “Judicial Independence and Human Rights” in R. Blackburn & J. Taylor, eds., *Human Rights for the 1990s: Legal and Political and Ethical Issues* (London: Mansell, 1991) at 44.

⁵¹ *Latimer House Principles*, endorsed by Commonwealth Heads of Government at their summit in Abuja, Nigeria, December 2003, Article IV, Independence of the Judiciary. See also the Supreme Court of Canada in *Reference re Provincial Court Judges*, [1997] 3 S.C.R. 3 at para. 131.

⁵² See:

Basic Principles on the Independence of the Judiciary, Adopted by the Eighth United National Congress of the Prevention of Crime and the treatment of Offenders in 1985;

Bangalore Principles of Judicial Conduct 2002, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002;

Recommendation No. R (94)12 of the Committee of Minister of the Council of Europe on the Independence, Efficiency and Role of Judges, Adopted by the Committee of minister of the Council of Europe in 1994;

Latimer House Principles endorsed by Commonwealth Heads of Government at their summit in Abuja, Nigeria, December 2003, Article IV, Independence of the Judiciary.

⁵³ “The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.” *Basic Principles on the Independence of the Judiciary*, Adopted by the Eighth United National Congress of the Prevention of Crime and the treatment of Offenders in 1985, Art. 3.

at the judge personally. Suspension –let alone criminal prosecution, as occurred here--is strictly prohibited.⁵⁴

“Liability... would destroy that independence without which no judiciary can be either respectful or useful.”⁵⁵

A law “...used to punish judges whose decisions displease the government in question... infringes the constitutionally protected independence of the judiciary and is thus invalid...”⁵⁶ Clearly, “...while exceeding jurisdiction takes an act or decision of a judge out of the realm of correctness, it does not take the activity out of the realm of judging.”⁵⁷

Judges investigating allegations of serious human rights violations constituting international crimes by state agents—including disappearances, executions and torture—are at heightened risk of professional and physical harm from reprisals and therefore require more stringent protections. For this reason International instruments prohibiting disappearances require states to provide special protection for investigators (including judges), lawyers and witnesses.⁵⁸

The proceeding against Judge Garzón demonstrate the failure by Spain to guarantee, respect and observe judicial independence as required by law and will have a chilling effect on other Spanish judges called upon to remedy serious human rights violations constituting crimes committed in Spain and abroad.

Respectfully submitted.

⁵⁴ “Judges shall be subject to suspension or removal only for reasons of incapacity of behaviour that renders them unfit to discharge their duties.” Art. 19, *infra*.

⁵⁵ *R.M. V. M.Z.*, Ontario Superior Court of Justice, Divisional Court, April 1, 2009. 249 O.A.C.1. 2009 at para. 26.

⁵⁶ *Cosgrove v. Canadian Judicial Council*, 261 D.L.R. (4th) 447 • 40 Admin. L.R. (4th) 1 • 282 F.T.R. 60

⁵⁷ *R.M. v. M.Z.*, Ontario Superior Court of Justice, Divisional Court, April 1, 2009. 249 O.A.C.1. 2009 at para 28 & 29, relying on the Supreme Court of Canada in *Morier and Boiley v. Rivard*, [1985] 2 S.C.R. 716 (S.C.C.) at p.737.

⁵⁸ *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, Article 15; *Declaration on the Protection of all Persons from Enforced Disappearance*, General Assembly resolution 47/133 of 18 December 1992, A/RES/47/133, 8 December 1992, Articles 13.3, 13.5 & 18; and, *International Convention for the Protection of all Persons from Enforced Disappearance*, Entry into Force 20 December 2010, Doc.A/61/488. C.N.737.2008, Art. 12.