



Date : Tuesday 23 March 2010

Open letter to Spanish judiciary authorities in solidarity with Justice Baltasar Garzón

Judges of the Supreme Court, Criminal chamber

General Prosecutor of the State Cándido Conde-Pumpido Tourón

As jurists, lawyers, judges, academics and human rights defenders of different nationalities signing below, we are writing to you in order to express our perplexity regarding the decision on 3 February 2010 of the Investigative Judge of the Second Chamber of the Supreme Court in the special case N°: 20048/2009. The judge decided to continue the judicial investigation against Justice Baltasar Garzón, allegedly responsible of the offence of judicial prevarication [1].
<http://www.fidh.org/Open-letter-to-Spanish-judiciary>

FIDH - Worldwide Human Rights Movement

The criminal complaint was filed against Justice Garzón for trying to fulfill the obligation of the Spanish State to investigate crimes against humanity committed during Franco's dictatorship, in particular enforced disappearances. He is allegedly responsible of disregarding the 1977 Amnesty Law, of violating the principle of non retroactivity of criminal law and the principle of legality and prescription of criminal action.

On 31 October 2008, the United Nations Human Rights Committee has expressed its concerns about the existing obstacles that Spanish victims have been fighting against in order to obtain truth, justice and reparation. The Committee has also called Spanish authorities to take the necessary measures to nullify the 1977 Amnesty Law and to guarantee the imperceptibility of crimes against humanity. Moreover, the Committee has asked the Government to create an independent commission to determine the historic truth about human right violations which took place during the Civil War and Franco's regime, and that will guarantee the localisation, exhumation and identification of the victims' remains, and its restitution to their families.

The so-called law "of Historical Memory" of 2007 has not taken into account the appropriate and sufficient measures in favor of victims. Contrary to what the investigative judge has stated in the decision against Garzón, the above mentioned law allows him to act in favor of the victims, for example by requesting the exhumation of the remains. Indeed the law establishes that it is "compatible with the exercise of the right to remedy and access to ordinary and extraordinary judicial proceedings, as established in national law or in international treaties and conventions ratified by Spain".

Enforced disappearances are among the gravest crimes which cannot be prescribed nor be granted with amnesty without attempting against international law, which is part of the Spanish judicial system.

The crime of illegal detention, without giving information of the detainee's location, or the crime of enforced disappearances, are crimes of continuous nature, that are ongoing until it is known what happened to the victims; that is why these crimes cannot be object of criminal prescription. When these disappearances have been committed in a systematic, massive and generalized manner, as it occurred during the Civil War and Franco's dictatorship, they are considered as crimes against humanity and hence cannot be subject amnesty nor pardon. For this type of crimes, the principle of non-retroactivity in criminal law cannot apply since the prohibition of such crimes already existed under international customary law (*jus cogens*) at the time of the facts and, the principle of legality, is formed by national provisions and international human rights law.

The investigative judge adds against Justice Garzón: "Of course, altruist motives, as the laudable wish of palliating the pain of the family of victims of horrendous crimes, do not exonerate, or even attenuate, the possible criminal responsibility of [judge Garzón]".

Justice Garzón certainly acts within his obligation towards justice and human rights. Altruism can be part of his personal convictions, but what is at stake here is the obligation of the State of Spain to respect the rights of victims of Franco's dictatorship as well as to fulfill its international obligations as regards human rights.

The investigative judge reproaches Justice Garzón for not having considered the denounced facts as related to political crime and for disregarding the application of the 1977 Amnesty Law. Nevertheless, the same law states in its article 1 that it is not applicable concerning facts that presuppose "grave violence against the life or personal integrity of several persons".

The International Convention for the Protection of All Persons from Enforced Disappearance, ratified by Spain on 24

September 2009, states in its article 13 that "the offence of enforced disappearance shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives".

In its article 24, the Convention considers as a 'victim' "the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance" and states that "each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person". Finally it reiterates the obligation of each State Party to take "all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains".

We therefore express to you, dear judges, our perplexity in relation to the use of the offence of judicial prevarication against Justice Baltasar Garzón. Indeed, a judicial officer has always some scope for discretion in the implementation of law. If he does so in order to fulfill the State's human rights obligations, his acts cannot be considered as irrational or contrary to law, otherwise damaging the basic principles of the administration of criminal justice concerning the investigation, prosecution, reparation and prevention of all types of crimes, in particular crimes of international character, as in the present case.

We would also like to express our recognition of Justice Baltasar Garzón's work in favour of victims' rights to truth, justice and reparation, not only in Spain but beyond Spanish borders. He became thereby a very important defender and promoter of international criminal law in the past years, enjoying now a well-earned worldwide recognition.

We hope that you can reverse Francisco Quevedo's maxim "where there is little justice, it is dangerous to be right", and contribute to have in Spain a lot of justice and a lot of reason, allowing the rights of victims and their families to be fully respected. We also call you to support judges like Baltasar Garzón, in their actions that enable Spain to fulfill its obligations under international human rights law, and that contribute to the well being of Spanish people but also of the humanity as a whole.

Respectfully yours.

SIGNATORY ORGANISATIONS

Asociación Pro Derechos Humanos de España (APDHE) - ESPAÑA Comisión Española de Ayuda al Refugiado (CEAR) - ESPAÑA Institut de Drets Humans de Catalunya (IDHC) - ESPAÑA Instituto de Estudios Políticos para América Latina y África (IEPALA) - ESPAÑA Justicia y Paz - ESPAÑA Liga Española Pro Derechos Humanos - ESPAÑA Movimiento por la Paz, el Desarme y la Libertad (MPDL) - ESPAÑA Paz y Cooperación - ESPAÑA Mundubat - ESPAÑA UNESCO Etxea - ESPAÑA ATTAC - ESPAÑA Comunal Laurita Allende en España de PSCh - ESPAÑA Asociación para las Naciones Unidas en España (ANUE) - ESPAÑA Asociación para la Defensa de la Libertad Religiosa (ADLR) - ESPAÑA Plataforma de Mujeres Artistas contra la Violencia de Género - ESPAÑA Coordinadora Estatal de Asociaciones Solidarias con el Sáhara (CEAS-Sáhara) Asociación Española para el Derecho Internacional de los Derechos Humanos (AEDIDH) - ESPAÑA Asociación por los Derechos Humanos en Afganistán (ASDHA) - ESPAÑA IPES Elkartea. Instituto de Estudios Sociales, Navarra - ESPAÑA Voluntarios Comunidad Parroquial Santo Domingo de la Calzada. Cañada Real. Madrid. - ESPAÑA Center For Constitutional Rights - USA Lawyer's Rights Watch Canada (LRWC) - CANADA Syndicat de la Magistrature Français - FRANCIA Conférence du Barreau de Paris - FRANCIA Grupo Belga por la Justicia y la Paz en Guatemala - BÉLGICA Unione Forense per la Tutela dei Diritti dell'Uomo (UFTDU) - ITALIA Asociación Servicios de Promoción Laboral (ASEPROLA) - COSTA RICA Ligue Djiboutienne des Droits Humains (LDDH) - DJIBOUTI Asociación Por Derechos Humanos (APRODEH) - PERÚ Asamblea Permanente por los Derechos Humanos (APDH) - ARGENTINA Centro de Estudios Legales y Sociales (CELS) - ARGENTINA Centro para la Acción Legal en Derechos Humanos (CALDH) -

GUATEMALA Comisión de Derechos Humanos de Guatemala (CDHG) - GUATEMALA Comisión Ecuuménica de Derechos Humanos (CEDHU) - ECUADOR Frente Ecuatoriano de Derechos Humanos (FEDHU) - ECUADOR Comisión de Derechos Humanos de El Salvador (CDHES) - EL SALVADOR Centro de Derechos y Desarrollo - (CEDAL) - PERÚ Coordinadora Nacional de Derechos Humanos (CNDDHH) - PERÚ Centro de Políticas Públicas y Derechos Humanos - Perú EQUIDAD - PERU Coalición Salvadoreña para la Corte Penal Internacional (CSCPI) - EL SALVADOR Corporación Colectivo de Abogados "José Alvear Restrepo" (CCAJAR) - COLOMBIA Instituto Latinoamericano de Servicios Legales Alternativos (ILSA) - COLOMBIA Comité Permanente por la Defensa de Derechos Humanos (CPDH) - COLOMBIA Organización Femenina Popular - COLOMBIA Organización Mundial contra la Tortura (OMCT) Frente Nacional de Resistencia Popular - HONDURAS Bloque Popular Honduras - HONDURAS Fundación Regional de Asesoría en Derechos Humanos (INREDH) - ECUADOR Comité de Acción Jurídica (CAJ) - ARGENTINA Centro Nicaragüense de Derechos Humanos (CENIDH) - NICARAGUA Centro de Iniciativas Democráticas (CIDEM) - PANAMÁ FIAN Internacional Federación Internacional de Derechos Humanos (FIDH) Associació per a la recuperació de la memòria històrica de Catalunya (ARMHC) Fédération euroméditerranéenne contre les disparitions forcées (FEMED) Collectif des Familles de Disparu(e)s en Algérie (CFDA)

INDIVIDUAL SIGNATURES

Louis Joinet, ex magistrado de la corte de casación francesa y ex relator especial de la ONU para Haití y en la lucha contra la impunidad. Carla del Ponte, actual embajadora de Suiza en Argentina. Roberto Garretón Merino, abogado chileno, ex-relator especial y experto de la ONU, y miembro de la Asamblea General de la OMCT. Luis Acebal Monfort, Vicepresidente Asociación Pro DD HH1 de España (APDHE). Roberto Saviano. Escritor. Autor de Gomorra. Inma Chacón, Escritora y Profesora de la Universidad Rey Juan Carlos de Madrid Javier Mujica. Defensor de Derechos Humanos. Mario Lana. Presidente Liga Italiana. ITALIA. Rosa María Ayala Sancha. Defensora DD HH Carlos Ballesteros García, Profesor Universidad Pontificia Comillas Ana Barrero Tiscar, Fundación Cultura de Paz Lionel Baudet Labbé, Presidente Comunal Laurita Allende en España Andrew Buchan, Lawyer Eric Alt, delegado del Syndicat de la magistrature à MEDEL (Magistrats européens pour la démocratie et les libertés) FRANCIA Jorge Auat fiscal a cargo de la Unidad Fiscal de Coordinación y Seguimiento de las causas por violaciones a los Derechos Humanos cometidas durante el terrorismo de Estado (Procuración General de la Nación -ARGENTINA-). Pablo Parenti, coordinador de la Unidad Fiscal de Coordinación y Seguimiento de las causas por violaciones a los Derechos Humanos cometidas durante el terrorismo de Estado (Procuración General de la Nación -ARGENTINA-). Amelia M. Bayón Gimeno, APDHE Mikel Berraondo López. Instituto de DD HH, Universidad de Deusto Javier Blanco Belda. Defensor DD HH Raquel Colera Cañas. Defensora DD HH M. Isabel Córdoba Montaña, Defensora DD HH Ana M^a Cañas Cortázar. Defensora DD HH Paco Cascón Soriano. Educador, Defensor de DD HH Raquel Colera Cañas. Defensora DD HH Javier Chinchón Álvarez. Profesor de Derecho Internacional y Relaciones Internacionales Paloma Cruz López. Defensora de DD HH Bernardo Diaz Salina. Defensor DD HH Julia Jaraiz. Defensora DD HH Ana Etxenique. Vicepresidenta Confederación de Consumidores y Usuarios Celia Fernández Aller. Profesora Derecho, Univ. Politécnica Madrid José Miguel Fernández López. Defensor DD HH Paula Fernández Martínez. Defensora DD HH Ana María Flores Barraza. Directiva APDHE José Antonio Gimbernat Ordeig, Presidente Federación de Asociaciones de Derechos Humanos - España Katya Ruiz Jodrá, Defensora DD HH Bienvenida Goikoechea Aldaz. Defensora DD HH María Isabel Guijarro Atienza, Defensora DD HH M^a Pilar Hernández Vázquez. Abogada. Defensora DD HH Calo Iglesias. Educador para la Paz. Santiago de Compostela Marisol Iturralde Roger. Directiva APDHE Augusto Klappenbach Minotti. Ex-Rector Universidad. Argentina Manuel León Rodríguez, Fundación Socialdemócratas Pedro López López. Profesor Universidad Complutense. Antonio López Pina. Catedrático de Derecho Constitucional. Universidad Complutense Concepción Marino Canosa, Defensora DD HH Fernando Mariño Menéndez, Director Instituto de Derecho Internacional, Universidad Carlos III, Madrid María José Martín Antón. Defensora DD HH Concepcion Martin Rey. Defensora DD HH Asier Martinez de Bringas. Profesor de Derecho. Constitucional, Barcelona Federico Mayor Zaragoza, Presidente, Fundación Cultura de Paz Manuela Mesa Peinado. Directora de CEIPAZ-Fundación Cultura de Paz Alicia Moreno Pérez. Abogada del Ilustre Colegio de Abogados de Madrid Adriana Moscoso del Prado Hernández. Directiva APDHE María Novo Villaverde.

Catedrática de la Universidad Nacional a Distancia. Madrid Carmen Oliart Delgado de Torres, Defensora de DD HH Manuel Ollé Sesé. Abogado. Presidente APDHE Rosa Orta Álvarez. Defensora DD HH Annarita Palumu. Defensora DD HH Cristina Pascual Álvaro. Defensora DD HH Francisco José Pascual Díez. Profesor. Defensor DDHH Fernando Pedrós Pérez. Defensor DD HH Justo Pérez Corral. Defensor DD HH Lilian Ana Pertovt, Defensora DD HH Oscar Peyrou. Defensor DD HH Annegret Pietsch. Defensora DD HH José Luis Pitarch Bartolomé. Directiva APDHE. Profesor de Derecho Constitucional, Univ. de Valencia. Isabel Pizarro Ponce de la Torre. Defensora DD HH Higinio Polo. Profesor y escritor. Barcelona. Martin PRADEL, Abogado y Ancien secrétaire de la Conférence du Barreau de Paris - FRANCIA Jorge Riechmann, Profesor de Filosofía Moral. Universidad Autónoma de Madrid Miguel Ángel Rodríguez Arias, Profesor de Derecho Penal Internacional, Universidad de Castilla La Mancha. Carlos Ruiz. ATTAC España Mari Carmen Sánchez Hernández. Defensora DD HH Mari Carmen Sánchez Sánchez. Defensora DD HH Santiago Sanz Álvarez. Directiva APDHE Elias Sanz Casado. Defensor DD HH Silvia Schmitz Engelke, Defensora DD HH Patricia Simón Carrasco. Defensora DD HH Teresa Torres, Defensora DD HH Silvia Tubert, Defensora DD HH Lydia Vicente, Abogada, Defensora de los DD HH Andrés Viñas Orta. Defensor DD HH María Jesús Fernández Alonso. Defensora DD HH Crisanta Rey Ordás. Defensora DD HH Maximino Rey Rey. Defensor DD HH Paloma Maldonado. Psicóloga. Jonathan Contreras. Jurista. José Ugaz Sánchez-Moreno. Penalista. Procurador anticorrupción y profesor de derecho. Dr. Francisco Ercilio Moura. responsable del Programa de Derechos Centro de Derechos y Desarrollo - CEDAL. Eduardo A. Coello. Politólogo - HONDURAS Erasto Reyes Abogado, miembro del Bloque Popular-FNRP-Honduras - HONDURAS Lorena Zelaya. Resistencia Honduras - HONDURAS Mario Eduardo Minera Monzón - GUATEMALA Jime Nani Mosquera. Infostelle - PERÚ Walter Schweninger. Vocero del Grupo de Trabajo Internacional y Paz de los Verdes de Alemania. Juan Antonio Gimbernát. Presidente de la Federación de Asociaciones de Defensa y Promoción de los Derechos Humanos-España Rachel LINDON Abogada y Ancien Secrétaire de la Conférence - FRANCIA Delphine JAAFAR. Abogada y Ancien Secrétaire de la Conférence du Barreau de Paris - FRANCIA Francisco Torres Pérez. Sociólogo y profesor del Departamento de Sociología y Antropología Social de la Universidad de Valencia. Prof. José García Añón. Vicedecano de innovación educativa y calidad y Coordinador de la Facultad de Derecho para la Convergencia al Espacio Europeo de Educación Superior. Universidad de Valencia. Susana E. Vior. Docente investigadora Universidad Nacional de Luján Argentina Fouad Lahssaini. Député fédéral. Groupe Ecolo-Goen! Bélgica Oscar Castellucci. Docente universitario. Presidente de la Asociación Civil Martín Castellucci. María Adela Antokoletz. Docente. Hermana de Daniel, detenido desaparecido en la ESMA el 10/11/1976. Jose Antonio García Saez. Defensor DD HH Manuel Lambert. Conseiller juridique de la Ligue des Droits de l'Homme (Belgique), Président de la Coordination des ONG pour les droits de l'enfant (Belgique) et assistant en droit à l'Université libre de Bruxelles. Catherine Absalom. Miembro de la FIDH. Defensora DD HH. Jimena Reyes. Abogada. Defensora DD HH. Lola Borges Blázquez. Jurista y traductora. Defensora DD HH Maria Ximena Cañón Dorado. Abogada colombiana. Defensora DD HH María Roca. Politóloga. Defensora DD HH. Jaume Gosalbez. Periodista. Defensor DD HH. Vanesa Vacas. Socióloga. Defensora DD HH. Luis Guillermo Pérez. Secretario General FIDH y Secretario ejecutivo de CIFCA. Benjamin Deman Abogado. BÉLGICA Guyot Madeleine. Defensora DD HH. BÉLGICA Sharon Weill, Phd Candidate in international law, University of Geneva. SUIZA. Jules Fafchamps. Sindicalista. BÉLGICA. Florence Paul. Defensor DD HH. Liliane Cordova. Defensora DD HH. FRANCIA Florent Schaeffer. Defensor DD HH. Paris. Nicole Kahn Lyon. Defensora de los derechos humanos y miembro de la unión judía francesa por la paz que milita por los derechos de los palestinos. FRANCIA. Kristiina Vainio. M. Pol. Sc. (international law). FINLANDIA Professor Marian Hobson CBE. Fellow of the British Academy. Cambridge. Dr. Anat Matar. The Dept. of Philosophy. Tel Aviv University. Tel Aviv 69978. Israel Enrique Santiago Romero. Abogado. Ruth Kñallinsky Dra. Dpto. Incidencia y Comunicación Fundación CEAR -Habitáfrica. Alice Cherki Psiquiatra y Psiconalista. FRANCIA Juan Carlos Capurro. Presidente del CAJ y vicepresidente de la FIDH. AdAr Grayevsky. Defensor DD HH. Judith Butler. Professor. University of California, Berkeley Prof. François Lecercle. University of Paris-Sorbonne, Paris IV Rela Mazali. Defensora DD HH. Israel Kerstin Reemtsma. Defensora DD HH. Yuval Yonay. Senior Lecturer. Department of Sociology and Anthropology University of Haifa. ISRAEL Jaime San De Bremond. Abogado de DD HH Jean-Michel Frodon. Ecrivain, professeur, critique, ancien directeur des Cahiers du cinéma. Gustavo Gómez. Abogado del Ilustre Colegio de Abogados de Barcelona. Defensor DD HH Mauricio Forero. Profesor de Derechos Humanos. Mission de Derechos Humanos en Haiti-MICIVIH Tom Koenigs, Chairman of the Committee on Human Rights and Humanitarian Aid of the German Bundestag

[1] Article 446 of the Spanish penal code says: "the judge or magistrate who, intentionally, pronounces a ruling or emits a judgment that is not fair will be sanctioned: ... 3. by a fine of twelve to twenty-four months and special disqualification from public employment for a period of between ten and twenty years" .