

Judge Garzón: criminal case to begin in Spain

Prosecution in Spain violates Judge's Rights and is an Attack on Judicial Independence 23 January 2012

The trial of Judge Baltasar Garzón for his judicial decision to authorise an investigation into Franco-era crimes begins in Madrid tomorrow, 24 January 2012. Judge Garzón is being prosecuted under Spain's 'prevaricación' (or 'malfeasance') law, purportedly on the basis of having rendered 'unjust' judgments.

The decisions in question were Judge Garzón's decisions in 2006 to open an investigation into Franco-era crimes following a request by families and representatives of Franco's victims. Judge Garzón authorised preliminary investigative steps into the victim's families' allegations, to ascertain whether a prosecution would be justified. His analysis of Spanish law, as well as the body of developed international law in this area, led him to determine that Spain's 1977 amnesty law did not apply to the serious crimes against humanity in question. As a result, in a move which turned him from judge and human rights defender to criminal defendant, Judge Garzón was suspended without pay from his role pending the outcome of the criminal trial which begins tomorrow.

INTERIGHTS is representing Garzón in a pending case before the European Court of Human Rights (submitted in March 2011) which alleges that these criminal proceedings against Judge Garzón in Spain violate several of that country's obligations under the European Convention on Human Rights. Helen Duffy, INTERIGHTS Senior Counsel who is representing Judge Garzón, said

“The criminal case now underway against Judge Garzón violates his rights and punishes him for discharging his judicial responsibilities. But it also has broader implications. Prosecuting judges for their interpretations of the law, rather than appealing or reviewing those decisions within the normal legal framework if there is any basis to do so, violates the fundamental principle of judicial independence.”

A high level witness statement presented to the European Court by international experts – including international and national judges, former UN Special Rapporteurs on Judicial Independence – makes clear that prosecuting a judge for judicial opinions is at odds with internationally accepted standards. The statement highlights the potential chilling effect of such prosecutions on the willingness of national judges to enforce human rights standards on the national level, including on controversial and difficult questions such as accountability for crimes against humanity.

A further witness statement by a professor of criminal law submitted to the European Court explains that the malfeasance or 'prevaricación' law is being applied in this case in a way that has no basis in Spanish law either: the criminal provision has rarely been invoked in the past and only in relation to flagrant misinterpretations of the law. Yet individuals affected by Judge Garzón's decision have been allowed by the Supreme Court to use this law in private actions that seek to punish the judge for bringing the law to bear on certain politically

charged areas – namely the investigation of the Franco crimes which have enjoyed long impunity, and, in a different case, allegations of corruption in the governing Partido Popular. (Garzón's trial in this case was completed last week).

Yet a further high level expert witness statement presented with Judge Garzón's case to the European Court makes clear that the decisions for which Garzón finds himself in the dock tomorrow are in line with very well established international law and practice. The experts, which include national judges from Argentina and Chile who have reached similar decisions, distinguished professors of international law from the UK and US, and current and former UN Special Rapporteurs, demonstrate that judge Garzón is being prosecuted for opinions that are, as a matter of international law, both well founded and within the mainstream of international legal analysis. Some of these experts have sought to also give evidence to the Spanish courts, but have thus far been precluded from doing so. It remains to be seen whether the court will allow their evidence this week.

The case pending against Spain before the European Court of Human Rights in Strasbourg challenges the decision to prosecute a judge for reasoned opinions – in this case for giving effect to the international law obligation to investigate crimes against humanity – as itself a violation of human rights. In light of how the Spanish trial unfolds, there may be a basis to expand the European Court case to include other rights violations should Judge Garzón decide to do so. Among the open questions is whether Garzón will be allowed to present the international expert witnesses, relevant to an assessment of why his decisions were well founded and made in good faith, which have thus far been excluded by the Spanish Court.

The fact that Garzón is the first person in the dock in relation to Franco-era crimes has been the subject of comment and criticism in Spain and internationally. Meanwhile victims' claims against those responsible for crimes against humanity are frozen, suspended pending the resolution of this criminal case against Judge Garzón.

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See www.interights.org/Garzón. For background information on Spanish proceedings, also in Spanish, see <http://www.crimenesinternacionales-franquismo-casoGarzón.es>