

Baltasar Garzón v Spain: Important Decision by the United Nations Human Rights Committee

27 August 2021

The United Nations Human Rights Committee ('**UNHRC**') has handed down a powerful decision finding Spain responsible for multiple violations of the rights of our client, the former judge of the Spanish national court, Baltasar Garzón. Between 2009 y 2012, Judge Garzón was criminally prosecuted for the decision to open an investigation into allegations of crimes against humanity during Franco's dictatorship, despite Spain's controversial 1977 amnesty law, and for authorizing telephone intercepts in the *Gürtel* high-level political corruption case. The case, brought by Helen Duffy in January 2016 on behalf of Judge Garzón, challenged the abuse of criminal law to prosecute a judge for 'prevaricación' or criminal malfeasance, based solely on his judicial decisions, as a violation of multiple rights under the ICCPR and an affront to the underlying principle of judicial independence.

The 18-person expert UN body noted, in a [decision published yesterday](#), found unanimously that criminal proceedings against Garzón in both the *Franquismo* and *Gürtel* cases were 'arbitrary' and should never have been brought. Garzón's judicial decisions were indisputably reasoned, supported by other judges and the *Ministerio Fiscal*, and were overturned on appeal (where any alleged errors could be addressed). Moreover, in a further striking rebuke to the Spanish judicial system, it found the Spanish courts lacked the requirements of impartiality, and failed to guarantee the right to appeal, in violation of basic fair trial rights. The decision fully vindicates the applicant's long-running complaint that the Spanish state for abusing the criminal process to silences judges and remove him from judicial office.

Spain must now provide 'full' reparation, which includes restoring his rights as a judge, deleting his criminal record, providing compensation and ensuring that such arbitrariness cannot happen again.

The UNHRC has the role of authoritatively deciding on complaints against state parties for violations of the International Covenant on Civil and Political Rights ('**ICCPR**'), and has been binding on Spain since 1977. Spain has been given 180 days to address the wrongs identified in the decision and to report to the UNHRC.

Background to the Decision:

The Garzón v Spain case was presented to the UNHRC by Human Rights *in Practice* in January 2016. The case complained that the series of criminal prosecutions brought against the judge between 2009 and 2012, solely on the basis of his interpretations of the law, were inherently arbitrary, unforeseeable and lacked basic fair trial guarantees, amounting to multiple violations of the ICCPR. The complaint was supported by multiple high level experts, who collectively intervened in support of a) the principles of judicial independence at stake in the case and b) the duty to investigate and the right to truth, consistent with Garzon's judicial interpretations in the Franco decision.

On 21 October 2019 the Committee found the key elements of the complaint admissible, and went on to consider the merits of several complaints, namely: i) the arbitrariness of the criminal prosecutions in both the *Franquismo* and *Gürtel* cases, under Article 14(1) ii) the lack of

impartiality of the instructing and trial judges iii) the denial of the right of appeal and iv) the unforeseeable interpretation and application of the criminal law under Article 15.

The decision of 25 August 2021 finds in favour of the applicant on all of these counts, finding violations of articles 14(1), 14(5) and 15 of the ICCPR.

- First, the criminal prosecutions of Judge Garzón, on the sole basis of his interpretations of the law in a series of politically contentious cases, were found to be inherently 'arbitrary.' Emphasizing the fundamental principle of judicial independence, the decision recalled that judges 'should not be subject to criminal or disciplinary action based on the content of their decisions.' The cases were based solely on Garzón's judicial decisions - to open an investigation into the Franco's dictatorship crimes, despite the amnesty law, and to authorize telephone intercepts in the *Gürtel* high-level corruption case, subject to safeguards - which were indisputably reasoned decisions, supported by other judges and by the Public Prosecutor's Office, and which constituted, at a minimum, plausible judicial interpretations of the law. Moreover, both decisions were overturned on appeal, so if there had been errors in the decision, as the Spanish state alleged, they could be remedied in that way. The Committee's decision is clear that such judicial decisions could not be considered crimes and criminal charges in the *Franquismo* case (in which he was eventually acquitted) and conviction him in the *Gürtel* case were arbitrary criminal processes, in violation of Art 14(1) ICCPR guaranteeing a fair trial.
- Second, the UNHRC also found that the Spanish courts lacked the necessary independence and impartiality in their handling of the cases against Judge Garzón. The Committee noted the overlap of judges involved in the investigative and trial stages of both the *Franquismo* and *Gürtel* processes, as well as the role of the investigating magistrate in assisting right-wing organisations lodging the *Franquismo* case in the first place. On this basis, it concluded that there were violations of article 14(1) concerning Judge Garzón's right to an impartial tribunal.
- Third, Judge Garzón's fair trial rights were violated by the denial of any right of appeal. The fact that the Supreme Court was the trial court in both *Franquismo* and *Gürtel* cases provided no guarantee of a fair trial, as these cases made clear (5.12).
- Finally, the Committee found that the crime of '*prevaricación*', which criminalizes 'unjust judgments' under the Spanish Criminal Code, for which Judge Garzón was convicted, fell foul of the requirements of legal certainty and foreseeability under article 15 of the ICCPR. The conviction of Judge Garzón was not a foreseeable application of the criminal law.

The Committee finally found that Spain must make full and comprehensive reparation for the dismissal and prosecution of Judge Garzón. This includes ensuring that Garzón's criminal record is annulled, and that his rights as a judge are fully restored without delay.

The decision is available in Spanish [here](#) (English translation to follow). Quotes by Baltasar Garzón and Helen Duffy are annexed to this release. For more Background to Judge Garzón's decision's and the cases against him in English, see [LINK](#).

Contact: Helen Duffy, Human Rights in Practice helen@rightsinpractice.org; +31624283283

(para contactar **Garzón en España**) iMades Communication; info@imadesc.com; +34910882399

Annex: Quotes concerning the case:

Baltasar Garzón:

«I am very happy with the resolution. I am happy personally and for my family. I am happy for everyone who believed in me and in the integrity of my work, which is just the work of a public servant, which I've always been and tried to be. I believe in justice. I said I did not agree with the decision by the Supreme Court, that it was a wrong decision and that I would respond looking for justice according to the law. The Supreme Court did not give me justice. The Human Rights Committee has provided it now and that is why I am happy for me and for others, especially for the victims who are still waiting for justice in the Franquismo case.

Spain has the obligation to make an integral reparation since my rights have been violated. Consequently, Spain has the obligation to erase my criminal record and to provide me a compensation adequate to the damage sustained. The damage sustained is immense. It is the worst thing that can happen to a person who has devoted and continues to devote his entire life to justice, that is, the loss of the position of judge in an arbitrary manner, as the Committee has stated. It is very difficult that this can be compensated. The only way to do it is to reinstate me in my position as a judge and of course, the criminal record must be erased. The damage is done, and I've sustained it for eleven years, every day, every hour, every minute, due to an unfair and arbitrary decision. Spain must also, as stated by the Committee, adopt the necessary measures to avoid that similar violations are committed in the future. It will be important how the State reacts to meet, or not, this obligation».

Helen Duffy:

«Today's decision is the culmination of a very long process for my client of challenging prosecutions that should never have been brought. The Committee's detailed and careful decision make clear there was never any plausible justification for prosecuting a judge for reasoned interpretations of the law, which is anathema to judicial independence. Spain, and other states round the world, should ensure that this does not and cannot happen again.

It has been an honor to represent Baltasar Garzon and to see this decision finally vindicate him. But its importance is broader. It sends a message on the need for essential safeguards of judicial independence, at a time when they are under attack globally. It shines a light on how criminal law, unchecked and unclear, can be a dangerous weapon of arbitrariness.

The UNHRC has revealed the extent to which the Spanish legal system failed, with the arbitrary manipulation of criminal law by interested parties, the lack of basic guarantees of impartiality and fair trial, and the lack of clarity in the criminal law itself. The Spanish government needs to reckon with the far-reaching implications for the future.

The Spanish government should act urgently act to repair the harm caused to my client, including by restoring Garzon to his judicial functions, expunging his criminal record, and to take measures to ensure that such an affront to judicial independence and criminal justice cannot happen again. Spain must show its commitment to international law and human rights by recognising, and fully complying with, this important decision without delay.»