
PRESS RELEASE - THE OBSERVATORY

SPAIN: Solidarity with Justice Baltasar Garzón

Paris-Geneva-Madrid, March 23, 2010. *The Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), has completed a solidarity mission in support of Justice Baltasar Garzón today in Spain.*

The mission presented an open letter to Spanish judiciary authorities in solidarity with Justice Baltasar Garzón. This initiative garnered the support of 59 human rights organisations in many countries and over 150 jurists, lawyers, judges, academics and human rights defenders worldwide.

The solidarity mission was composed of Mr. **Louis Joinet**, Honorary Attorney General to the French Cassation Court, former Independent Expert for the United Nations and former UN Special Rapporteur for the fight against impunity, Mr. **Luis Guillermo Pérez Casas**, FIDH Secretary General, and Mr. **Francisco Soberón**, Director of the Association for Human Rights (APRODEH - Peru).

The mission requested that the criminal investigation against Justice Baltasar Garzón for prevarication be dropped, as Justice Garzón acted in accordance with international law. The *chargés de mission* also requested that it be clearly established that the 1977 Amnesty Law does not apply to crimes against humanity, and that the Spanish State conforms to its obligation to investigate these crimes committed during the Franco dictatorship, in particular enforced disappearances.

The letter that was presented shows the perplexity of the signatories regarding the decision of the instructing magistrate of the Supreme Court's Second Chamber of February 3, 2010 on the case against Justice Baltasar Garzón to continue the proceedings for prevarication, on the grounds that the latter assumed competency to investigate crimes committed during the Franco dictatorship. 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.

The use of the offence of judicial prevarication against Justice Baltasar Garzón is disconcerting as "indeed, a judicial officer has always some scope for discretion in the implementation of law. If he does so in order to fulfil 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. the judicial body retains a margin of appreciation when applying the law and, if it is applied with regard to the Human rights obligations of the State, this should not be considered as unreasonable or against the law without incurring the risk of damaging the fundamental basis of criminal law in the investigation, sanction, preparation and prevention of all types of crimes and in particular those of an international nature", as declared the signatories of the letter.

The signatories also recalled the imperative need for Spain to acknowledge its duty towards the victims of the Franco dictatorship as well as its human rights obligations under international law.

The mission also took note of other complaints made against Justice Baltasar Garzón in cases that question his interpretation of the law¹. It is normal to question, annul, modify or confirm decisions by ordinary means of appeal. On the other hand, resorting to the penal persecution of a judge in order to sanction the different interpretations of the application of the law creates an extremely dangerous precedent that affects the independence of judges, an essential pillar of the implementation of justice in a democracy and a social State under rule of law.

The mission notes with concern that such complaints tend to undermine the credibility of the judge, his honour and his professional commitments, and leaves room for a possible persecution orchestrated by interests distinct from those of seeking justice. The mission asked how many justice officers were subject to criminal persecution in Spain, for alleged prevarication, because they had different criteria for implementation of criminal law. The complaints against Justice Garzón seem to show an unprecedented steadiness in their admissibility, which leaves serious doubts as to the motivations on which the proceedings against him are based.

In conclusion, the mission and the signatories expressed their recognition of Justice Baltasar Garzón's work in favour of victims' rights to truth, justice and reparation, not only in Spain but beyond its borders, thus becoming an important bastion and promoter of international criminal law these the past years.

For further information, please contact:

- FIDH: Gael Grilhot / Karine Appy: + 33 1 43 55 25 18
- OMCT: Eric Sottas: + 41 22 809 49 39

¹ Decision ("*auto*") of January 28, 2010 following the complaint against Baltasar Garzón (Banco Santander) - case n°00339/2009: prevarication and corruption; and decision ("*auto*") of February 25, 2010 following the complaint against Baltasar Garzón (Gürtel case): prevarication for alleged illegal interception of communications.