

# Spain: Baltasar Garzón—The people’s judge as defender of the capitalist state

## Part 2

**Paul Mitchell**  
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*This is second and concluding part of an article examining the role of leading Spanish judge Baltasar Garzón. Part 1 was posted October 13.*

Whilst the rightist terror group Grupos Antiterroristas de Liberación (GAL) terrorists and their masters have escaped relatively unscathed, ETA terrorists have faced the full force of the state. And the pursuit of the nationalist organisation Basque Homeland and Liberty (Euskadi Ta Askatasuna—ETA) has been a major preoccupation for Garzón himself. He says his “work regarding Spanish problems is mostly dedicated to cases of terrorism, political terrorism, pro-independence terrorist acts, Islamic terrorism. But mostly, ETA terrorism, which is the Basque organisation from northern Spain” (from the profile in *Speak Truth to Power*). It is interesting to note that Garzón never considers the state capable of terrorism. He is careful to say that states do not commit acts of terrorism—only those people who are the highest authorities in the state and use the army or paramilitary groups in terrorist actions.

Garzón’s campaign against ETA pre-dates that of the Aznar government’s clampdown against the group under the guise of the Bush administration’s so-called “war on terrorism.” Indeed, Garzón showed the way.

In May 1998, Garzón disbanded Koordinora Arbetzale Sozialista, an association of Basque independence groups, claiming it was an arm of the ETA organisation. Two months later he ordered the indefinite closure of the Basque radio station *Egin Irratia*, the journal *Egin* and the arrest of 11 of its workers, accusing them of collaborating with ETA.

In November 1999, ETA ended the ceasefire it had agreed 14 months earlier and began an assassination and bombing campaign that resulted in 38 deaths by the end of 2001.

Garzón ordered the arrest of members of Ekin, an organisation seen as the successor of KAS and accused three parliamentarians from Euskal Herriarrok (the electoral name of Herri Batasuna) of being leaders of ETA’s political structure.

In August 2002, Garzón banned Herri Batasuna for three years—the first political party to be outlawed since the death of Franco in 1975—saying, “One should not hesitate to classify the actions of the terrorist organisation ETA, of which [Batasuna] is an element, as crimes against humanity.”

On the same day, the Spanish parliament overwhelmingly passed a bill recommending that the government ask the Supreme Court to outlaw Batasuna permanently—making a mockery of Spain’s constitutional requirement that the judiciary and government should operate independently.

In February this year the left-leaning Basque-language paper *Egunkaria* was closed down for refusing to join the denunciations of ETA and Aznar described the conservative Basque Nationalist Party (PNV) as “soft on terror” for suggesting that the ban on Batasuna might drive people away

from the parliamentary process.

In a letter to Garzón, Robert Ménard, the secretary-general of Reporters Without Borders, protested his decision to close the pro-independence Basque magazine *Ardi Beltza*, following the indictment of its director, Pepe Rei, for belonging to ETA. Ménard wrote, “Pepe Rei’s indictment is a legal procedure on which we do not wish to comment. Our organisation was one of the first to denounce his threatening attitude towards journalists. But the closure of a press organ is a dangerous decision for freedom of expression .... We ask that you reconsider this decision and authorise the magazine *Ardi Beltza* to start publishing again.”

It is likely that the PP’s national election campaign in March 2004 will focus on the suppression of the Basque question using the “war against terror,” but this has been the pretext for undermining the democratic rights of the Spanish people as a whole.

Garzón first came to international attention when former Chilean President General Augusto Pinochet was arrested during a medical check-up in London in 1998.

Back in 1996 the Progressive Union of Prosecutors filed criminal complaints against the Argentine and Chilean military for the disappearance of Spanish citizens in those countries under the dictatorships that ruled them during the 1970s and 1980s. People’s prosecutions, including one by the Salvador Allende Foundation, followed those complaints.

The National Court appointed Judge Manuel Garcia-Castellon to investigate the charges. Garcia-Castellon passed the case over to Garzón when he became convinced there was enough evidence to charge Pinochet for his role in the disappearances and in Operation Condor—the plan devised by South American dictators to help each other wipe out dissent in the name of “elimination of communism” and “defence of Western-Christian society.”

In October 1998, upon hearing that Pinochet was present in England, the Communist-led United Left and the Chilean Group of Relatives of Detained and Disappeared People (Agrupacion de Familiares de Detenidos y Desaparecidos de Chile) asked Garzón to order Pinochet’s arrest.

Garzon was, however, the most reluctant of authors of the subsequent detention of Pinochet. As Garzón’s name became a household word he complained, “The press is using me ... I recognize that I am a very popular judge. Despite myself. For better or worse.”

The Pinochet case was a sensitive issue for the British and Spanish governments. British Prime Minister Tony Blair was preaching a “new era of human rights” and an “ethical foreign policy” that provided the pretext for the imperialist powers to ignore questions of national sovereignty and intervene wherever they deemed human rights were being abused—as in Kosovo and Iraq.

The Labour government had argued specifically that Serbian President Slobodan Milosevic did not enjoy diplomatic immunity from prosecution by an international court despite his position as a head of state. So it was difficult to block Pinochet's prosecution on the grounds of his position as a former head of state or by insisting that Chile must enjoy sovereign rights over whether or not he was prosecuted.

In Spain, the Pinochet case raised the issue of pardons granted to former Franco officials during the "transition to democracy." Pinochet had been granted immunity from prosecution in Chile under circumstances that echoed the events in Spain following the death of Franco in 1975 and the collapse of his regime. Then the PSOE and Communist Party ensured a peaceful transition under the slogan "forget and forgive." Apart from one or two show trials that led to house arrest for a few individuals, no one was tried or punished for the crimes of the Franco era. Most government officials and business leaders retained their posts and property.

As a result of these concerns, the chief prosecutor of the National Assembly, Eduardo Fungairiño, and the general prosecutor of the state, Jesús Cardenal, stopped the progress of Pinochet's prosecution. Felipe González also criticised the extradition, saying, "I carried out the transition in Spain and I would not have liked someone interfering in that process once we had the opportunity to define it ourselves."

The British House of Lords' decision to allow the extradition to proceed was seen as a vital step in the establishment of universal justice by human rights organisations. Garzón exclaimed, "There have been spectacular advances, like the decision of the House of Lords that Pinochet is not immune from prosecution. The international community has now accepted, thanks to this case in England, that the principle of universal jurisdiction is valid" (from the profile in *Speak Truth to Power*).

However, after a few months of house arrest in London, British Foreign Minister Jack Straw released Pinochet in March 2000 deeming him unfit to stand trial on the grounds of ill health.

Garzón has also signalled his intention to question Richard Nixon's national security adviser Henry Kissinger about events in Chile after declassified documents released by the US State Department and the CIA during Pinochet's detention suggest that Kissinger was well aware of what was happening.

It was because of such threats that the United States government refused to ratify the establishment of the International Criminal Court and led a worldwide campaign to thwart further extraditions on the basis of universal justice, which it sees as a restraint on its colonialist ambitions.

There were a number of people's prosecutions naming Argentine military officers as responsible for crimes of genocide and terrorism that were accepted by Garzón in 1996. One year later he issued an arrest order that included Argentine Navy Captain Adolfo Scilingo, who made a televised confession in 1995 of "death flights" in which hundreds of detainees were thrown from airplanes to their deaths in the Atlantic Ocean. Scilingo was detained after travelling to Spain voluntarily.

Numerous witnesses have testified about the repression in Argentina leading Garzón to declare, "According to the law, these crimes must be investigated and hundreds of assassinations cannot remain unpunished.... We have a moral debt with the hundreds of victims" (*New York Times*, October 19, 1998).

Garzón has pursued the extradition of another Argentine officer on his arrest warrant—Ricardo Miguel Cavallo—who was captured in Mexico and transferred to Spain.

Whether Scilingo or Cavallo will ever face trial in Spain is doubtful, however. The Spanish government has always argued that it has no jurisdiction over crimes committed in Argentina. It recently dropped its request to extradite the remaining officers on Garzón's arrest warrant from Argentina to Spain after accepting assurances from Nestor Kirchner, Argentina's new president, that his government would take action in the national courts.

In 1992-93 Garzón was involved in a case against Monzer al-Kassar, a Syrian arms dealer who has a house in Spain and was known as the "Prince of Malaga." Garzón indicted al-Kassar on charges of piracy and providing arms to Abu Abbas's Popular Front for the Liberation of Palestine to carry out the hijacking of the Achille Lauro cruise ship near Egypt in 1985. Leon Klinghoffer, a Jewish American passenger confined to a wheelchair, was shot and thrown overboard during the hijack.

Al-Kassar is a very shady character protected at the highest levels. The Final Report of the Independent Counsel for Iran/Contra Matters noted that al-Kassar received \$500,000 from selling arms to the Contra counterrevolutionaries in Nicaragua. The 1992 Senate Committee report into the Bank for Credit and Commerce International collapse in 1991—at that time the biggest in banking history—recommended "further investigation" into the money-laundering bank's relationship with the "arms trafficker" al-Kassar. A Pan Am insurance investigator's report claimed al-Kassar provided the bomb that blew up Pan Am Flight 103 over Lockerbie in Scotland in December 1988.

More importantly, at the time Garzón was investigating al-Kassar, al-Kassar was smuggling Polish arms to Croatia and Bosnia in defiance of a United Nations arms embargo. The US was heavily involved in sanction-busting, with allegations that former ambassador to Argentina, James Cheek, arranged for arms to be flown from Buenos Aires to Croatia.

But al-Kassar was released from Spanish custody after several prosecution witnesses changed their evidence before the trial began.

Another individual who more recently survived a brush with universal justice is the Russian media baron Vladimir Gusinsky, who holds joint Russian/Israeli nationality and is wanted by the Russian government for questioning over allegations of fraud. Gusinsky is charged with "misrepresenting" the assets of his Media-Most company to secure a \$262 million loan from the state-controlled Gazprom conglomerate. No doubt, political decisions and disputes within the Russian oligarchy lay behind the charges—Media-Most showed bloody images of the Chechen war in contrast to the sanitised reports on government-run TV stations. Garzón ordered Gusinsky to be detained in his villa in Spain on \$5 million bail after an extradition request from the Russian authorities in December 2000, saying, "He easily has the potential to evade justice due both to his economic and operational resources."

Four months later he was freed. On August 21, 2003, the Greek authorities detained Gusinsky on another extradition request from Russia. On the same day he was granted a US immigration visa.

Garzón's most recent investigations have included the September 24, 2003 indictment of 35 Al Qaeda suspects, including Tayssir Alouni, an *Al-Jazeera* correspondent in Spain, and Osama bin Laden.

In November 2001 Garzón arrested eight Islamic extremists belonging to the "Soldiers of Allah" in Spain, accusing them of helping the September 11 terrorists as well as involvement in a foiled bomb plot against the US embassy in Paris.

The indictment makes it clear that Spanish intelligence officers had watched and listened to the prime suspect, Imad Eddin Barakat Yarkas, in his contacts with other suspected Al Qaeda operatives around the world since at least 1997. Of course, this case also raises awkward questions—it is inconceivable that the Spanish authorities did not inform the US intelligence services.

The pattern of events could not be clearer. Whenever Garzón has attached himself to a case involving a prosecution that may prove embarrassing to the government, the Spanish state and its allies, it has either ended in failure or those convicted have been quickly released. In contrast, his campaign against ETA and other instances that serve the political interests of the powers that be have gone from strength to strength.

Garzón is no "people's judge." He may publicly proclaim his belief in the cause of "universal justice" every hour on the hour for the rest of his

life, but his career shows there is no such thing in the real world. He is a representative of a system of bourgeois justice. As such, he may on occasion be forced to raise issues that embarrass the government of the day, but he also makes sure that he never deliberately undermines the longer-term interests of the Spanish ruling class he truly serves.

*Concluded*

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